



**Upper Tribunal
(Immigration and Asylum Chamber)**

Durrani (Entrepreneurs: bank letters; evidential flexibility) [2014] UKUT 00295
(IAC)

THE IMMIGRATION ACTS

**Heard at Field House, London
On 08 April and 13 May 2014**

**Determination Promulgated
On 13 June 2013**

Before

**The President, The Hon. Mr Justice McCloskey
And Upper Tribunal Judge Clive Lane**

Between

HAZRAT WAQAS DURRANI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Mr I MacDonald QC, Mr M Iqbal and Mr S Khan (both of Counsel)
instructed by Farani Javid Taylor Solicitors
Respondent: Mr P Duffy, Senior Home Office Presenting Officer

(1) The requirements listed in paragraph 41-SD(a)(i) of the Rules are to be construed reasonably and sensibly, in their full context. Approached in this way, the letters required from banks or other financial institutions are not designed to provide, and do not commit

them to, any form of guarantee or assurance to any party. Rather, the function of the prescribed letters is to attest to the state of the relevant bank account on the date when they are written and to provide certain other items of information designed to confirm the authenticity of the application for entrepreneurial migrant status and its economic viability. There is no difficulty in the third party bank, with its customer's consent, expressing its understanding, based on the customer's instructions, that the use of specified funds in the customer's bank account/s is contemplated or proposed by the customer for the purpose of financing the applicant's proposed business venture. Accordingly, there is no substance in the argument that the relevant requirements contained in paragraph 41-SD(a)(i) produce an absurd result and must, therefore, be interpreted in some other manner.

- (2) The question of whether a policy exists is one of fact. There is no evidence that some policy on evidential flexibility, independent and freestanding of paragraph 245AA, survived the introduction of that paragraph in the immigration rules.

DETERMINATION AND REASONS

1. This appeal was heard together with three others, namely those in the cases of Kiran Fayyaz, Pavaiz Akhter and Chandni Maqbool. The last two mentioned cases form a unitary pair.¹ We shall make reference to our decision in the other cases where appropriate. The relevant provisions of the Immigration Rules are appended hereto.
2. The factors which are common to all of these appeals are that each of them has its origins in an unsuccessful application for entrepreneurial migrant status under the Immigration Rules and each raises issues about the construction of certain provisions of the Rules. Each case, however, possesses certain distinguishing features.
3. Hazrat Waqas Durrani (hereinafter "*this Appellant*") is a national of Pakistan, aged 29 years. He has been lawfully present in the United Kingdom at all material times, dating from 01 September 2007. Initially, his immigration status was that of student. Latterly, he converted to the status of Tier 1 (Post-Study Work) Migrant, which was scheduled to expire on 23 February 2013. On this date, he applied for further leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant. We shall, for convenience, describe this as "*entrepreneurial migrant status*".
4. A distinctive feature of this Appellant's application is that while it was made in his own name, there was another member of the proposed entrepreneurial team, Mr "R". The Appellant was seeking to demonstrate the necessary funding (£50,000 in his case) by reference to both his own finances and those of Mr R. The documents accompanying the Appellant's application included two letters from banks. The first of these, written by Lloyds TSB, stated:

"Dear Mr Durrani

I am pleased to confirm the following details as at 22/02/2013.

¹ Fayyaz (Entrepreneurs: paragraph 41-SD(a)(i) – "provided to") [2014] UKUT 00296 (IAC) and Akhter and another (paragraph 245AA: wrong format) [2014] UKUT 00297 (IAC)

*Account number – [specified]
Balance - £27,043.10*

The second was a letter from the Santander bank, in these terms:

“To whom it may concern, I am writing to confirm that Mr [R] holds an account with Santander numbered This account is registered at his home address which we hold as The available balance as of 22 February 2013 is £25,014.77.”

While we have omitted the bank account number and the account holder’s address from the passage quoted, in the interests of confidentiality, both were provided.

5. By letter dated 04 April 2013, the UK Border Agency (“UKBA”) informed the Appellant that his application had been refused. The assessment was that whereas he had successfully claimed 10 points in respect of the English language requirement and 10 points in respect of the maintenance (funds) requirement, he qualified for an award of no points in relation to three other “attributes”, namely:

- (a) Access to funds as required (25 points).
- (b) Funds held in a regulated financial institution (25 points).
- (c) Funds disposal in the United Kingdom (25 points).

