



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/03482/2014  
& IA/03481/2014

THE IMMIGRATION ACTS

Heard at Manchester  
On 29<sup>th</sup> June 2018

Decision and Reasons Promulgated  
On 23<sup>rd</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MRS NABIHA AMREEN  
MR MAHMUD HASAN  
(NO ANONYMITY DIRECTIONS MADE)

Appellants

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellants: Mr Senega Jannah, Counsel, instructed by First Law  
Solicitors  
For the respondent: Mr Tang, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The issue arising in this appeal is whether First tier Tribunal Judge R Cooper materially erred in law in hearing the appeal on the papers.

2. The first appellant is married to the second appellant. Both are nationals of Bangladesh.
3. The first appellant came to the United Kingdom with permission as a student granted on 8 October 2009. Her initial leave was valid until 12 February 2011. On 3 June 2010 the second appellant was granted leave to enter as her dependent, with an expiry the same as the first appellant's. The first appellant then obtained further leave as a student on 11 March 2011 valid until 30 April 2013. Her husband was granted leave in line with this.
4. On 18 January 2013 the first appellant made an application for leave to remain as a Tier 1 entrepreneur. This was on the basis she was to open a boutique. The second appellant made application as her dependent. The application was refused on 18 January 2013. It is this decision, which brought about the present appeal.
5. In support of her application she had submitted a letter from a firm called Profectus Venture Capital indicating that she had £50,000 to invest in the proposed business. She indicated that her accountants, Ghani and Co, put her in touch with a Mr Mhd Serfaz of Profectus Venture Capital and finance was arranged. The respondent had concluded that the appellant was not a genuine applicant. The respondent did not accept that the first appellant had £50,000 available to invest. It was noted that she proposing to run a boutique, yet her experience related to health care.
6. There was a right of appeal under section 82 (1). On 17 January 2014 an appeal form was submitted on behalf of the appellants who indicated that they wanted the appeal heard on the papers. The law firm Joyya Law was named as acting for the appellants. The fee for a paper appeal of £80 was paid.
7. On 10 February 2014 the Tribunal wrote to the appellant indicating that they were required to give reasons for their appeal by 17 February 2014. There is a letter in the file dated 13 February 2014 from Joyya Law stating that the appeal forms had already been submitted online. It refers to enclosing further documents, including grounds of appeal. On file is the covering form, date stamped by the Tribunal administration 14 February 2014. There also are detailed grounds of appeal dated 6 February 2014 referring to the appellants having twins who were born on 6 September 2012 in the United Kingdom. It stated applications for leave to remain on their behalf had also been made which were refused with no right of appeal because, as they were born here, they did not have entry clearance or leave to enter the United Kingdom. Much of the grounds are taken up with the question of finance. Paragraph 42 onwards deals with article 8 issues.

8. On file there is a letter from Wiseman solicitors, dated 17th March 2015 to the Tribunal administration indicating that they are now acting for the appellants. It states that clients are still awaiting the decision on their appeal. There was a further letter from Wiseman solicitors dated 26 May 2015 to the Tribunal office pointing out the appellant's address had changed, and they were awaiting decisions in their appeals.
9. As there were a number of appeals involving Profectus Venture Capital and the genuineness of funds being available a test case was held in the First Tier Tribunal by Designated Immigration Judge Shaerf and First-tier Judge Brunnen. The hearings were spread out between November 2014 and July 2015 when a decision dismissing that appeal was promulgated. The tribunal found that the applications before it were not genuine in intent.
10. On 10 August 2016 Directions were sent to the appellant's new representatives, Wiseman Solicitors and to the appellants. The Directions referred to the test cases and a similar decision in the Upper Tribunal, Arshad and others (Tier 1 applicants-funding availability) [2016] UKUT 00334. The appellants were given notice that it was intended that their appeal would proceed without a hearing pursuant to rule 25 (1) (g) of the Tribunal procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Reference was made to rule 25 (2) whereby the Tribunal must not decide an appeal without a hearing unless the parties had been advised of its intention to do so and an opportunity given to make written representations as to whether there should be a hearing. Such written representations were to be made within four weeks of the date of the notice.
11. There is a letter dated 17 October 2016 from Wiseman solicitors referring to a letter dated 21 September 2016 from the Tribunal. I cannot find this letter on file, but it appears to be similar to the earlier Directions. The letter from the appellant's representative states that it would be premature to determine the appeal on the papers as the Upper Tribunal decision referred to was being challenged. They also asked to be given the opportunity to make representations on whether they should be afforded an oral hearing. It also refers to the appellant's article 8 rights and the need for assessment at an oral hearing. In summary, it is apparent from the tone of this letter that the appellants are not content without more to the matter proceeding on the papers. The bundle also includes material about the children which was not before the First-tier Tribunal.

