



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/29532/2014

THE IMMIGRATION ACTS

Heard at Field House
On 19 September 2017

Decision & Reasons Promulgated
On 26 September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

MUHAMMAD MARAJ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Syed Shah of 786 Law Associates
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Dean promulgated on 17 January 2017.
2. The Appellant is a citizen of Pakistan born on 15 April 1985. He entered the United Kingdom on 27 November 2009 as a student with a visa conferring leave until 31 January 2011. He then made an application for variation of leave to remain as a Tier 4 Migrant which was granted on 4 February 2011 with leave until 30 January 2012.

Thereafter on 24 May 2012 he was granted further leave to remain until 24 May 2014 as a Tier 1 (Post-Study) Migrant. On 20 April 2014 he made an application as a Tier 1 Entrepreneur. The application was made as part of an entrepreneurial team alongside a Mr Sajjad Ahmed (date of birth 10 August 1984).

3. The Appellant was interviewed in relation to the application on 27 June 2014. On 8 July 2014 his application was refused: he was refused variation of leave to remain and the Respondent also made a decision to remove him pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.
4. The Appellant appealed to the IAC.
5. The appeal was dismissed for reasons set out in the decision of First-tier Tribunal Judge Dean.
6. The Appellant applied for permission to appeal to the Upper Tribunal which was granted by Designated First-tier Tribunal Judge McCarthy on 1 August 2017.
7. Judge McCarthy considered a number of grounds of challenge but only granted permission to appeal in respect of two. In particular the Judge granted permission: in respect of a pleading to the effect that the First-tier Tribunal Judge had failed to make a finding in relation to a bank certificate dated 24 June 2014; and in respect of a challenge to the effect that Judge Dean had taken into account immaterial factors, specifically the Appellant's failure to provide a business bank statement when no such statement was required under the Immigration Rules. Judge McCarthy however rejected grounds in respect of a bank certificate dated 20 May 2014, and also rejected grounds in respect of the Judge's refusal to grant an adjournment in the circumstance of the Appellant's absence from the hearing.
8. Before turning to the substance of the challenge to the Judge Dean's Decision it is important to understand the context of the appeal: in that regard it is instructive to consider the contents of the Respondent's 'reasons for refusal' letter ('RFRL').
9. The RFRL sets out rejections of numerous aspects of the Appellant's application with reference to the requirements of the Immigration Rules in respect of a Tier 1

(Entrepreneur) application. The Respondent was not satisfied as to the viability and credibility of the source of money that the Appellant claimed to be available for his business; was not satisfied in respect of the viability and credibility of the Appellant's business plans and the market research carried out into the chosen sector; and was not satisfied that the Appellant's previous educational and business experience were such to demonstrate he was sufficiently experienced to pursue the project proposed.

10. For present purposes it is particularly pertinent to quote the RFRL in respect of the viability and credibility of the source of funds:

"You have stated that you have £50,000 available for investment in your business, Watford Business Consultants Ltd.

You have provided a letter from Barclays Bank stating that at close of business on 20 May 2014, the joint current account held a credit of £52,000.00. It is noted that this letter is dated 20 May 2014, so it is not clear how it is known that the balance was £52,000.00 at the close of play the same day.

You have not provided any bank statements for the joint personal account, or for the business account for Watford Business Consultants Ltd. The statement provided for your maintenance funds is clearly for an account that is not used regularly. The account was opened on 07 February 2014, with a transfer of £2,000. You have not provided any evidence of the source of the funds, or how long the funds have been available to you.

You have stated that the £50,000 investment comes from yourself and your team member, Sajjad Ahmed, with £25,000 being invested by each of you. You have stated that your share of the funds is from your personal savings, from the work you have done over the last three years. I do not find it credible that you could save £25,000 in three years when you state you have worked as a 'Reception security mix of job'.

You have also stated that the £15,155.12 available in your business account is from yourself and your team member. 'We give directors loan to the business because we are not putting £50,000 in business until Home Office allows, gives us visas'. This suggests you are only stating that you have £50,000 to meet the requirements of the Tier 1 Entrepreneur scheme on paper, and the necessary funds are only £15,000.

I am not satisfied that the £50,000 is genuinely available for investment in your business in the UK. You have not provided any evidence of the source of the funds, and as such, I have concerns over the viability and credibility of the genuine availability of the funds."

11. It is absolutely transparent from this passage that the Respondent's decision-maker was not satisfied that the Appellant had demonstrated that his share of the £50,000 investment - that is say his claimed £25,000 - was money genuinely available to the

Appellant (and therefore genuinely available to be invested in the business enterprise by him) because he had not satisfactorily explained and demonstrated its source.

