



IAC-AH-DP-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/48470/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 21<sup>st</sup> March 2016**

**Decision &  
Promulgated  
On 25<sup>th</sup> April 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR SAYED ASHFAQ UD DIN SHAH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Grace Brown (Counsel)

For the Respondent: Ms A Brocklesby-Weller (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge D Morgan, promulgated on 28<sup>th</sup> July 2015, following a hearing at Taylor House on 16<sup>th</sup> July 2015. In the determination, the judge allowed the appeal of Sayed Ashfaq Ud Din Shah, whereupon the Respondent

Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Pakistan, who was born on 18<sup>th</sup> February 1966. He is 40 years of age. He appeals against the decision of the Respondent refusing his application for leave to remain as a Tier 1 (Entrepreneur) Migrant, made on 4<sup>th</sup> April 2014 following a period of leave as a Tier 1 (Post-Study Work) Migrant.

### **The Appellant's Claim**

3. The Appellant's claim is that he complied with the requirements of paragraph 245DD of the Immigration Rules because he has genuinely invested money in the business and there is a contract between the Appellant and Rye Telecom. The Respondent states that this contract is not a valid contract because it did not specify a fee. The Respondent also states that there are concerns in respect of the market research conducted by the Appellant. The Appellant's response to this is that there are no requirements in the Rules for market research. The Respondent also states that there are concerns about the website used by the Appellant to promote his business this was a relationship with another company. The Appellant's response for this is that websites are frequently registered to third parties. The Appellant maintains that he has completed his Masters from Glamorgan University in Strategic Human Resources Management and he has set up this business to pursue a human resource management providing small businesses, who could not afford their own separate HR department, with human resource management service.

### **The Judge's Findings**

4. The judge held that he was persuaded that the Appellant met the requisite standard in the Immigration Rules and that he was genuinely intending and is able to establish a human resource management business. He genuinely intended to invest the available funds and he did not intend to take other employment. The judge went on to say, "the best evidence of the genuineness of the Appellant's business is that he is seeking to pursue a business in which he has a postgraduate qualification for which he maintains and accept there is a clear market" (see paragraph 12).

### **Grounds of Application**

5. The grounds of application state that the judge failed to give adequate reasons since coming to his conclusions and violated the principle in **MK (Duty to give reasons) Pakistan [2013] UKUT 00641**.
6. On 5 February 2016, permission to appeal was granted on the basis that it was argued that the judge had not engaged with the reasons given by the Secretary of State in the refusal letter because the refusal letter made it clear that the business plan appeared to have been copied from different

sources and text had been inserted but that was not explained by the Appellant and it is arguably insufficient to say that there was nothing wrong with that without any more being explained by the judge.

### **Submissions**

7. At the hearing before me on 21<sup>st</sup> March 2016, Ms Brocklesby-Weller, appearing on behalf of the Respondent as the Senior Home Office Presenting Officer, stated that there was a complete lack of reasoning to engage with the refusal letter by the Home Office. For example, from paragraph 7 the judge accepts simply at face value what the Appellant states. At paragraph 8 of the determination it is said that no fee has been paid, but when Counsel says that the page is missing that was the explanation for it, the judge simply accepts this at face value.
8. For her part, Ms Brown, appearing on behalf of the Appellant, submitted that this was nothing more than a disagreement with the decision. There was a Presenting Officer in attendance at the hearing. He made submissions with the judge fully recorded at paragraph 4. The judge did engage the refusal letter, and had the court bundles, and referred to a “detailed skeleton argument” (at paragraph 6). This letter is seven pages long and all it says is that at page 3 there are problems with the business plan, the contract, the market research, and the website. Yet, when one looks at each of these there are explanations that were given before the Tribunal. For example, if one takes the “business plan”, the quibble by the Respondent with this is that he chooses Americanised spelling but, it is not clear why this should be a problem in a globalised world.
9. Second, if one takes the contract, it is said that there is no specified fee, but as Counsel at the hearing made clear, this was because there was a page missing, and the determination records that, “a copy of which is reproduced at page 76 of the Appellant’s bundle”, but this was not evidence emerging just at the hearing itself, but was available to the Home Office as well, and all it amounted to was a single page number 76 missing from the bundle.
10. Third, if one takes the market research concern of the Respondent, a list of companies was provided by the Appellant for the Home Office’s consideration.
11. Finally, if one considers the concerns of a website the objection to this is that “checks of website domain registration records show that your website appears to have been registered by Scorp Group Ltd, which it transpired are legal representatives based in Manchester”. However, it is not clear why this should be a matter of any concern whatsoever.
12. The refusal letter (at page 3) also goes on to say that there are concerns given the applicant’s immigration, but the judge gives a resounding answer to this by explaining that the Appellant had completed a Masters from Glamorgan University in “Strategic Human Resources Management”

which is precisely the area in which he now wished to specialise further by setting up a business. It was simply not clear what the objection was. This was just a disagreement with the determination of the Judge.

13. In reply Ms Brocklesby-Weller submitted that as far as market research was concerned all the Appellant had done was to produce a list of companies and this was not sufficient.

### **No Error of Law**

14. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law such that I should set aside the decision (see Section 12(1) of TCEA 2007). It is clear from **R (Iran) [2005] EWCA Civ 982** that, “it is well-known that ‘perversity’ represents a very high hurdle” (at paragraph 11). That level of perversity has simply not been demonstrated in this appeal by the Secretary of State. The judge’s findings at paragraph 11 and at paragraph 12 are a sufficient answer to any criticism of the determination. In fact, as **Budhathoki [2014] UKUT 341**, makes clear, “it is generally unnecessary and unhelpful for a First-tier Tribunal Judge to rehearse every detail raised in the case”. The judge here has resolved the conflicts in the evidence in his concluding paragraphs.

### **Notice of Decision**

There is no material error of law in the original judge’s decision. The determination shall stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

21<sup>st</sup> April 2016