### Consideration

12. The decision of First-tier Tribunal Judge R Cooper indicates an appreciation of this background. Paragraph 5 refers to the notice of appeal lodged online, and the lengthy grounds of appeal forwarded. The judge records the Directions inviting them to make further representations. References then

made to the letter from Wiseman solicitors of 21 September 2015. There is a mention of further Directions which really repeat the original directions. No further response was received.

13. At paragraph 11 the judge did consider whether the matter should proceed by way of an oral hearing and concluded that it was fair just and proportionate to decide the matter on the papers. Reference was made to the absence of further evidence about the position of the children and that the documents relating to funding were identical to those used in the other tribunal. It was also felt that an oral hearing would result in further delay and cost, bearing in mind the original decision was in January 2014. The judge refers to witness statements from the appellants and the business plan they submitted and so forth. The judge was satisfied that the decision in respect of the entrepreneurial application should be upheld. Regarding article 8 the judge referred to appendix FM and concluded the decision was proportionate.

### Consideration

14. The new material contained in the appellant's bundle was not before the judge and so the judge cannot be faulted for not taking it into account. However, in considering the overall fairness of matters, I have looked at this material which indicates the first appellant has a blood disorder and suffered from haemorrhoids. There is a letter dated October 2016 indicating that her haemoglobin was well within normal limits. She had been having iron infusion intravenously. There is a letter dated September 2017 in respect of the twins referring to developmental delay and challenging behaviour with a diagnosis of autistic spectrum disorder.
15. The correspondence indicated that the appellants were engaging with their appeal and were not content for the matter to be heard on the papers. Rule 25 of the procedure rules confirm that the Tribunal must hold a hearing unless there is justification otherwise, such as non-compliance or consent.
16. There would have been a build-up of outstanding cases with similar issues in relation to Profectus Venture Capital and a hearing on the papers provides a practical and efficient way of disposing of straightforward cases where the facts were largely uncontroversial. However, in this particular case it was clear the appellants were pursuing their appeal and that there were article 8 issues arising, with children involved.
17. The judge refers to delay and cost in not proceeding. However, the delay in the listing of the appeal is not the fault of the appellants. I do not see any particular cost issues arising. The object of the rules is to deal with cases fairly and justly. In this case given the representations made on behalf of the appellants and the fact article 8 issues were raised and children were involved

it is my conclusion the judge materially erred in law in determining the appeal on the papers in the circumstance.

Decision

The decision of First-tier Tribunal judge R Cooper dismissing the appeals materially errs in law. The appeal is remitted for a de novo hearing in the First-tier Tribunal.

Francis J Farrelly  
Deputy Upper Tribunal Judge

Directions.

1. The appellants are to pay the balance of the appropriate hearing fees for an oral hearing.
2. Relist for an oral hearing after the balance of the appropriate hearing fee has been paid. List in the First-tier Tribunal in Manchester, excluding First-tier Tribunal Judge R Cooper.
3. The hearing is to be de novo. The appellants can raise issues relating to the original entrepreneurial application, but their representatives should reflect on the new case law before deciding to pursue this aspect. With the passage of time article 8 issues are now coming to the fore and it may be more beneficial to focus upon these. An appropriate updated bundle should be prepared and provided not later than two weeks before the date of hearing.
4. The appellants' representative should advise if there would be any need for an interpreter and as to the number of witnesses.

Francis J Farrelly  
Deputy Upper Tribunal Judge..

Dated 15 August 2018