In order for his application to succeed, it was necessary under the Rules that the Appellant achieve the maximum score of 25 points in respect of each of these attributes, a total of 75 points. His assessed score was nil.

6. Duly analysed, the Secretary of State’s decision proffered three reasons for refusing the Appellant’s application. The first was expressed in the following terms:

“.... You have not provided evidence from the bank holding Mr [R’s] funds to confirm that you have access to these funds as part of the £50,000. As a result you have only provided evidence to show that you have access to funds of £27,043.10.”

The second reason articulated for refusing the application was based on the “specified documents” requirement contained in paragraph 41-SD(c)(iii) of the Rules. Having rehearsed this provision, the letter continued:

“You have not provided any evidence of business activity in the form of advertising, newspaper articles or other publications and/or information from a trade fair or personal registration with a trade’s body.”

This was stated to be in contravention of the four prescribed “specified documents” requirements in question. The third reason for refusal was expressed in the following terms:

“You have claimed 25 points for funds held in a regulated financial institution under paragraph 245DD(b) and Appendix A of the Immigration Rules

You have failed to provide sufficient acceptable evidence to demonstrate that you have access to sufficient funds."

The second element of this reason was, in essence, a restatement of the substance of the first reason. Both expressed the Appellant's failure to demonstrate access to the necessary minimum funding of £50,000.

7. The first ground of appeal pursued before the First-tier Tribunal ("*the FtT*") was that paragraph 41-SD(a) of the Rules did not apply to this Appellant's application. The Judge rejected this argument in [20] of his determination. We record that it was no longer pursued before this Tribunal. The second ground of appeal, advanced in the alternative, was that the requirement enshrined in paragraph 41-SD(a)(i)(9) should not be construed literally since to do so produces an absurd outcome. This argument was based on an assertion that the third party bank in question (Santander) would not confirm that Mr R's funds were available to the Appellant as it was against their policy to do so. The Judge did not deal with the absurdity argument. The reason for this appears to be his construction of paragraph 41-SD(a)(i) to the effect that, in a "third party funder" case, the relevant financial institution does not have to certify that the requisite funds are available to the applicant: see [24]. The Judge did not focus specifically on what is required by sub-paragraph (9). Rather, he concentrated on sub-paragraphs (6) and (10), finding that the Santander letter was non-compliant with the Rules because it did not state the Appellant's name, contrary to sub-paragraph (6), and did not state the account holder's telephone number and email address, contrary to sub-paragraph (10).
8. Next, the Judge found that the Appellant's application suffered from the further flaw of non-compliance with any of the requirements of paragraph 41-SD(c)(i), noting that this failure was accepted: although the Judge refers to requirement (i) rather than (iii), this appears to reflect the second reason proffered in the Secretary of State's decision for refusing the Appellant's application: thus the correct reference is requirement (iii). The final ground of appeal advanced was that the Secretary of State's decision was not in accordance with the law on account of a failure by UKBA to make an "*evidential flexibility*" request for further documents. The Judge rejected this argument succinctly on the ground that, per paragraph 245AA(c) of the Rules, there is no obligation on UKBA to request documents in circumstances where "*a specified document has not been submitted*".
9. In common with the conjoined appeals, the main argument canvassed on behalf of the Appellant in this appeal is that certain provisions of paragraph 41-SD(a)(i) of the Rules must be construed other than literally in order to avoid absurd results. We refer to [21]-[23] of our decision in Fayyaz, where the essence of this argument is rehearsed. The distinguishing feature of the present appeal is that the financial institutions concerned are English, not foreign, banks. In contrast, the other related appeals involve Pakistani banks. In this context, in support of the absurdity argument, Mr MacDonald QC submitted that, literally interpreted, the bank letter required by paragraph 41-SD(a)(i)(6) and the bank statement required by paragraph 41-SD(a)(ii)(4), if these sub-paragraphs are construed literally, are not capable of being provided by a United Kingdom bank by reason of privity of contract and the

relationship of confidentiality between bank and customer. Thus, it was submitted, a literal interpretation must be avoided as it gives rise to an absurdity. It was contended that this absurdity is avoided in the first of the aforementioned provisions by substituting “*account holder’s*” for “*applicant’s*” and deleting all of the words which follow “*name*” where this word first appears. As regards the second of the provisions under scrutiny, the proposal was more modest, involving only the substitution of “*account holder’s*” for “*applicant’s*”.

