



IAC-FH-CK-V1

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

Appeal Number: IA/48723/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 10 March 2016**

**Decision &  
Promulgated**

**On 19 April 2016**

**Reasons**

**Before**

**Mr H J E LATTER  
(DEPUTY UPPER TRIBUNAL JUDGE)**

**Between**

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

**and**

**MUHAMMAD JAMIL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Ms J Isherwood, Home Office Presenting Officer

For the Respondent: Mr R Parkin, Solicitor of Rayan Adams Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal (Judge Maxwell) allowing an appeal by Mr Muhammad Jamil against a decision made on 4 December 2014 refusing him leave to remain as a Tier 1 (Entrepreneur) Migrant. The appeal was allowed to the extent that it was remitted to the Secretary of State for consideration of

the requirements of leave remaining outstanding. In this decision I will refer to the parties as they were before the First-tier Tribunal, Mr Jamil as the appellant and the Secretary of State as the respondent.

## Background

2. The background to this appeal can briefly be set out as follows. The appellant is a citizen of Pakistan born on 17 November 1985. He first entered the UK on 23 January 2011 with leave to enter as a Tier 4 (General) Student and was granted leave to remain until 29 October 2012. Subsequently he was granted further leave to remain as a Tier 1 (Post-Study Work) Migrant until 4 September 2014. On 3 September 2014 he applied for leave to remain as a Tier 1 (Entrepreneur) Migrant. The appellant was able to take advantage of the transitional arrangements in respect of Tier 1 (Post-Study Work) Migrants and did not therefore have to meet the requirement of using funding from registered UK entrepreneurial seed funding competitions or from one or more UK government departments or devolved government departments. However, he was required to provide one or more documents from the categories identified at G26 of his application form to cover a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application. The applicant has ticked the box “advertising or marketing material”.
3. The appellant submitted with his application form a number of documents but they were undated. His application was refused on the basis that the evidence he had submitted in relation to marketing and advertising material was not acceptable as it did not cover a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application. In the skeleton argument produced for the hearing before the First-tier Tribunal the material submitted with the application is identified as follows: an undated business card, an undated flyer and printouts from the “Scoot” and the “Sun Business Directory” websites. It was argued that the appellant had been treated unfairly and harshly by the respondent and this could have been avoided had the respondent given the appellant an opportunity of being heard to clarify the respondent’s concerns. It was argued that the respondent had breached the principle of common law fairness and that the respondent’s decision was irrational and unreasonable.

## The Hearing before the First-tier Tribunal

4. At the hearing before the First-tier Tribunal the judge recorded that the appellant’s case was that in June 2014 he had purchased leaflets from HT Signs Ltd and had produced their invoice dated 25 June 2014. These leaflets were distributed and the appellant had provided letters from Loxford Muslim Society, undated but confirming that leaflets were distributed outside their mosque on 25 and 27 June 2014, and from Radio Cars Ltd, again undated but confirming that the appellant had distributed

leaflets for his business outside their office and also handed over 200 leaflets for distribution on 26 June 2014. In addition to the leaflets the appellant had been marketing via a website under the name gulmahalsolutions.co.uk and had produced a copy of a document from his service provider confirming his registration date as 1 July 2014.

5. The judge commented that it was unfortunate that the respondent had chosen not to consider all of the appellant's application but had concentrated on what was a relatively unimportant aspect, the advertising material. To succeed all the applicant had to do was to provide some advertising material that was available during the required period, in this instance within the period 11 June - 2 July 2014. The judge said that, disregarding the quality of the advertising and marketing and its apparent aim of garnering business via a local mosque and taxi company, it was clear that he produced advertising and marketing material within the specified period. He then said that although this sort of marketing approach appeared on the face of it to be futile this was not a matter for him as the respondent had taken a less than helpful approach in the present instance and he mentioned it only to dispel any misapprehension that, by allowing this appeal and criticising the approach of the respondent, he had formed any favourable view as to the outcome of the application which he had to remit to the respondent for a full and proper consideration of all the outstanding issues. For this reason the appeal was allowed to the extent that it was remitted to the respondent to consider all the requirements of leave that remained outstanding.

