JR-2023-LON-002896

# In the Upper Tribunal (Immigration and Asylum Chamber) Judicial Review

In the matter of an application for Judicial Review

The King on the application of
(1) Tagaeva Baarinsa
(2) Abdullah Nadiry (plus three others)
(NO ANONYMITY DIRECTION MADE)

Applicant

and

Secretary of State for the Home Department

Respondent

**ORDER**

**BEFORE Upper Tribunal Judge Stephen Smith**

HAVING considered all documents lodged and having heard Mr Zia Nasim of counsel, instructed by Lee Valley Solicitors, for the applicant and Mr T. Yarrow, of counsel, instructed by GLD, for the respondent at a hearing on 13 January 2025

**IT IS ORDERED THAT:**

(1) The application for judicial review is dismissed for the reasons in the attached judgment handed down on 4 February 2025 (circulated in draft on 20 January 2025).

(2) The Applicants do pay the Respondent's reasonable costs of these judicial review proceedings to be assessed if not agreed.

(3) Permission to appeal is refused because view none of the proposed grounds of appeal have a realistic prospect of success and there is no other compelling reason why permission to appeal should be granted. In particular, the proposed grounds of appeal are unreasoned and, beyond disagreement with the tribunal's conclusions, do not engage with the reasoning of the judgment.

Signed: Stephen H Smith

**Upper Tribunal Judge Stephen Smith**

Dated: **4 February 2025**

**The date on which this order was sent is given <u>below</u>**

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**For completion by the Upper Tribunal Immigration and Asylum Chamber**

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 05/02/2025

Solicitors:
Ref No.
Home Office Ref:

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**Notification of appeal rights**

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

Case No: JR-2023-LON-002896

**IN THE UPPER TRIBUNAL**
**(IMMIGRATION AND ASYLUM CHAMBER)**

Field House,
Breams Buildings
London, EC4A 1WR

4 February 2025

**Before:**

**UPPER TRIBUNAL JUDGE STEPHEN SMITH**

**- - - - - - - - - - - - - - - - - - - - -**

**Between:**

**THE KING**
**on the application of**
**(1) Tagaeva Baarinsa**
**(2) Abdullah Nadiry (plus three others)**
**(NO ANONYMITY DIRECTION MADE)**

**Applicants**

**- and -**

**Secretary of State for the Home Department**

**Respondent**

**- - - - - - - - - - - - - - - - - - - - -**

Mr Z. Nasim (instructed by Lee Valley Solicitors) for the applicant

Mr T. Yarrow (instructed by the Government Legal Department) for the respondent

Hearing date: 13/01/2025

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**J U D G M E N T**

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**Upper Tribunal Judge Stephen Smith:**

1. This application for judicial review concerns an application for leave to remain under Appendix Representative of an Overseas Business of the Immigration Rules ("Appendix ROB"). There are two principal controversial issues:

    a. The first is the point time at which UK-based subsidiary must be "wholly-owned" by an overseas business for the purposes of para. 8.6(a) of Appendix ROB. Put simply, does the UK-based subsidiary of an overseas business have to have been wholly-owned by the overseas business from its incorporation (as the Secretary of State contends), or is it sufficient for it to be wholly-owned by the overseas business by the time an applicant makes the application under Appendix ROB (as the applicant contends)?

    b. The resolution of that issue leads to the second issue: whether the Secretary of State irrationally refused the first applicant's application for further leave to remain as the Representative of an Overseas Business, under Appendix ROB.

2. The decision under challenge was taken on 29 September 2023, by way of an Administrative Review decision ("the AR decision") which upheld the initial refusal decision dated 23 April 2023.