10. The second ground of appeal pursued in this forum was based on the “evidential flexibility” issue. It was not submitted that the Secretary of State’s refusal decision was not in accordance with the law by reference to paragraph 245AA of the Rules. Rather, the argument developed was that there remains a “flexibility policy”, independent of paragraph 245AA, conferring a discretion on the relevant case worker to request further information or documents of the applicant. It was contended that, in essence, the error of law committed was a failure to appreciate the existence of this freestanding policy.

OUR CONCLUSIONS

11. It is common ground that it was incumbent on this Appellant to demonstrate the availability of a total sum of £50,000 minimum. The Rules permitted him to rely partly on his own financial resources and partly on those of a third party. In such circumstances, two separate bank letters are required. The first, from the applicant’s own bank, must state the applicant’s name and the amount of money available in his account/s: this is the clear and obvious meaning of the requirements enshrined in sub-paragraphs (6) and (8) of paragraph 41-SD(a)(i) of the Rules. The second letter must emanate from the third party’s bank. This must state two names: those of the applicant, per sub-paragraph (6) and the third party account holder, per sub-paragraph (10). This we consider to be the clear and obvious construction of these discrete requirements. By virtue of sub-paragraph (9), this second letter must also “*confirm the amount of money provided to the applicant from any third party (if applicable) that is held in that institution*”. In our decision in Fayyaz, we have construed the words “*provided to*” as denoting “*available to*”. See [28]:
12. All of the requirements listed in paragraph 41-SD(a)(i) of the Rules are to be construed reasonably and sensibly, in their full context. Approached in this way, we consider it clear that the letters required from banks or other financial institutions are not designed to provide, and do not commit them to, any form of guarantee or assurance to any party. Rather, the function of the prescribed letters is to attest to the state of the relevant bank account on the date when they are written and to provide certain other items of information designed to confirm the authenticity of the application for entrepreneurial migrant status and its economic viability. The letters do not commit either of the banks, whether the applicant’s own bank or that of the third party, to releasing a specified sum of money in order to finance the proposed business venture. Furthermore, we consider that there can be no conceivable difficulty in the third party bank, with its customer’s consent, expressing its understanding, based on the customer’s instructions, that the use of specified funds in the customer’s bank account/s is contemplated or proposed by the customer for the purpose of financing the applicant’s proposed business venture. A simple

statement to this effect, based on the customer's instructions to the bank, is less onerous and intrusive than the disclosure of the customer's name, account number and account balance. We consider that sub-paragraphs (6) and (9) are to be construed in this uncomplicated, reasonable and sensible fashion.

13. We are not persuaded that there is any principle of United Kingdom banking law precluding the construction of the relevant provisions of the Rules which we have espoused above. The relationship of banker and customer is contractual in nature. The bank owes a duty of loyalty and confidentiality to the customer, sometimes described as a duty of secrecy: see Jones - v - Law Society [1969] 1 Ch 1, 9, per Diplock LJ. However, as the leading authority of Tournier - v - National Provincial and Union Bank of England [1924] 1 KB 461 makes clear, the implied duty of confidentiality does not apply where the customer consents to the bank disclosing the information in question. Bankes LJ, having asked, rhetorically, what are "*the qualifications of the contractual duty of secrecy implied in the relation of banker and customer*", continued, at 473:

"On principle I think that the qualifications can be classed under four heads: (a) where disclosure is under compulsion by law; (b) where there is a duty to the public to disclose; (c) where the interests of the bank require disclosure; (d) where the disclosure is made by the express or implied consent of the customer."

[Our emphasis.]

While the first of these four qualifications, or exceptions, could also conceivably, apply to paragraph 41-SD(i) and (ii) of the Immigration Rules, we would observe that we received no argument on this point. What is clear beyond peradventure, in our estimation, is that the disclosure by a bank of information pertaining to a customer's account is lawful where the customer consents. No argument to the contrary was developed on behalf of the Appellant.