### The Grounds and Submissions

6. In her grounds the respondent relied on the provisions of s.85A of the Nationality, Immigration and Asylum Act 2002, arguing that it was only open to the appellant to rely on evidence submitted in support of the application. The First-tier Tribunal had erred, so it is argued, by relying on an invoice and letters mentioned at [5(ii)] as they had not been produced with the application. The advertising material provided with the application was not acceptable as specified evidence as defined by para 41-SD(e)(iii) of Appendix A of the Immigration Rules as it did not cover a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of the application.
7. In the appellant's rule 24 statement it is argued that the documents on which the appellant sought to rely fell within the exceptions to s.85A(4) in that it was evidence adduced to show that a document was genuine or valid. There was no requirement in the rules that the date of the advertising material needed to appear on the material itself and it was therefore open to the appellant to produce evidence as to the date when it was not contained within the advertising material itself. The evidence could be either oral or documentary.

8. In her submissions Ms Isherwood relied on the grounds arguing that the judge had clearly erred in law by relying on evidence not submitted with the application. The evidence produced was to supplement the evidence submitted and did not fall within the category of evidence designed to show that a document submitted was genuine or valid.
9. Mr Parkin accepted that the judge may have erred in law in his approach but the error was not material. The purpose of the further evidence had been to confirm that the documents submitted were genuine or valid. He accepted that the documents originally submitted were all undated but the appellant had been entitled to produce further evidence at the hearing to support an argument that the documents were valid in the sense of existing at the time required by the rules.

#### Consideration of whether the First-tier Tribunal erred in Law

10. It is common ground between the parties that an application made under the points-based scheme must be evidenced by the documents specified in the rules, which must be submitted with the application. At G26 of his application form the appellant opted to produce advertising or marketing material to cover a continuous period commencing before 11 July 2014 to up to no earlier than three months before the date of the application, in this case, potentially a relatively short period as the application was made on 3 September 2014. The documents submitted with the application were all undated. However, further evidence both oral and documentary was produced at the hearing before the First-tier Tribunal and in the light of this evidence the judge remitted the application to the respondent.
11. By virtue of s.85(5) and s.85A it was not open under the points-based scheme to adduce evidence additional to the evidence submitted with the application save where it is produced to prove that a document is genuine or valid (s.85A(4)(c)). There are a number of other exceptions but this is the only one applicable to this appeal.
12. The judge did consider further evidence in addition to that submitted in support of and at the time of making the application. At the hearing before me it was argued on behalf of the appellant that the evidence was in fact admissible (although it appears that this point was not taken at the hearing before the judge) on the basis that it was produced to prove that the advertising material was genuine or valid in the sense that it demonstrated that the documents covered the period required by the rules.
13. However, I am not satisfied that the further evidence is evidence produced to prove that the advertising material was genuine or valid. No issue was taken on whether the documents were genuine. The respondent's decision was based simply on the fact that as the evidence was undated it failed to show that it covered the period required by the rules. The evidence the appellant now seeks to rely upon does not impact on

whether the documents are genuine or valid but seeks by further evidence to supplement the documents or cure defects in them. The evidence does not go to their genuine nature or their validity. In short, the appellant cannot rely on the exception that the evidence has been adduced to prove that the documents are genuine or valid. The fact remains that the evidence submitted did not meet the requirements of the rules and the respondent was entitled to refuse the application on that basis. On the evidence the judge should have found that the appeal could not succeed.

14. It has not been argued before me that there was any procedural unfairness on the part of the respondent. The requirements to be met by an application under the points-based scheme are set out in the rules, complex though they are, and properly reflected in the application form. If part of the rules were not met such that the appellant could not obtain the required points, there was no reason why the respondent necessarily had to consider other aspects of the rules whether relating to points or other requirements. The respondent's decision makes it clear that the appellant had the option of making a new application and indicates that she reserved the right to consider the points' criteria outstanding and any other requirements in any further reconsideration.
15. In summary, I am satisfied that the judge erred in law by remitting the matter to the respondent for further consideration. I set aside the decision. In the light of my findings it is clear that the appeal should have been dismissed. I therefore substitute a decision dismissing the appeal.

### Decision

16. The First-tier Tribunal erred in law and the decision is set aside. I re-make the decision by dismissing the appellant's appeal against the respondent's decision refusing leave to remain as a Tier 1 (Entrepreneur).

Signed  
H J E Latter  
H J E Latter  
Deputy Upper Tribunal Judge

Date: 13 April 2016