Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA490222014 IA490252014

THE IMMIGRATION ACTS

Heard at Taylor House	**Decision& Promulgated**	**Reasons**
On 25th of April 2017	**On 2nd June 2017**	

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MRS AFSHEEN MAQSOOD (1)
MR TILA MOHAMMAD (2)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Al Arayn of counsel
For the Respondent: Mr Stanton, a Home Office presenting officer

DETERMINATION AND REASONS

Introduction and background

1. The first appellant is a citizen of Pakistan born on 29 December 1980. The second appellant is also a citizen of Pakistan born on 9 February 1988. The second appellant is the first appellant's dependent husband.

2. The first appellant first entered the UK on 1 September 2010 with entry clearance until 1 July 2012 as a Tier 4 (General) Migrant. On 16 August 2012 the first appellant was granted further leave to remain until 16 August 2014 as a Tier 1 (Post-study work) Migrant. On 14 August 2014 first appellant made a combined application for leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant under the points-based system. That application was refused on 18 November 2014. The appellant appealed to the First-tier Tribunal (FTT) on 4 December 2014.

3. On 26 July 2009 the second appellant was granted leave to enter the UK as a Tier 4 (General) Migrant until 30 November 2012. He made an application for leave to remain in the UK as a partner of Tier 1 Post-Study Dependent Migrant (the first appellant) under the Points-based System (PBS) and was given a biometric residence permit until 16 August 2014. However, following the first appellant's refusal of further leave to remain, the Secretary of State was not satisfied that the appellant was the spouse or civil partner, unmarried or same-sex partner the first appellant, as a Tier 1 migrant. The second appellant was advised of his appeal rights. His immigration status remained dependent on that of the first appellant's.

4. The respondent, having refused the first appellant's application, decided to make directions under section 47 of the Immigration Asylum and Nationality Act 2006 for the removal of the appellants from the UK.

The appeal to the FTT

5. The first appellant appealed to the FTT and her appeal was determined on the papers, following a request to that effect by her legal representative. The file was allocated to Judge of the First-tier Tribunal Kainth (the immigration judge). Having considered the case on the papers, the immigration judge concluded that the refusal letter had correctly addressed the points including any exercise of discretion in the first appellant's favour. The decision is recorded as having been determined on the papers on 25 July 2016.

6. It followed that the second appellant's appeal also failed.

7. On 15 August 2016 the first appellant sought permission to appeal to the Upper Tribunal (U T). Permission to appeal was initially refused on 5 January 2017 but of 7 February 2017 that application was reviewed the U T. On 9th of March 2017 the application was considered by Upper Tribunal Judge Rimington. Judge Rimington decided that the case had arguable merit in that when all relevant material was considered it was properly arguable that the appellant could meet the requirements of the Immigration Rules.

The Hearing before the UT

8. At the hearing before the UT Mr Al Arayn candidly accepted that the relevant version of the archived Immigration Rules (which he produced) set out the requirements the first appellant's application must meet under the Tier 1 (Entrepreneur) scheme. In particular, he accepted that the requirements included a requirement that the documents must cover a continuous period commencing before 11 July 2014 up to no later than three months before the date of her application (in this case the first appellant's application was on 15 August 2014 and this would therefore have had to have covered a period which expired no later than 15 May 2014). Secondly, the relevant rule specified the type of documents including the following:

> "41 – SD (III)
> 1. advertising or marketing material, including printouts online advertising, that has been published locally or nationally, showing the applicant's name (and the name of the business if applicable) together with the business activity or where his business is trading online, confirmation of his ownership of the domain name of the business website"

9. It was submitted on the part of the appellants, based on page 6 of a faxed supplementary bundle dated 23 June 2015, that an email written to Mrs Maqsood from yell.com, relating to a free listing confirmation, was sufficient to amount to a piece of "advertising or marketing material… showing the applicant's name". It was also submitted on the appellants' behalf that the immigration judge had not engaged sufficiently with the documents submitted in support of the paper appeal and had not taken full account of those documents.

10. Mr Stanton submitted that the appellant had failed to surmount an essential hurdle placed in front of her, by the relevant version of the immigration rules; namely, rule 41 – SD as quoted above. This meant that even if there were any errors in terms of failing to consider all the evidence, which he did not accept, there was no material error in the decision of the FTT as there was no material error of law. He therefore invited me to dismiss the appeal. Insofar as it was necessary to consider it, paragraph 41 – SD (III) (1) of the immigration rules appeared to prohibit such evidence. Mr Stanton did not consider that Mr Al Arayn's charactersation of the yell.com e mail as "advertising material" could be correct.

Conclusions

11. Having carefully considered the wording of rule 41 – SD, I have concluded that the words “advertising or marketing material” did not refer to an email merely making reference to a “free line entry” on yell.com. The inference may well be that the first appellant did indeed advertise with yell.com. However, the yell.com email could not be capable of constituting “marketing material” as defined by the rule.

12. Mr Al Arayn has conceded that he was no longer wishes to pursue the criticism of the immigration judge at paragraph 5 of his amended grounds of appeal to the UT, in relation to the immigration judge’s interpretation of the requirement for the appellant’s name to appear to comply with the rules. He also conceded that his client had been looking at the new rules rather than rules which pertained at the date of the application (see above).

13. It follows from the latter concession that the first appellant did not satisfy a requirement of the Tier 1 scheme and therefore it cannot be said that a different judge could have come to a different interpretation of the immigration rules or, indeed, a different conclusion on the facts.

14. Further, Mr Al Arayn’s other criticisms of the immigration judge, with respect, appeared not to stand up to proper analysis. Having carefully reviewed the decision of the immigration judge I am satisfied that she took account material aspects of the case. The decision appears to be a detailed one which looked at all the evidence placed before her, including the email to which reference has been made.

15. Overall, I am not satisfied that the immigration judge’s decision contains any material error of law and the decision of the FTT therefore stands.

Signed W.E.Hanbury

Dated 31st of May 2017

Decision

The appeal is against the decision of the FTT is dismissed on all grounds.

The decision of the FTT therefore stands.

No anonymity direction was made by the FTT and I make no such direction.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

Fee Award

I have dismissed the appeal and therefore there can be no fee award.

Signature William Hanbury **Dated 31st of May 2017**