14. Thus we consider that, construed in this way, there is no substance in the argument that the relevant requirements contained in paragraph 41-SD(a)(i) produce an absurd result and must, therefore, be interpreted in some other manner. There is no evidence that this construction gives rise to an absurdity or anomaly. Nor, viewed objectively and in the abstract, is any absurdity or anomaly to be inferred. Finally, we are satisfied that this construction of the provisions of the Rules under scrutiny is harmonious with the relevant principles of banking law. Accordingly, the first ground of appeal must fail.
15. The cornerstone of the second ground of appeal, properly analysed, consists of an assertion. The assertion is to the effect that an "evidential flexibility" policy of sorts survived the introduction of paragraph 245AA. The latter provision of the Rules came into operation on 06 September 2012. It is common ground that paragraph 245AA governed all of the applications for entrepreneurial migrant status generating this cluster of appeals. The FtT's primary reason for rejecting this ground of appeal was the absence of any evidence that some policy, independent and freestanding of paragraph 245AA, also applied to these applications: see [32]. We endorse this reasoning and conclusion. In doing so, we highlight the distinction between

argument and evidence. The question of whether a policy exists, in whatever context it arises, is a question of fact. This ground of appeal fails because it has no supporting evidence, direct or inferential.

16. In our judgement, this ground of appeal must fail on the further basis that whereas the Upper Tribunal in Rodriguez held that the two documents appended to its decision constituted a policy of the Secretary of State of wide ranging scope and effect, the Court of Appeal reversed this holding: see Rodriguez (Flexibility Policy) [2013] UKUT 00042 (IAC), [9] - [13] and Appendices and Secretary of State for the Home Department - v - Rodriguez [2014] EWCA Civ 2, [82] - [101]. Insofar as necessary, we are also mindful of the additional evidence adduced on behalf of the Secretary of State in Rodriguez see [47] and [65]. While this was not admitted on the basis of the new evidence principles, we cannot pretend that it does not exist and were not invited to do so.
17. Thus, the Appellant's appeal must be dismissed. To this we would add that the Appellant's application and both ensuing appeals were, in our estimation, doomed to failure in any event on account of the egregious and irremediable failure to comply with all of the requirements enshrined in paragraph 41-SD(c) of the Immigration Rules.

DECISION

18. For the reasons elaborated above, we dismiss this appeal and affirm the decision of the FtT.

Bernard McCloskey.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 24th May 2014

Footnote: Names of Appellant's representatives corrected under Rule 42, 07 July 2014.

Appendix

Relevant provisions of Immigration Rules [HC 395, as amended]

Part 6A - Points-based system

Tier 1 (Entrepreneur) Migrants

245D. Purpose of this route and meaning of business

- (a) This route is for migrants who wish to establish, join or take over one or more businesses in the UK.
- (b) For the purpose of paragraphs 245D to 245DF and paragraphs 35 to 53 of Appendix A 'business' means an enterprise as:
- (i) a sole trader,
 - (ii) a partnership, or
 - (iii) a company registered in the UK.

245DA. Entry to the UK

All migrants arriving in the UK and wishing to enter as a Tier 1 (Entrepreneur) Migrant must have a valid entry clearance for entry under this route. If they do not have a valid entry clearance, entry will be refused.

245DB. Requirements for entry clearance

To qualify for entry clearance as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below. If the applicant meets those requirements, entry clearance will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal.
- (b) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.
- (c) The applicant must have a minimum of 10 points under paragraph 1 to 15 of Appendix B.
- (d) The applicant must have a minimum of 10 points under paragraph 1 to 2 of Appendix C.
- (e) An applicant who has, or was last granted, leave as a Student or a Postgraduate Doctor or Dentist, a Student Nurse, a Student Writing-Up a Thesis, a Student Re-Sitting an Examination or as a Tier 4 Migrant and:
- (i) is currently being sponsored by a government or international scholarship agency, or
 - (ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,
must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents as set out in paragraph 245A above, to show that this requirement has been met.
- (f) Except where the applicant has had entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator in the 12 months immediately before the date of application and is being assessed under Table 5 of Appendix A, the Entry Clearance Officer must be satisfied that:

- (i) the applicant genuinely intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months;
- (ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);
- (iii) that the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent by his business or businesses. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A;

(iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DC;

(g) In making the assessment in (f), the Entry Clearance Officer will assess the balance of probabilities. The Entry Clearance Officer may take into account the following factors:

- (i) the evidence the applicant has submitted;
- (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
- (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;
- (iv) the applicant's previous educational and business experience (or lack thereof);
- (v) the applicant's immigration history and previous activity in the UK; and
- (vi) any other relevant information.