**Factual background**

3. The first applicant is a citizen of Kyrgyzstan. On 13 February 2020, pursuant to an application submitted on 31 December 2019, she was granted leave to enter the United Kingdom for three years as the representative of an overseas business, Serena Transport LLC, a company incorporated in the United Arab Emirates ("Serena UAE"). That application was made, and granted, on the basis that the first applicant was a senior employee of Serena UAE, and that she would establish a UK-based subsidiary (referred to in this judgment as "Serena Euro") that would be wholly-owned by Serena UAE. The 31 December 2019 application was made pursuant to para. 144 and following of the Immigration Rules as then in force.

4. The applicants entered the UK pursuant to the above entry clearance.

5. On 7 May 2020, the first applicant incorporated Serena Euro at Companies House. She was the 100% shareholder.

6. On 24 June 2020, the shareholding in Serena Euro was transferred to Serena UAE.

7. At some point before 8 August 2022, the shareholding in Serena Euro reverted to the first applicant.

8. On 12 October 2022, the second applicant was appointed as a director of Serena Euro.

9. At some point before 30 December 2022, the shareholding in Serena Euro was transferred back to Serena UAE.

10. On 30 December 2022, the following changes were registered at Companies House in respect of Serena Euro:

    a. the second applicant ceased to be a director;

    b. the first applicant's status as a person with a significant control of Serena UK (a status she had held since its establishment) ceased with retrospective effect from the date of establishment, 7 May 2020;

    c. Serena UAE was recorded as being a person with significant control with effect from the day of establishment, 7 May 2020.

11. On 14 January 2023, the first applicant made an in-time application for further leave to remain under Appendix ROB, with the remaining applicants as her dependents. Para. 144 and the regime it established had by then been replaced by Appendix ROB.

## The decisions under challenge

12. By a decision dated 23 April 2023, the application was refused. Having cited extracts from para. 8.6 of Appendix ROB, the decision stated that the first applicant was the 100% shareholder of Serena Euro. It added that her husband was the 100% shareholder of Serena UAE and that he also worked for Serena Euro as confirmed by wage slips and summarised a number of other documentary features of the application (to which I shall return below).

13. The operative part of the decision said that the overseas business (Serena UAE) was not the majority shareholder of Serena Euro. Rather, the applicant was the 100% shareholder of Serena Euro. The decision-maker was satisfied that Serena Euro was not a subsidiary of Serena UAE but a separate entity. The decision added that the applicant was not a genuine employee of Serena Euro, since her husband, the second applicant, had signed her employment letter with Serena Euro, and he was the 100% shareholder of Serena UAE. The decision continued:

> "Therefore I am satisfied that this position has been created to enable you to gain entry to the United Kingdom. I am also satisfied that you are not supervising the UK branch as all the invoices sent to the company are addressed to Abdullah Naidry and not yourself.
>
> As you have not submitted any UK Business bank statements I am not satisfied that this is a genuine business that can corroborate the invoices that you have submitted, or the business accounts that have been submitted. As you have also not submitted business bank statements or business accounts for the overseas business, I am not satisfied that this is an ongoing

> overseas business as your husband Abdullah Nadiry who is in the UK with you is the 100% shareholder of the overseas business.
>
> Therefore your application has been refused under 8.6 of the Immigration Rules".

14. The 23 April 2023 decision was upheld on Administrative Review by a decision dated 29 September 2023. The AR decision stated that the shareholding for Serena Euro was amended only shortly before the application for leave to remain. It upheld the 23 April 2023 decision's approach to the 100% shareholding in the parent company by the second applicant. The AR decision continued:

> "this would also indicate that you are not the sole business representative in the UK the overseas business. All invoices addressed to the UK company are addressed to Mr Abdullah Nadiry [the second applicant]".

15. The AR decision said that the second applicant was registered as a director of Serena Euro during the applicant's grant of leave in the United Kingdom. It agreed with the 23 April 2023 decision that the first applicant was not supervising the UK branch, and that it appeared as though the company had been created to facilitate entry clearance to the UK.

