



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

Appeal Number: IA/17157/2013

THE IMMIGRATION ACTS

Heard at Field House

On 16th April 2014

**Determination
Promulgated**

On 28th April 2014

Before

UPPER TRIBUNAL JUDGE RENTON

Between

**MAI SALAHELDIN YOUSSEF ELGUINDI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Yeo, Counsel, Instructed by Magrath LLP Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a citizen of Egypt born on 25th June 1961. He applied for leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant. That application was refused for the reasons given in a Notice of Decision dated 22nd May 2013. The Appellant appealed, and his appeal was heard by

Judge of the First-tier Tribunal Moore (the Judge) sitting at Taylor House on 11th February 2014. The Judge decided to dismiss the appeal under the Immigration Rules but to make a recommendation that leave to remain be granted to the Appellant for the reasons set out in his Determination dated 17th February 2014. The Appellant sought leave to appeal that decision, and on 17th March 2014 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal under the provisions of paragraph 245DD(b) of HC 395 because the Appellant had failed to score sufficient points under Appendix A. This was because the Appellant had failed to score sufficient points under the section headed "Creation of jobs in the UK" as the employee Salma Salama was not a settled worker. That decision is not impugned in this appeal.
4. The Judge went on to recommend that nevertheless the Appellant should be granted leave to remain. His reasons for that decision are given at paragraphs 16 to 20 inclusive of his Determination. He found that the Appellant had employed Salma Salama, her daughter, upon wrong advice given by the Respondent and that therefore the Appellant had had a legitimate expectation that her application for leave to remain would not be refused as a consequence of employing her daughter.
5. At the hearing, it was agreed between the representatives that the Judge had erred in law by dealing with the issue by way of making a recommendation whereas he should have found that the Respondent's decision was not in accordance with the law and allowed the appeal accordingly. I so find.

Re-made Decision

6. Having found that the decision of the Judge contained an error on a point of law I proceeded to re-make the decision of the First-tier Tribunal. It was again agreed between the representatives that for the reasons given above the decision of the Respondent was not in accordance with the law and that the appeal should be allowed accordingly. I concur.

Decision

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 re-make the decision in the appeal by allowing it to the extent of finding the decision of the Respondent not to be in accordance with the law. The

Appellant's application for leave to remain as a Tier 1 (Entrepreneur) Migrant is therefore to be decided again by the Secretary of State.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton