



Case No: C7/2015/3470

Neutral Citation Number: [2017] EWCA Civ 2688
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday, 15 November 2017

Before:

LORD JUSTICE BEATSON

Between:

ALI

Applicant

- and -

**THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Respondent

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The Applicant did not appear and was not represented.

The Respondent did not appear and was not represented.

Judgment
(Approved)
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LORD JUSTICE BEATSON:

1. This is the renewed application for permission to appeal against the refusal of permission to appeal against the refusal to apply for judicial review by Upper Tribunal Judge Allen on 13 August 2015. There is no attendance by Mr Ali, the applicant. The case was called on at 10.00 am as listed and when there was no attendance, an attempt was made to contact him at the telephone number which he or his representatives had provided the court. I understand that when the attempt was made the number was not in service. Accordingly, having given an hour lest she had some problem in getting here, I now proceed to deal with this case.
2. The applicant applied for leave to remain as a Tier One Entrepreneur on the points based system on 14 October 2014. The Secretary of State refused her application on 2 March 2015 because she had not provided evidence in support of the application in the forms of advertising her business for a continuous period, a business website or membership of the relevant trade body. She had therefore not complied with paragraph 245(a)(a) of the Immigration Rules and could not get the 75 points under appendix A of the Rules. The Secretary of State considered whether she should take action under paragraph 245(a)(a) in respect of the documents that had not been submitted and concluded that the evidential flexibility policy only covered missing documents from a sequence of documents that were provided by the applicant, or missing information from documents which were provided. Accordingly, the refusal did not fall within the evidential flexibility policy, and a decision was reached on the basis of the evidence submitted.

3. An application for judicial review was filed on 1 June 2015 claiming that the omissions were minor and relying on the evidential flexibility policy. As I have stated, the Upper Tribunal Judge refused permission on 13 August 2015 and the Upper Tribunal (Upper Tribunal Judges Canavan and Wikeley) refused permission to appeal on 23 September 2015.
4. There were then two developments, which have given rise to this application. The first was the decision of the Supreme Court in the decision in Mandalia v Secretary of State on 14 October 2015 [2015] UKSC 59. The second was the decision of this court in the case of SH v Secretary of State given on 18 February 2016 [2016] EWCA Civ 426. The application for permission was not pursued and, at one stage, because of the failure to comply with the requirements as to filing documents, the application was dismissed. It was, however, restored to the list on 5 July 2016.
5. On 24 January 2017, the matter came before me on the papers and I refused permission. I stated that the evidential flexibility policy, even in the light of Mandalia and SH, did not assist this applicant because the policy applied where there are minor errors of omissions in specified documents submitted. In this case, the documents were key documents and had not been supplied at all. I concluded:

"The Upper Tribunal Judges were correct to conclude that this was insufficient in this case where the failures related to different categories of documents and although SH (Pakistan) referred to the reference in the policy to giving the applicant the benefit of the doubt (see paragraph 24), this applicant is not assisted by SH's case because it was one in which the required information had been provided in a document from the wrong person and the court concluded, in SH there was plainly enough evidence to show that if the appropriate certificate was provided by the awarding educational institution, the application would succeed and overwhelming evidence to believe that the evidence existed."

6. The grounds for permission to appeal are that the judgment of the Upper Tribunal was too short and no reasoning was provided, that the tribunal had not engaged with the applicant's article 8 rights in terms of the substantive investment commitment she made to settle in the United Kingdom, and that it had failed to consider the decision of Mandalia. I have reconsidered this decision and reread Mandalia and SH but I still consider that neither those cases assist the applicant. The judgment of the Upper Tribunal was brief, and the reasons were clear. The tribunal stated it accepted the reasons given by the respondents and for those reasons, would have been clear to the applicant. The information provided did not suggest that her article 8 rights were engaged. The only issue she raised was the fact that she had committed to making an investment in the hope that it would enable her to remain in the UK under the Rules. She asserted that the effect of the Supreme Court ruling in Mandalia is that the Home Office is obliged to request missing evidence. That, however, misrepresents the decision. In that case, as in this, the guidance stated that before requesting further information or documentation, "We must have established that evidence exists or has sufficient reason to believe the information exists". In that case the applicant had provided one out of a series of bank statements. It covered 22 days of the necessary 28 day period and the court held that in those circumstances, the additional bank statements should have been requested. By contrast, in this case, it does appear that the information which the Secretary of State held made it more likely than not that the applicant had the missing documents. Accordingly, the question of the benefit of the doubt did not arise.
7. I have explained what the difference is between this case and SH's case. Accordingly, for these reasons, this application is refused.

Order: Application refused.