



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

Appeal Number: IA/12195/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 September 2014**

**Determination
Promulgated
On 8 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS ANGELA ISIOMA EMEFIELE

Respondent

Representation:

For the Appellant: Ms A Holmes, Home Office Presenting Officer

For the Respondent: Ms U Miskel, Jein Solicitors

DECISION AND REASONS

1. The respondent Ms Angela Isioma Emefiele (whom I shall refer to as the appellant as she was in the proceedings before the First-tier Tribunal) is a citizen of Nigeria and her date of birth is 27 December 1977.
2. The appellant made an application for leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant under the points-based system on 17 June 2013. Her application was refused by the Secretary of State for a number of

reasons in a decision of 20 February 2014. The thrust of the decision was that the appellant was not a genuine entrepreneur.

3. The appellant appealed against the decision and her appeal was allowed by Immigration Judge Parkes in a determination that was promulgated on 24 July 2014 following a hearing on 18 July 2014.
4. One of the grounds of appeal before the First-tier Tribunal was that the respondent had not exercised discretion pursuant to paragraph 245DD(j) of the Rules which states that the Secretary of State reserves the right to request additional information and evidence to support the assessment relating to whether or not he is a genuine entrepreneur. On this basis it was argued that the decision is not in accordance with the law.
5. Prior to the decision the appellant was interviewed by the Secretary of State. The appellant did not agree to what it was asserted that she had stated in this interview. The Judge allowed the appeal on the basis that the Secretary of State had not given the appellant the opportunity to address issues that had been raised in the interview and had not exercised discretion contained in 245DD(j) and concluded that the decision was not in accordance with the law and allowed it to that limited extent.
6. The Secretary of State appealed against the decision and permission to appeal was granted by Judge of the First-Tier Tribunal Appleyard in a decision of 12 August 2014.

The Grounds and Oral Submissions

7. The grounds of appeal prepared by the Secretary of State argue that the Judge referred to paragraph 245DD(h) of the Immigration Rules however there is no discretion conferred by this paragraph. Secondly it is argued that the discretion must be first exercised by the Secretary of State before the First-tier Tribunal could be in a position to consider the matter.
8. I heard oral submissions from Ms Holmes who stated that she was in difficulty in defending the Secretary of States' grounds of appeal. She submitted that it is clear that the Judge referred to the wrong paragraph of the Rules but, but in her view, this was a typographical error. Ms Holmes stated she was not in a position to concede the matter but was unable to defend the grounds. She had had the opportunity to consider the appellant's response to the grounds of appeal under Rule 24. In Ms Holmes' view that paragraph 245DD(j) does contain a discretion and it was not exercised by the decision maker.

Conclusions

9. Having taken into account Ms Holmes' submissions and considered the (albeit ambiguous) wording of paragraph 245DD(j), I find that there was no material error of law and the decision of the Judge to allow the appeal on

the basis that the decision is not in accordance with the law is maintained.
A lawful decision by the Secretary of State is pending.

Signed Joanna McWilliam

Date 6 October 2014

Deputy Upper Tribunal Judge McWilliam