(h) The Entry Clearance Officer reserves the right to request additional information and evidence to support the assessment in (f), and to refuse the application if the information or evidence is not provided. Any requested documents must be received by the UK Border Agency at the address specified in the request within 28 working days of the date of the request.

(i) If the Entry Clearance Officer is not satisfied with the genuineness of the application in relation to a points-scoring requirement in Appendix A, those points will not be awarded.

(j) The Entry Clearance Officer will not carry out the assessment in (f) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.

245DC. Period and conditions of grant

(a) Entry clearance will be granted for a period of 3 years and four months and will be subject to the following conditions:

- (i) no recourse to public funds,
- (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
- (iii) no employment other than working for the business(es) the applicant has established, joined or taken over, and
- (iv) no employment as a professional sportsperson (including as a sports coach).

245DD. Requirements for leave to remain

To qualify for leave to remain as a Tier 1 (Entrepreneur) Migrant under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.
- (b) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.
- (c) The applicant must have a minimum of 10 points under paragraphs 1 to 15 of Appendix B.
- (d) The applicant must have a minimum of 10 points under paragraphs 1 to 2 of Appendix C.
- (e) The applicant who is applying for leave to remain must have, or have last been granted, entry clearance, leave to enter or remain:

- (i) as a Highly Skilled Migrant,
- (ii) as a Tier 1 (General) Migrant,
- (iii) as a Tier 1 (Entrepreneur) Migrant,
- (iv) as a Tier 1 (Investor) Migrant,
- (v) as a Tier 1 (Graduate Entrepreneur) Migrant
- (vi) as a Tier 1 (Post-Study Work) Migrant,
- (vii) as a Businessperson,
- (viii) as an Innovator,
- (ix) as an Investor,
- (x) as a Participant in the Fresh Talent: Working in Scotland Scheme,
- (xi) as a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme),
- (xii) as a Postgraduate Doctor or Dentist,
- (xiii) as a Self-employed Lawyer,
- (xiv) as a Student,
- (xv) as a Student Nurse,
- (xvi) as a Student Re-sitting an Examination,
- (xvii) as a Student Writing Up a Thesis,
- (xviii) as a Work Permit Holder,
- (xix) as a Writer, Composer or Artist,
- (xx) as a Tier 2 Migrant
- (xxi) as a Tier 4 Migrant, or
- (xxii) as a Prospective Entrepreneur

- (f) An applicant who has, or was last granted, leave as a Student or a Postgraduate Doctor or Dentist, Student Nurse, Student Re-Sitting an Examination, a Student Writing-Up a Thesis or as a Tier 4 Migrant and:

- (i) is currently being sponsored by a government or international scholarship agency, or
- (ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,

must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents as set out in paragraph 245A above, to show that this requirement has been met.

- (g) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.

- (h) Except where the applicant has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator and is being assessed under Table 5 of Appendix A, the UK Border Agency must be satisfied that:

- (i) the applicant genuinely:

- (1) intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months, or

(2) has established, taken over or become a director of one or more businesses in the UK and continues to operate that business or businesses; and

(ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);

(iii) that the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent by his business or businesses. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A;

(iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DE.

(i) In making the assessment in (h), the UK Border Agency will assess the balance of probabilities. The UK Border Agency may take into account the following factors:

- (i) the evidence the applicant has submitted;
- (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
- (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;
- (iv) the applicant's previous educational and business experience (or lack thereof);
- (v) the applicant's immigration history and previous activity in the UK;
- (vi) where the applicant has already registered in the UK as self-employed or as the director of a business, and the nature of the business requires mandatory accreditation, registration and/or insurance, whether that accreditation, registration and/or insurance has been obtained; and
- (vii) any other relevant information.

(j) The UK Border Agency reserves the right to request additional information and evidence to support the assessment in (h), and to refuse the application if the information or evidence is not provided. Any requested documents must be received by the UK Border Agency at the address specified in the request within 28 working days of the date of the request.

(k) If the UK Border Agency is not satisfied with the genuineness of the application in relation to a points-scoring requirement in Appendix A, those points will not be awarded.

(l) The UK Border Agency will not carry out the assessment in (h) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.

245DE. Period, conditions and curtailment of grant

(a) Leave to remain will be granted:

- (i) for a period of 2 years, to an applicant who has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant,
- (ii) for a period of 3 years, to any other applicant.

(b) Leave to remain under this route will be subject to the following conditions:

- (i) no recourse to public funds,
- (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
- (iii) no employment, other than working for the business or businesses which he has established, joined or taken over, and
- (iv) no employment as a professional sportsperson (including as a sports coach).

(c) Without prejudice to the grounds for curtailment in paragraph 323 of these Rules, leave to enter or remain granted to a Tier 1 (Entrepreneur) Migrant may be curtailed if:

(i) within 6 months of the date specified in paragraph (d), the applicant has not done one or more of the following things:

- (1) registered with HM Revenue and Customs as self-employed,
- (2) registered a new business in which he is a director, or
- (3) registered as a director of an existing business, or

(ii) the funds referred to in the relevant sections of Appendix A cease to be available to him, except where they have been spent in the establishment or running of his business or businesses. 'Spent' excludes spending on the applicant's own remuneration. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A.

(d) The date referred to in paragraph (c) is:

- (i) the date of the applicant's entry to the UK, in the case of an applicant granted entry clearance as a Tier 1 (Entrepreneur) Migrant where there is evidence to establish the applicant's date of entry to the UK,
- (ii) the date of the grant of entry clearance to the applicant, in the case of an applicant granted entry clearance as a Tier 1 (Entrepreneur) Migrant where there is no evidence to establish the applicant's date of entry to the UK, or
- (iii) the date of the grant of leave to remain to the applicant, in any other case.

(e) Paragraph 245DE(c) does not apply where the applicant's last grant of leave prior to the grant of the leave that he currently has was as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator.

245DF. Requirements for indefinite leave to remain

To qualify for indefinite leave to remain as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, indefinite leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

(a) DELETED

(b) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.

(c) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.

(d) The applicant must have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with paragraph 33BA, unless the applicant is under the age of 18 or aged 65 or over at the date the application is made.

(e) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.

Appendix A

Attributes for Tier 1 (Entrepreneur) Migrants

35. An applicant applying for entry clearance, leave to remain or indefinite leave to remain as a Tier 1 (Entrepreneur) Migrant must score 75 points for attributes.

36. Subject to paragraph 37, available points for applications for entry clearance or leave to remain are shown in Table 4.

36A. An applicant who is applying for leave to remain and has, or was last granted, entry clearance, leave to enter or leave to remain as:

- (i) a Tier 4 Migrant,
- (ii) a Student,
- (iii) a Student Nurse,
- (iv) a Student Re-sitting an Examination, or
- (v) a Student Writing Up a Thesis,

will only be awarded points under the provisions in (b) in Table 4.

37. Available points are shown in Table 5 for an applicant who:

(a) has had entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator in the 12 months immediately before the date of application, or

(b) is applying for leave to remain and has, or was last granted, entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator.

38. Available points for applications for indefinite leave to remain are shown in Table 6.

39. (a) Notes to accompany Table 4 appear below Table 4.

(b) Notes to accompany Tables 4, 5 and 6 appear below Table 6.

