



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/18001/2013  
IA/18004/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 16 October 2013  
Extempore

Determination Promulgated  
On 4<sup>th</sup> November 2013

Before

MR JUSTICE COLLINS  
UPPER TRIBUNAL JUDGE RINTOUL

Between

SIVARAMKUMAR MURUGAN ARUNAGIRI (1)  
UTHARA RAJAN (2)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Allen, Counsel, instructed by Berkleys Solicitors  
For the Respondent: Mr S Allan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants appeal with permission against the determination of First-tier Tribunal Judge Cox promulgated on 8 August 2013 dismissing their appeals against a decision of the respondent to refuse in the case of the first appellant his application for leave to remain as a Tier 1 Entrepreneur, and in the case of the second appellant

permission to remain as his dependent. For the reasons which we will set out below it is unnecessary to go into detail on the facts of this case, suffice it to say that the appellants' immigration history is not disputed. It is set out in the refusal letter.

2. The first-named appellant arrived in the United Kingdom with leave to remain as a student. He was then granted leave to remain as a Tier 1 Post-Study Worker until 30 November 2012. Prior to his leave to remain in that capacity expiring he applied for leave to remain as a Tier 1 Entrepreneur, an application which was refused by the Secretary of State on the basis of his failure to supply sufficient documents to show that he was entitled to claim 25 points for the access to funds as required. On the basis of that finding the Secretary of State concluded that he was not entitled to any of the other points which were claimed under Appendix A, although he was awarded points under Appendices B and C. The second appellant's application as the dependant of the first appellant was refused in line.
3. The appellants appealed against these decisions, requesting the appeals be dealt with on the papers without a hearing. For reasons which are not entirely clear, it appears that owing to an administrative error the bundle of papers which the appellants sent to the First-tier Tribunal at the main office in Leicester were not forwarded in time to Judge Cox, and that through no fault of the judge he reached a decision which did not take into account those documents. It is accepted by the Secretary of State that that is what occurred.
4. Accordingly we are satisfied that there was a procedural error in this case which resulted in the judge, through no fault of his, dismissing the appeal on the basis of the evidence before him. We hasten to add that it is accepted that the judge came to a decision which was open to him on the material that was before him, but clearly that was not a decision which he ought to have reached even if there was material that should have been taken into account.
5. In the circumstances we consider it appropriate to set the decision aside. We heard submissions from Ms Allen and from Mr Allan regarding how the decision should be remade. It appears that a substantial part of the material not taken into account by Judge Cox had in fact been submitted to the Secretary of State under cover of a letter of 7 May 2013. Mr Allan fairly accepted that that had been received by the Secretary of State.
6. Given that as a result it will now require a further fact-finding exercise to determine what material was in fact in front of the Secretary of State, we consider that it is not clear that had the material been taken into account it would have resulted in the appeal either being dismissed or allowed. Thus, it is appropriate in all the circumstances to remit the matter to the First-tier Tribunal for a fresh decision on all issues to be taken into account.

## **SUMMARY OF DECISION**

1. The determination of the First-tier Tribunal did involve the making of an error of law and we set it aside.

2. The appeal is remitted to the First-tier Tribunal to be remade by a First-tier Tribunal Judge other than Judge Cox.
3. The respondent is directed to serve on the appellants and on the First-tier Tribunal a copy of the letter dated 7 May 2013, and to specify in writing which of the documents listed therein were received, and which it is said were not received.

Signed

Date 4<sup>th</sup> November 2013

Upper Tribunal Judge Rintoul