## Grounds of challenge

16. The first applicant is the lead applicant in this claim for judicial review. The second applicant is, as I have said, her husband. The third to fifth applicants are their children. The second to fifth applicants' claims are dependent upon the first applicant's claim.

17. Permission was initially refused on the papers by Upper Tribunal Judge Mahmood by an order dated 13 August 2024 . At a hearing on 16 October 2024, UTJJ Canavan and Ruddick granted permission on ground 2 only.

18. As pleaded, Ground 2 has a number of facets:

    a. First, neither decision set out which provision of para. 8.6(a) the first applicant had allegedly failed to meet;

    b. Secondly, para. 8.6 is, in fact met, in the circumstances of these proceedings;

    c. Thirdly, both decisions of the Secretary of State raised additional issues beyond the scope of para. 8.6(a);

    d. At the date of the application to the Secretary of State, the first applicant was not, in fact, the 100% shareholder of Serena Euro; Serena UAE was by then the shareholder and had overall control;

    e. Contrary to what was asserted in each decision, the applicant *did* provide UK invoices and bank statements, and they were overlooked;

f. The Immigration Rules do not require all invoices to be issued to the sole representative;

g. The Secretary of State failed properly to consider the relevant provisions of the Immigration Rules and the "vast" number of supporting documents.

## Submissions

19. Mr Nasim and Mr Yarrow provided helpful skeleton arguments dated 24 December 2024 and 6 January 2025 respectively. I will only summarise their submissions here and will engage in the substance of them in the course of my substantive analysis, below.

20. In his oral submissions, Mr Nasim summarised the evolution of para. 144 of the Immigration Rules to what is now Appendix ROB. It is now no longer possible to obtain entry clearance as the sole representative of an overseas business, but one should look back to para. 144 of the rules as then in force to construe the basis upon which the first applicant was initially granted leave to enter.

21. Mr Nasim submitted that neither decision cited paras 5.1 nor 5.2 of Appendix ROB, concerning the genuineness requirement. Similarly, neither decision relied on other provisions of the rules, such as para. ROB 8.3, which states that an applicant must not have a majority stake in, or otherwise own or control a majority of the overseas business that they represent. There was, he said, no suggestion that the first applicant had a controlling stake in Serena UAE.

22. Turning to the requirements of para. ROB 8.6, Mr Nasim's case was that the first applicant met all relevant requirements. The requirement for Serena Euro to be "wholly-owned" by Serena UAE was engaged at the time of the application, and at that point that requirement was met. The first applicant had provided everything that the Secretary of State had requested during the application process, in doing so providing more evidence than was required by the rules themselves. The rules were met. The application should not have been refused.

23. Mr Yarrow submitted that there were multiple reasons why the Secretary of State was entitled to refuse the application, and that any one of those reasons was fatal to the application.

24. First, on a proper construction of para. ROB 8.6(a), the overseas business must have been the majority shareholder in Serena Euro at the time of its incorporation. Since the first applicant was the sole shareholder at the point of Serena Euro's incorporation, para. 8.6(a) could not be met.

25. Secondly, the Secretary of State was entitled to conclude on the evidence before her that the applicant did not "supervise" Serena Euro. That was because the second applicant was formerly a director of the company, and many (most) of the invoices and other formal documents issued to Serena Euro had been in the name of the second applicant.

26. Thirdly, the Secretary of State was entitled to conclude that Serena Euro did not meet the genuineness requirement. It was only at the eleventh hour that the corporate arrangements were changed such that the first applicant purportedly resumed a corporate role of any significance, and Serena UAE was not the majority shareholder throughout the majority of the time for which Serena Euro had been established.

27. Finally, no public law error arose from the impugned decisions not referring expressly to paras 5.1 and 5.2 of Appendix ROB. The decisions reflected the substantive requirements of Appendix ROB and provided sufficient reasons for their conclusions.

28. I reserved my decision.

## The law

29. The relevant provisions of Appendix ROB are as follows:

> "**ROB 4 Work requirement for Representative of an Overseas Business**
>
> ROB 4.4 An applicant must be either:
>
> (a) a Sole Representative who already has, or was last granted, permission as a Sole Representative and is a senior employee of an overseas business, who is assigned to the UK to establish and supervise a branch or subsidiary of an overseas business, where that branch or subsidiary will actively trade in the same type of business as the overseas business…"
>
> "**ROB 5 Genuineness requirement for the Representative of an Overseas Business**
>
> ROB 5.1. The decision maker must be satisfied that the applicant is a genuine Representative of an Overseas Business.
>
> ROB 5.2. The decision maker must not have reasonable grounds to believe the business is being established in the UK by the overseas business, or the applicant has been appointed as a representative of the overseas business or media organisation, mainly so the applicant can apply for entry clearance or permission to stay."
>
> "**ROB 8 Additional business requirements for a Sole Representative on the Representative of an Overseas Business route**
>
> ROB 8.6. The applicant must meet all the following requirements:
>
> (a) the applicant must have established the registered branch or wholly-owned subsidiary of the overseas business for which they were last granted permission under this route; and

(b) the applicant must be engaged in full time employment and must supervise the registered branch or wholly-owned subsidiary which they have established, and must be required by their employer to continue in that role; and

(c) the applicant must provide all of the following:

(i) evidence of business that has been generated, principally with firms in the UK, on behalf of their employer since their last grant of permission, in the form of accounts, copies of invoices or letters from businesses with whom the applicant has done business, including the value of transactions; and

(ii) a Companies House certificate of registration as a UK establishment (for a branch), or a certificate of incorporation (for a subsidiary), together with either a copy of the share register or a letter from the overseas business's accountant confirming that the UK business is wholly-owned by the overseas business; and

(iii) a letter from the applicant's employer confirming that the applicant supervises the UK branch or subsidiary and is required to continue in that employment; and

(iv) evidence of salary paid by the employer in the 12 months immediately before the date of application and details of the remuneration package the employee receives."

30. Paras 144 and 145 of the Immigration Rules as they were at the time of the first applicant's application for entry clearance on 31 December 2019 provided, where relevant:

"144. The requirements to be met by a person seeking leave to enter the United Kingdom as a representative of an overseas business are that he:

(i) has been recruited and taken on as an employee outside the United Kingdom of a business which has its headquarters and principal place of business outside the United Kingdom; and

(ii) is seeking entry to the United Kingdom:

(a) as a senior employee of an overseas business which has no active branch, subsidiary or other representative in the United Kingdom with full authority to take operational decisions on behalf of the overseas business for the purpose of representing it in the United Kingdom by establishing and operating a registered branch or wholly-owned subsidiary of that overseas business, the branch or subsidiary of which will be concerned with same type of business activity as the overseas business…"

## First issue: Appendix ROB 8.6(a) requires overseas ownership from incorporation

31. The first issue to resolve is the proper construction of Appendix ROB 8.6(a). I formulated this issue in the following terms at the outset of this judgment: at which point time must a UK-based subsidiary be "wholly-owned" by an overseas business for the purposes of para. 8.6(a) of Appendix ROB? Put simply, does the UK-based subsidiary of an overseas business have to have been wholly-owned by the overseas business from its incorporation (as the Secretary of State contends), or is it sufficient for it to be wholly-owned by the overseas business by the time an applicant makes the application under Appendix ROB (as the applicant contends)?

32. I will follow the established approach to the construction of the Immigration Rules. See *Mahad v Entry Clearance Officer* [2009] UKSC 16. At para. 10, Lord Brown of Eaton-under-Heywood cited *Odelola v Secretary of State for the Home Department* [2009] 1 WLR 1230, 1233 at para. 4:

> "Like any other question of construction, this [whether a rule change applies to all undetermined applications or only to subsequent applications] depends upon the language of the rule, construed against the relevant background. That involves a consideration of the immigration rules as a whole and the function which they serve in the administration of immigration policy."

33. At para. 10 of *Mahad*, Lord Brown continued:

> "Essentially it comes to this. The Rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy."

34. Applying those principles to these proceedings, I begin with the language of the rules ("the natural and ordinary meaning of the words used").

35. By way of a preliminary observation, an applicant may qualify under para. ROB 8.6(a) in one of two ways First, through establishing the "registered branch" of the overseas business, or, secondly, by establishing the "wholly-owned subsidiary" of the overseas business. Those terms are illuminated by the specified documentary evidence required for each route pursuant to para. 8.6(c)(ii). Where an applicant establishes a registered branch, para. (ii) requires a "certificate of registration" issued by Companies House. By contrast, in the case of a subsidiary, para. (ii) requires the certificate of incorporation "together with a copy of the share register". There is, accordingly, a clear difference between the two terms. The "registered branch" route does not require the UK-based entity to have been incorporated in the UK, where as the "wholly-owned" route does.

36. It is not the applicants' case that the first applicant established a registered branch of Serena UK. Their case is that, properly understood, she

established a wholly-owned subsidiary of Serena UAE, and that that arrangement met the requirements of ROB 8.6(a) because Serena UAE was the 100% shareholder at the date of the first applicant's application under Appendix ROB. I will therefore focus on the "wholly-owed" requirement but will return to the impact of this distinction in due course.

37. By way of a further preliminary observation, there was some discussion at the hearing as to whether an applicant under Appendix ROB 8.6(a) could have held the shares in their personal capacity, but on trust for the overseas business. Mr Yarrow accepted that that would be possible, but made two points, both of which I accept. The first is that it is not the applicants' case that the shares were held by the first applicant on trust for Serena UAE. Their case is that the "wholly-owned" requirement is only engaged at the point of the application under Appendix ROB, not that, properly understood, the shares were held on trust for Serena UAE all along. The second point advanced by Mr Yarrow was that there is no evidence of any trust arrangement in any event. I therefore accept that a trust arrangement may, in principle, satisfy the "wholly-owned" requirement, but conclude that that possibility does not take matters further in these proceedings.

38. I commence with the requirement in sub-para. (a) that an applicant:

> "must have established the… wholly-owned subsidiary of the overseas business."

39. Eligibility under this route is anchored to the act of having established the wholly-owned subsidiary of the overseas business. "Must have established" means that it is the applicant under those rules who did the establishing. The object of the verb is the UK-based, wholly-owned subsidiary, which the applicant must "have established".

40. It is difficult to see how an applicant could have "established… the wholly-owned subsidiary" if, at the time of the establishment, the UK company was not wholly-owned by the overseas business and was instead owned by some other person (or an applicant). This is for the following reasons.

41. First, the applicants' construction would be at odds with what this sub-paragraph of the rules says. A defining characteristic of the business that has been established under ROB 8.6(a) is that it must be "wholly-owned" by the overseas company. If at the time of the company's incorporation the company is owned by another person or organisation, an applicant will not have "established… the wholly-owned subsidiary". Rather the applicant would have established a company that later became a wholly-owned subsidiary.

42. Had the "wholly-owned" limb of ROB 8.6(a) intended to capture a company established by an applicant that was owned by an entity other than the overseas business, it would have said so. The rule would have expressly permitted and recognised the possibility that the subsidiary need not initially have been wholly-owned by the overseas company, and would instead have provided that, by the time of the application, the subsidiary

was wholly-owned by the overseas company, that would have been sufficient. There is no such requirement.

43. Secondly, some light is cast on this temporal issue by the "registered branch" limb of ROB 8.6(a). By definition, the existence of an overseas parent company of a UK-based registered branch must pre-date the registration of the UK-based registered branch. The corporate relationship between the overseas parent company and the UK-based registered branch would therefore exist from the outset of the registered branch's registration in the UK and would continue throughout the UK-branch's operation in the UK.

44. Para. 8.6(a) would be internally inconsistent if the temporal scope of the "registered branch" requirement differed from that of the "wholly-owned subsidiary" route. It is unlikely that the temporal requirements for each limb would differ so significantly without further clarificatory wording, not least because the requirements feature within the same sentence within the same sub-paragraph of ROB 8.6(a). That is hardly surprising given the rules' focus on establishing a new business, rather than taking over a different one.

45. Thirdly, Appendix ROB 8.6(a) requires continuity between the wholly-owned subsidiary which is the subject of the application and the company "for which they were last granted permission under this route". The permission last granted to the first applicant was entry clearance under para. 144 of the Immigration Rules, as they then were.

46. Para. 144(ii)(a) provided that an applicant must be:

> "seeking entry to the United Kingdom:
>
> > (a) as a senior employee of an overseas business which has no active branch, subsidiary or other representative in the United Kingdom with full authority to take operational decisions on behalf of the overseas business for the purpose of representing it in the United Kingdom **by establishing and operating a registered branch or wholly-owned subsidiary of that overseas business**, the branch or subsidiary of which will be concerned with same type of business activity as the overseas business…" (emphasis added)

47. The words emphasised above are similar to those in ROB 8.6(a) but with one addition. As well as "establishing" a registered branch or wholly-owned subsidiary, para. 144(ii)(a) required an applicant to have sought entry for the purposes of "*operating*" the wholly-owned subsidiary.

48. The tandem requirements of "establishing and operating" the subsidiary, expressed in present, continuous terms, would not be consistent with establishing a separate entity later coming under the control of the overseas parent company. That is because the requirement to have been "operating" the UK-based subsidiary is engaged from the outset of an applicant's leave. The first applicant sought permission to enter the United

Kingdom on the basis that she was "seeking entry" for the purpose of "establishing *and operating*" a registered branch or wholly-owned subsidiary. The "*and operating*" limb of that requirement applies to the wholly-owned subsidiary and applies from the outset of admission to the UK. Para. 144(ii)(a) thus required an applicant to have sought entry for the purposes of establishing and operating a wholly-owned subsidiary of the overseas business from the point at which they arrived. The ordinary meaning of para. 144(ii)(a) is that an applicant must be seeking entry clearance for the purposes of establishing and operating a wholly-owned subsidiary from the outset of their residence.

49. That means there must be continuity between the purpose for which an applicant sought entry under para. 144(ii)(a) ("for the purpose of… establishing and operating a registered branch or wholly-owned subsidiary of that overseas business…") and the requirements of ROB 8.6(a). Para. 144(ii)(a) required the entity to be wholly-owned upon its establishment by an applicant. ROB 8.6(a) maintains that requirement.

50. Fourthly, Appendix ROB emphasises the need for the UK-based subsidiary to be just that: it must be a subsidiary that is a genuine, UK-based trading limb of an overseas going concern (para. 4.1). It requires an applicant to be a Sole Representative and senior employer of the overseas business, whose role it is to establish and supervise the UK-based subsidiary (para. 4.4(a)). Para. 5.1 requires applicants to be genuine representatives of the overseas business and excludes applicants in relation to whom the decision maker has reasonable grounds to believe that the business is being established in the UK "mainly" so that the applicant may apply for permission to stay (para. 5.2). The overall thrust of the regime targets genuine, UK-based subsidiaries of an overseas business. A domestic entity that was established by an applicant in her personal capacity and only later transferred to the overseas business would be inconsistent with the relevant background insofar as that may be gleaned from the face of Appendix ROB itself. That context is consistent with the analysis of the wording of the relevant rules themselves, above.

51. Drawing this analysis together, I accept the Secretary of State's submissions and reject those advanced by Mr Nasim:

    a. Appendix ROB 8.6(a) requires an applicant to *establish* a UK-based registered branch or wholly-owned subsidiary, not facilitate the takeover of an existing and separately-owned UK-based entity.

    b. Appendix ROB 8.6(a) is not engaged where an overseas business acquires an existing, domestically-incorporated, and separately-owned business that is later transferred to the ownership of the overseas business. The requirement for the UK-subsidiary to be wholly-owned is engaged at the point of establishment, not the application.

52. Applied to these proceedings, on a plain reading of the rule the Secretary of State was entitled to refuse the application citing para. 8.6(a). At the date of Serena Euro's incorporation, the applicant was the sole shareholder, not Serena UAE. That meant that para. 8.6(a) was not met because the

applicant had not established a wholly-owned subsidiary. She had established a separate entity that was later transferred to Serena UAE's ownership. The Secretary of State was entitled to refuse the application in the decision dated 23 April 2023 on that basis, for the reasons she gave. That was because, on the basis of the materials that were before the Secretary of State at the point of the application, the documents from Companies House demonstrated that the applicant was the 100% shareholder of Serena Euro.

53. Of course, upon taking the AR decision, the Secretary of State had available to her further material relating to the Companies House records. The decision stated as follows:

> "The UK company shareholding was only amended shortly before your leave to remain application and the overseas parent company did not hold 100% of the shares of the UK company for the majority of your grant of leave in the UK. As such, I am satisfied that your application has not the requirements of ROB 8.6."

54. In light of the analysis above, that analysis was entirely open to the Secretary of State.

**The second issue: refusal not irrational**

55. I will consider the second issue in the alternative, since I heard full submissions on the remaining rationality issues (as they were termed in the grounds for review).

**Non-citation of ROB 5.1 not material**

56. One facet of the second issue is whether it was lawful for the Secretary of State to cite and rely upon the substantive requirements of other provisions of the rules in Appendix ROB without expressly relying on the specific provisions of the rules in question.

57. I agree with Mr Yarrow's submission that there is no public law requirement to cite the specific provision in question. What matters is that the substance of the provision is applied accurately and that the decision itself discloses sufficient reasons for the conclusions reached. What is sufficient is a fact-specific question, but in my judgment the reasons given by both decisions and challenge were sufficient.

58. The Secretary of State relied upon the substantive requirements contained in Appendix ROB, in particular para. 5.1, concerning the genuineness of the applicant's purported representation of the overseas business. Insofar as neither decision expressly mentioned para. 5.1, no error arises on that account, since the reference in the 23 April 2023 decision to the business not being genuine was plainly a reference to the requirements established by para. 5.1. There was no requirement expressly to cite paras 5.1 or 5.2 in circumstances where, as here, the substantive requirements of those provisions were clearly applied and referred to by the Secretary of State. It is clear from the Secretary of State's analysis which provisions of appendix

ROB the decision relied upon, since the term "genuine" is clear from both the decisions under challenge and the substantive requirements of the rules. No procedural unfairness or other unlawfulness arose on that account.

59. Similarly, the Secretary of State's concerns that the company had been created to facilitate entry clearance into the United Kingdom were plainly a reference to para. 5.2 of Appendix ROB.

60. The same analysis applies by analogy to the AR decision's conclusion that the first applicant was not supervising Serena Euro. While that decision did not cite ROB 4.4(b) in reaching that conclusion, it is clear that the reference to a requirement

61. Alternatively, even if the Secretary of State had been subject to a requirement expressly to cite paras 4.4(b), 5.1, and 5.2 when referring to their substantive requirements, had she done so the outcome for the applicant would not have been substantially different.

**Secretary of State entitled to conclude that the business was not genuine etc.**

62. In my judgment, bearing in mind the high threshold to establish a rationality claim, the Secretary of State was entitled to conclude that Serena Euro was not a genuine business, and that it had been established in order to facilitate entry clearance.

63. The second applicant was the owner of Serena UAE at all relevant times (nothing turns on the changing requirements of UAE law relating to foreign ownership for present purposes). The second applicant was the addressee of the majority of invoices to and agreements with Serena Euro. He was a director of the company initially, an arrangement which only changed shortly before the first applicant's application under Appendix ROB. In addition, despite reportedly being the 100% shareholder in Serena UAE, the second applicant appeared to be employed by Serena Euro in the United Kingdom and was a recipient of wage slips issued by the company in his name. Those factors also combine to support the Secretary of State's conclusion that the first applicant was not the sole representative of the overseas business, in addition to her conclusion that the criteria in ROB paras 5.1 and 5.2 were engaged.

**Nothing turns on the references to invoices and business documents**

64. Mr Nasim submitted that it was an error of fact for the Secretary of State to state that "no" utility bills for the applicant's home and business premises had been provided, and that it was equally an error to state that "all" invoices addressed to Serena Euro were addressed to the second applicant. That is because there were some utility bills in the first applicant's name, and not "all" invoices were addressed to the second applicant.

65. In my judgment, nothing turns on this. The Secretary of State was entitled to ascribe significance to the large numbers of business documents that were addressed to the second applicant, in the context of concluding that

the first applicant was not the controlling mind behind Serena Euro. That the first applicant provided some domestic utility bills does not take matters any further, and certainly is incapable of demonstrating that the Secretary of State reached an irrational decision. Similarly, while some invoices were indeed addressed to the first applicant, the Secretary of State was entitled to ascribe significance to the overall package of materials which in the Secretary of State's legitimate view (as to which, see below) demonstrated that the second applicant had a far greater and more significant controlling role in the company than the first applicant had suggested in the application for leave to remain.

66. For example, the invoices in the first applicant's name were from Royal mail. There were two, dated 20 and 26 March 2023, for £3.35 each. The description of the goods was for a "Royal mail label." There were no further details, the invoices do not even mention Serena Euro and are addressed to the first applicant personally. In isolation, these documents could not possibly demonstrate that the first applicant was the controlling mind or sole representative of the business, at the expense of the wealth of documents pertaining to the second appellant's role and involvement in Serena Euro. These documents offer very low-level expenditure and cannot possibly demonstrate that the Secretary of State reached an irrational decision in concluding that the second applicant had a greater level of control over the company than the first applicant.

67. The remaining facets of ground 2 are disagreements of fact and weight. In light of the analysis that I have found the Secretary of State was entitled to conduct, nothing turns on the fact that the Secretary of State did not expressly refer to any additional documents. I have not been taken to anything in those documents that demonstrates that the Secretary of State's approach to the matters already addressed in this judgment was in error.

## Remaining facets of ground 2

68. At para. 18, above, I summarised the different facets of ground 2. In light of my analysis, I resolve those issues as follows:

    a. Nothing turned on the decisions' reliance on the substantive requirements of Appendix ROB without citing the specific paragraphs, in the circumstances of this case;

    b. Para. ROB 8.6(a) was not met;

    c. The Secretary of State was not confined to para. 8.6(a);

    d. It is nothing to the point that by the time of the application under Appendix ROB Serena UAE was the majority shareholder;

    e. The Secretary of State was entitled to ascribe significance to the preponderance of documents addressed to the second appellant, rather than the first, in light of his role with Serena UAE;

f. It was not irrational for the Secretary of State to ascribe significance to the second applicant's role in Serena Euro, in light of all remaining factors;

g. Nothing in the remaining documents before the Secretary of State demonstrates that her approach was irrational.

**Analysis open to the Secretary of State: decisions not irrational**

69. Drawing this analysis together, the Secretary of State was entitled to conclude that:

a. The requirements of ROB 8.6(a) were not met; and

b. Serena Euro was not a genuine business and had been created for the purposes of facilitating entry clearance.

70. For those reasons, this claim for judicial review is dismissed.

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