



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/25229/2014

THE IMMIGRATION ACTS

Heard at Field House
On 1st November 2017

Decision & Reasons Promulgated
On 10th November 2017

Before

THE RIGHT HONOURABLE LORD BOYD OF DUNCANSBY
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RANVEER SINGH
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Miss J Isherwood, Senior Home Office Presenting Officer
For the Respondent: Mr P Saini of Counsel instructed by Candey Parker Solicitors

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge Majid of the First-tier Tribunal (the FTT) promulgated on 12th April 2016.

2. The Respondent before the Upper Tribunal was the Appellant before the FTT and we will refer to him as the Claimant.
3. The Claimant is a male Indian citizen born 16th September 1985 who on 26th March 2014 applied for leave to remain in the UK as a Tier 1 (Entrepreneur). He was interviewed in connection with his application on 21st May 2014, and his application was refused on 2nd June 2014.
4. The Secretary of State refused the application with reference to paragraph 245DD(h), (i) and (k). In brief summary it was not accepted that the Claimant had £50,000 of investment funds available, and it was not accepted that he genuinely intended to invest these funds in a business. It was not accepted that the Claimant had demonstrated that he had a viable or credible business proposal, nor that he had undertaken credible market research. It was not accepted that the Claimant had sufficient previous educational and employment experience in the business area in which he intended to operate.
5. The Claimant appealed pursuant to section 82 of the Nationality, Immigration and Asylum Act 2002, and his appeal was heard by the FTT on 6th April 2016. The FTT allowed the appeal concluding at paragraph 18;

“In the circumstances, in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal, I am persuaded that the Appellant comes within the relevant immigration law, as amended.”

6. The Secretary of State applied for permission to appeal to the Upper Tribunal. The grounds for seeking permission are summarised below.
7. It was contended that the FTT had demonstrated a complete lack of regard and application of the Tier 1 (Entrepreneur) rules, and had carried out an irrelevant consideration of Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention). It was unclear whether the appeal had been allowed under the Immigration Rules or Article 8.
8. The FTT had found the claimant to be involved in a genuine business, but gave no reasons for this finding. The FTT had failed to engage with the reasons given by the Secretary of State for refusing the application.
9. Permission to appeal was granted by Judge J M Holmes of the FTT in the following terms;

“3. It is arguable, as set out in the grounds, that this brief decision discloses either a failure to engage adequately with the disputed issues of fact raised by the appeal, or a failure to give adequate reasons for the findings made on those disputed issues of fact. It is thus arguably unclear from the decision that the judge has engaged upon a fair hearing of the appeal.

4. In any event the decision arguably discloses a material error in the judge's approach to the Article 8 appeal, and to the terms of section 117, to which no reference is made. The judge makes no reference to any relevant jurisprudence, and makes no finding that Article 8 is engaged by the decision under appeal."
10. Following the grant of permission, the Claimant did not lodge a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FTT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

11. Miss Isherwood relied upon the grounds contained within the application for permission to appeal, and the grant of permission.
12. Mr Saini realistically conceded that the FTT decision contained material errors of law, as contended on behalf of the Secretary of State.
13. Both representatives agreed that the FTT decision should be set aside and it was suggested that the appropriate course was for the appeal to be remitted back to the FTT to be heard afresh.

Our Conclusions and Reasons

14. As announced at the hearing, the decision of the FTT contains material errors of law and is set aside. No findings are preserved. The FTT erred by failing to engage with the issues in the appeal. The FTT did not adequately consider the reasons given by the Secretary of State for rejecting the Claimant's application, and did not adequately consider the relevant Immigration Rules. The FTT did not make reasoned findings. It is unclear whether the FTT purported to allow the appeal under the Immigration rules or Article 8. The consideration of Article 8 is inadequate and makes no reference to section 117B of the 2002 Act.
15. We have considered paragraph 7 of the Senior President's Practice Statements, and it is appropriate to remit this appeal to the FTT. This is because there has not been a fair hearing before the FTT, and the nature and extent of judicial fact-finding which is necessary, means that it is more appropriate for this appeal to be decided by the FTT, rather than the Upper Tribunal.
16. Therefore the appeal of the Secretary of State is allowed and the appeal is remitted to the FTT to be considered afresh with no findings of fact preserved. The appeal is to be heard by an FTT Judge other than Judge Majid. It is understood that no interpreter will be required. If that is not the case the Claimant's solicitors must notify the FTT immediately.

Notice of Decision

The decision of the FTT contained material errors of law and is set aside. The appeal of the Secretary of State is allowed to the extent that the appeal is remitted back to the FTT for fresh consideration.

Anonymity

No anonymity direction was made by the FTT. No application was made to the Upper Tribunal for anonymity. We see no need to make an anonymity order.

Signed

Date 1st November 2017

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The Tribunal makes no fee award. The issue of any fee award must be considered by the FTT when the decision is re-made.

Signed

Date 1st November 2017

Deputy Upper Tribunal Judge M A Hall