12. The Appellant's first response to the Respondent's decision was by way of his Notice of Appeal and Grounds of Appeal. Although the Grounds are somewhat lengthy, upon careful consideration, they essentially comprise a series of generic assertions as to error with such phrases as "*the decision is not in accordance with the law*", "*the decision is capricious and based on erroneous understanding of the immigration rules*", "*is ultra vires and arbitrary*". There is precious little by way of analysis of the Respondent's actual decision, and there is nothing by way of explanation as to the source of the Appellant's funds. In substance these are essentially empty grounds.
13. The next response of the Appellant to the Respondent's decision was by way of the materials filed in the appeal. The Appellant's appeal bundle includes witness statements from both Mr Sajjad Ahmed and the Appellant. The Appellant's statement, signed by him on 28 December 2014, contains absolutely no reference to the source of the £25,000 he claimed to have genuinely available for investment in the business enterprise. The Appellant did produce three P60s in respect of his employment, being for the tax years ending April 2012, April 2013 and April 2014. Whilst those demonstrate on their face that the Appellant was earning a gross figure before tax of just over £18,000 in the first of those years, just over £33,000 in the second, and approximately £29,500 in the third of those years, there was nothing further to demonstrate what the Appellant's outgoings had been during this period: in particular there was nothing by way of bank statements to demonstrate that the Appellant had indeed been able to save £25,000 during the time of his employment in the UK, as he had claimed in the course of his application when challenged on funds.
14. In short, the Appellant put nothing of substance before the First-tier Tribunal to address the concerns that had been so clearly expressed in the RFRL.
15. It is to be recalled - as indicated in my reference to the grant of permission to appeal - that the Appellant did not attend before the First-tier Tribunal and accordingly gave no oral evidence. Nor does it appear that Mr Sajjad Ahmed, his proposed entrepreneurial partner, attended the First-tier Tribunal hearing. (As an aside it is to be noted that by the date of the appeal hearing Mr Ahmed had secured indefinite leave to remain by some other route, and there was no up-to-date evidence before the First-tier Tribunal that Mr Ahmed was still interested in, intent upon, or otherwise committed to, the proposed entrepreneurial scheme.)

16. It is against this background and context that I now turn to the substance of the challenge to the Decision of Judge Deans.
17. There were before the First-tier Tribunal, as indeed there had been before the Secretary of State, two very similar letters from Barclays Bank in respect of the balance in the joint account held by the Appellant and Mr Ahmed. These are what have been referred to in the grant of permission to appeal as the 'bank certificates'.
18. The document dated 20 May 2014 has been expressly addressed by the First-tier Tribunal Judge in similar terms to the way it was addressed in the RFRL. The document itself is in these terms:

"I hereby certify that at the close of business on 20 May 2014 the Current account of Mr Ahmed and Mr Miraj showed a credit balance of £52,000.00".

The Judge, echoing the RFRL, said this at paragraph 12:

"The letter was written on 20 May 2014 and I find it implausible that the Bank would be able to certify the closing credit balance on the same day. I therefore attach little weight to this letter."

19. There was a further similar letter dated 24 June 2014. It is signed by the same person as the letter of 20 May 2014 and is in exactly the same terms save that it refers to a close of business balance on 24 June 2014 of £50,100.
20. It is true to say that the First-tier Tribunal Judge has made no express reference to the letter of 24 June 2014. However, it seems to me that the letter is vulnerable to the same criticisms as were expressed in respect of the letter of 20 May 2014. To that extent I do not see that the Judge's failure to make express reference to it could have had any material impact on this appeal. It is clear that the Judge considered a letter dated on the same day for which it purported to show a closing balance was a document upon which little weight could be attached.
21. In any event, even if it were otherwise, neither of these documents go anywhere towards addressing the core issue - the source of the funds that were said to be in the account. Therefore, in my judgement, neither of these letters were ultimately material to the issue that I have identified from the RFRL as being at the core of the Respondent's concerns in respect of the genuine availability of funds.

22. I conclude that the Judge's failure to make express reference to the document of 24 June 2014 was not material. Moreover, given the lack of materiality of this document to the core issue I do not consider that there was a deficiency of reasons constituting an error of law.
23. The second ground of challenge is the allegation that the Judge wrongly expected the Appellant to produce bank statements for the business's bank accounts.

24. What the Judge says at paragraph 13 is this:

"Furthermore, the Appellant has not only failed to submit any bank statements for the joint current account, but he has also not submitted any bank statements for the business account of Watford Business Consultants Ltd, the credit balance of which is the subject of a letter from Barclays Bank dated 24 May. Accordingly, when taken in the round, I find the absence of the firm's bank statements undermines the credibility of the Appellant's account of the facts".

25. It seems to me absolutely clear that the First-tier Tribunal Judge was not there saying that it was a requirement of the Rules that the Appellant produce statements for the business's bank accounts. What the Judge is very clearly saying is that the failure to produce business bank statement meant that it was not clear from where the Appellant had sourced his funds. This again was a matter expressly raised in the RFRL. Plainly production of relevant bank statements would have assisted in evaluating the source of funds claimed to be genuinely available. It seems to me that the Judge was doing no more than identifying that by the time of the appeal the Appellant had done nothing to correct the omission of such statements raised in the RFRL, and that the failure to provide evidence that should be readily available to the Appellant undermined his credibility.
26. Whilst it may well be that there are certain specified evidential requirements under the Rules, it does not follow that an applicant is entitled to succeed on a Tier 1 Entrepreneur application simply because they have produced those required documents. There is more to a Tier 1 Entrepreneur application than a document checklist - as is evident from the careful assessment of the viability of both the business proposition and the viability and availability of the claimed funds required under the Rules. If challenged in respect of these aspects, it is entirely reasonable to expect an applicant (and in turn an appellant) to bring forward available and relevant evidence to address any concerns - irrespective of whether such materials

are an express requirement specified under the Rules. In all of the circumstances of any particular case, it may then be open to a decision-maker or a Judge to draw adverse inferences from the failure to provide such evidential materials.

27. It seems to me that this Appellant singularly failed to address the case against him raised by the Secretary of State for the Home Department in any of his Grounds of Appeal, his witness statement, or the materials in his appeal bundle. To that extent there was no merit in his appeal before the First-tier Tribunal. In turn I see no merit in his appeal to the Upper Tribunal.

Notice of Decision

28. The Decision of the First-tier Tribunal contained no error of law and stands.
29. The appeal remains dismissed.
30. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: 24 September 2017

Deputy Upper Tribunal Judge I A Lewis