



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

Appeal Number: IA/15400/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd May 2014**

**Determination Promulgated
On 27th May 2014**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

ADEOLA ADEFUNKE FOWOKAN

Respondent

Representation:

For the Appellant: Ms A Everett Senior Home Office Presenting Officer
For the Respondent: no appearance and no legal representation

DETERMINATION AND REASONS

1. Permission to appeal the determination of the First-tier Tribunal was granted on the grounds that the First-tier Tribunal judge may have erred in law in recording that the presenting officer accepted that the documents presented by Ms Fowokan had been accepted by the appellant (hereafter the SSHD) as adequate evidence that she met the requirements of the Rules for variation of leave to remain as a Tier 1 (Entrepreneur). Attached to the grounds seeking permission to appeal, the SSHD had attached a 'minute' prepared by the presenting officer after the conclusion of the hearing which stated

“PO relied on refusal reasons, and reminded IJ that there is no near miss under PBS (case of Miah); and that the explanatory memorandum to the statement of changes to the Immigration Rules dated 31.01.2013 shows the importance of applying the evidential requirements in this category (Tier 1 Entrepreneur) rigidly.”

2. Although the grant of permission to appeal clearly states the basis upon which permission has been granted Ms Fowokan's legal representatives did not file a Rule 24 response rejecting the SSHD's contention and neither her counsel, who represented her before the First-tier Tribunal, appeared before me and nor did she. No explanation for their absence was given.

3. The First-tier Tribunal judge's record of proceedings notes

“PO accepts that A's statement is supported by the evidence.
He relies on the decision.”

4. It is not clear from that exactly what was being accepted.

5. The application for variation was refused on the grounds that

- a. The only evidence produced to demonstrate she was active was a printout of an advertisement on www.mylocalservices.co.uk which does not, on the screenshot taken on 24th September 2012, show her name or confirm that she is providing services as a management consultant;
- b. The contract produced was not signed and dated by herself and nor was it signed by a representative of her client's organisation Momenta and nor does it show the company's full address, landline phone number and any email address
- c. The contract does not detail the services that she provides to Momenta in support of their contract to Deloitte.

6. The determination of the First-tier Tribunal records that the advertisement at C1 in the respondent's bundle does provide Ms Fowokan's name and description of her business. That is in fact incorrect. The advert screenshot (which is on C2 of the bundle, not C1) does not give her name; it gives her address and that her business type is “Consultant and Specialist”. There is no reference in that advert to her name or that she provides services as a management consultant. The document at C1 is dated 25th November 2012 and is an ‘editor log in screen’. Her name appears at the top of that as ‘owner’; and under a heading of ‘services’ states

“assesses the functions objectives and requirements of the organisation seeking advice and using expertise to find information”.

7. The First-tier Tribunal determination also records that the absence of a signature from the contract is not relevant because email correspondence shows that a binding contract has been agreed.

8. The First-tier Tribunal determination does not address two significant matters raised in the refusal decision namely the lack of any address or landline for Momenta and secondly fails to identify the services that Ms Fowokan is required to provide.
9. Although the judge's record of proceedings is not clear it is apparent that by relying upon the decision letter the SSHD did not accept that the evidence referred to in that letter had been satisfactorily provided. It may be that the lack of signature on a contract which is evidenced by an email exchange is sufficient to show that a binding contract has been entered into and it may be that the combination of the log in screen and the advert are sufficient together but there is a clear lack of evidence as to Ms Fowokan's business operation and what she is doing for Momenta.
10. I am satisfied that on the basis of the combination of the 'minute' from the Presenting Officer, the judge's record of proceedings and examination of the documents before the First-tier Tribunal and the refusal letter, that no concession was made. I am satisfied that the First-tier Tribunal judge erred in law in mistakenly thinking that the presenting officer had accepted that the documentation met all of the SSHD's objections as set out in the decision letter.
11. I set aside the decision to be remade.

Re-made decision

12. The documents before me are as set out and referred to above. For the reasons I have given above I am satisfied that Ms Fowokan has not provided the required evidence in particular contractual evidence of the services she is providing despite the contract for services referring to "following services". These appear on the contract services to relate to 'business review and complaint handling services' but this bears little relation to the description of her services in C1

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I allow the appeal of the secretary of State thus the appeal of Ms Fowokan against the decision of the Secretary of State is dismissed.

Date 27th May 2014

Judge of the Upper Tribunal Coker