Table 4: Applications for entry clearance or leave to remain referred to in paragraph 36

Investment and business activity	Points
<p>(a) The applicant has access to not less than £200,000, or</p> <p>(b) The applicant has access to not less than £50,000 from:</p> <ul style="list-style-type: none"> (i) one or more registered venture capitalist firms regulated by the Financial Services Authority, (ii) one or more UK Entrepreneurial seed funding competitions which is listed as endorsed on the UK Trade & Investment website, or (iii) one or more UK Government Departments, or Devolved Government Departments in Scotland, Wales or Northern Ireland, and made available by the Department(s) for the specific purpose of establishing or expanding a UK business, or <p>(c) The applicant:</p> <ul style="list-style-type: none"> (i) is applying for leave to remain, (ii) has, or was last granted, leave as a Tier 1 (Graduate Entrepreneur) Migrant, and (iii) has access to not less than £50,000, or <p>(d) The applicant:</p> <ul style="list-style-type: none"> (i) is applying for leave to remain, (ii) has, or was last granted, leave as a Tier 1 (Post-Study Work) Migrant, (iii) was, on a date falling within the three months immediately prior to the date of application, 	25

<p>(1) registered with HM Revenue and Customs as self-employed, or (2) registered as a new business in which he is a director, or (3) registered as a director of an existing business,</p> <p>(iv) is working in an occupation which appears on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the Codes of Practice in Appendix J, and provides the specified evidence in paragraph 41-SD. "Working" in this context means that the core service his business provides to its customers or clients involves the business delivering a service in an occupation at this level. It excludes any work involved in administration, marketing or website functions for the business, and</p> <p>(v) has access to not less than £50,000</p>	
The money is held in one or more regulated financial institutions	25
The money is disposable in the UK	25

Investment: notes

40.DELETED.

41. An applicant will only be considered to have access to funds if:

(a) The specified documents in paragraph 41-SD are provided to show cash money to the amount required (this must not be in the form of assets);

(b) The specified documents in paragraph 41-SD are provided to show that the applicant has permission to use the money to invest in a business in the UK;

(c) The money is either held in a UK regulated financial institution or is transferable to the UK; and

(d) The money will remain available to the applicant until such time as it is spent in the establishment or running of the applicant's business or businesses. 'Spent' excludes spending on the applicant's own remuneration. The UK Border Agency reserves the right to request further evidence or otherwise verify that the money will remain available, and to refuse the application if this evidence is not provided or it is unable to satisfactorily verify. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A.

41-SD. The specified documents in Table 4 and paragraph 41 are as follows:

(a) The specified documents to show evidence of the money available to invest are one or more of the following specified documents:

(i) A letter from each financial institution holding the funds, to confirm the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). Each letter must:

- (1) be an original document and not a copy,
- (2) be on the institution's official headed paper,
- (3) have been issued by an authorised official of that institution,
- (4) have been produced within the three months immediately before the date of your application,
- (5) confirm that the institution is regulated by the appropriate body,
- (6) state the applicant's name, and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix,

- (7) state the date of the document,
- (8) confirm the amount of money available from the applicant's own funds (if applicable) that are held in that institution,
- (9) confirm the amount of money provided to the applicant from any third party (if applicable) that is held in that institution,
- (10) confirm the name of each third party and their contact details, including their full address including postal code, landline phone number and any email address, and
- (11) confirm that if the money is not in an institution regulated by the FSA, the money can be transferred into the UK;

or

(ii) For money held in the UK only, a recent personal bank or building society statement from each UK financial institution holding the funds, which confirms the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). The statements must satisfy the following requirements:

- (1) The statements must be original documents and not copies;
- (2) The bank or building society holding the money must be based in the UK and regulated by the Financial Services Authority;
- (3) The money must be in cash in the account, not Individual Savings Accounts or assets such as stocks and shares;
- (4) The account must be in the applicant's own name only (or both names for an entrepreneurial team), not in the name of a business or third party;
- (5) Each bank or building society statement must be on the institution's official stationary and confirm the applicant's name and, where relevant, the applicant's entrepreneurial team partner's name, the account number, the date of the statement, and the financial institution's name and logo;
- (6) The bank or building society statement must have been issued by an authorised official of that institution and produced within the three months immediately before the date of the application; and
- (7) If the statements are printouts of electronic statements from an online account, they must either be accompanied by a supporting letter from the bank, on company headed paper, confirming the authenticity of the statements, or bear the official stamp of the bank in question on each page of the statement;

or

(iii) For £50,000 from a Venture Capital firm, Seed Funding Competition or UK Government Department only, a recent letter from an accountant, who is a member of a recognised UK supervisory body, confirming the amount of money made available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). Each letter must:

- (1) be an original document and not a copy,
- (2) be on the institution's official headed paper,
- (3) have been issued by an accountant engaged by the Venture Capital firm, Seed funding competition or UK Government Department to provide the information,
- (4) have been produced within the three months immediately before the date of the application,
- (5) state the applicant's name, and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix,
- (6) state the date of the document,
- (7) confirm the amount of money available to the applicant or the applicant's business from the Venture Capital firm, Seed funding competition or UK Government Department, and
- (8) confirm the name of the Venture Capital firm, Seed funding competition or UK Government Department and the contact details of an official of that organisation, including their full address, postal code, landline phone number and any email address,

(b) If the applicant is applying using money from a third party, he must provide all of the following specified documents:

(i) An original declaration from every third party that they have made the money available for the applicant to invest in a business in the United Kingdom, containing:

- (1) the names of the third party and the applicant (and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix),
- (2) the date of the declaration;
- (3) the applicant's signature and the signature of the third party (and the signature of the applicant's team partner if the applicant is applying under the provisions in paragraph 52 of this Appendix),
- (4) the amount of money available to the applicant from the third party in pounds sterling,
- (5) the relationship(s) of the third party to the applicant,
- (6) if the third party is a venture capitalist firm, confirmation of whether this body is an Financial Services Authority-registered venture capital firm, in the form of a document confirming the award and the amount of money, and including the Financial Services Authority registration number that the firm's permission to operate as a Venture Capital firm is listed as permitted under,
- (7) if the third party is a UK entrepreneurial seed funding competition, a document confirming that the applicant has been awarded money and that the competition is listed as endorsed on the UK Trade & Investment website, together with the amount of the award and naming the applicant as a winner,
- (8) if the third party is a UK Government Department, a document confirming that it has made money available to the applicant for the specific purpose of establishing or expanding a UK business, and the amount, and
- (9) confirmation that the money will remain available to the applicant until such time as it is transferred to the applicant or the applicant's business.

and

(ii) A letter from a legal representative confirming the validity of signatures on each third-party declaration provided, which confirms that the declaration(s) from the third party/parties contains the signatures of the people stated. It can be a single letter covering all third-party permissions, or several letters from several legal representatives. It must be an original letter and not a copy, and it must be from a legal representative permitted to practise in the country where the third party or the money is. The letter must clearly show the following:

- (1) the name of the legal representative confirming the details,
- (2) the registration or authority of the legal representative to practise legally in the country in which the permission or permissions was/were given,
- (3) the date of the confirmation letter,
- (4) the applicant's name (and the name of the applicant's team partner if the applicant is applying under the provisions in paragraph 52 of this Appendix),
- (5) the third party's name,
- (6) that the declaration from the third party is signed and valid, and
- (7) if the third party is not a venture capitalist firm, seed funding competition or UK Government Department, the number of the third party's identity document (such as a passport or national identity card), the place of issue and dates of issue and expiry.

(c) If the applicant is applying under the provisions in (d) in Table 4, he must provide:

- (i) his job title,
- (ii) the Standard Occupational Classification (SOC) code of the occupation that the applicant is working in, which must appear on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the Codes of Practice in Appendix J,
- (iii) one or more of the following specified documents:

- (1) Advertising or marketing material, including printouts of 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,
- (2) Article(s) or online links to article(s) in a newspaper or other publication showing the applicant's name (and the name of the business if applicable) together with the business activity,

- (3) Information from a trade fair(s), at which the applicant has had a stand or given a presentation to market his business, showing the applicant's name (and the name of the business if applicable) together with the business activity, or
- (4) Personal registration with a trade's body linked to the applicant's occupation.

and

(iv) one or more contracts showing trading. If a contract is not an original the applicant must sign each page of the contract. The contract must show:

- (1) the applicant's name and the name of the business,
- (2) the service provided by the applicant's business; and
- (3) the name of the other party or parties involved in the contract and their contact details, including their full address, postal code, landline phone number and any email address.

42. Points will only be awarded to an applicant to whom Table 4, paragraph (b) applies if the total sum of those funds derives from one or more of the sources listed in (b)(i) to (iii) in Table 4.

43. A regulated financial institution is one, which is regulated by the appropriate regulatory body for the country in which the financial institution operates.