



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

Appeal Number: IA/17904/2013

THE IMMIGRATION ACTS

Heard at Field House, London

Determination

Promulgated

On 10th June 2014

On 11th July 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ANSAR ABBAS
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr G Saunders, Home Office Presenting Officer

For the Respondent: Mr Mahmood of Nationwide Law Associates

DETERMINATION AND REASONS

1. In this appeal, the Secretary of State is the Appellant and Mr Ansar Abbas is the Respondent. For the sake of clarity however throughout this determination, I will refer to the Secretary of State as “the Respondent” and Mr Abbas as “the Appellant”, as they were before the First-tier Tribunal.
2. The Appellant is a male citizen of Pakistan born 22nd February 1978. On 13th November 2012, he applied for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant. That application was refused for the

reasons given in a notice of decision dated 3rd May 2013. At the same time the Respondent decided to remove the Appellant under the provisions of Section 47 Immigration and Nationality Act 2006 as amended. The Appellant appealed that refusal and his appeal was heard by the First-tier Tribunal (Judge Meah) sitting at Taylor House on 11th March 2014. The Judge allowed the appeal for the reasons given in his determination promulgated on 18th March 2014. The Respondent sought leave to appeal that decision and on 6th May 2014 such permission was granted.

Error of Law

3. I must first decide if the determination of the First-tier Tribunal contains an error on a point of law such that it should be set aside and the decision re-made. The Appellant's application for leave to remain was refused because the Respondent considered that the Appellant had failed to score sufficient points for access to funds as required by paragraph 245DD (d) and Appendix A of HC 395. This was because the Appellant relied upon third party funding but he had failed to provide the documentary evidence as required by paragraph 41-SD of Appendix A to the Rules. The relevant part of the refusal is set out here.

"In relation to the refusal under the Attributes heading the Respondent stated as follows:

"...You have not provided sufficient evidence with your application as specified under Appendix A of the Immigration Rules. Alongside your application you must provide a Third Party Declaration with the date of the declaration on a Legal Representative Letter which includes the third parties passport or national identity document with the issue and expiry dates and a Bank letter confirming the funds available.

You have provided a Third Party Declaration, a Legal Representative Letter and a Bank Letter. However, the Legal Representative Letter does not include the issue date and the expiry date of the national identity document.

The Secretary of State is not satisfied, therefore, that you qualify for the award of points in this area. The acceptable evidence as defined in the Immigration Rules must be provided in order for you to meet the criteria and be awarded points.

On the basis of the documents you have provided, however, the Secretary of State is not satisfied that these meet the requirement specified under Appendix A of the Immigration Rules and you do not qualify for the award of 25 points in this area.

In line with Appendix A of the Immigration Rules, we have, therefore, been unable to award any points for access to funds as required..."

4. The FtT Judge in his determination in [10] under the heading **Findings** said the following;

"On the first point of refusal under the Attributes heading Mr Mahmood argued that the appellant had in fact submitted the evidence which the respondent stated was missing, namely the identity cards of the third

parties which included the issue date and the expiry date of these documents. I was provided with copies of these documents which clearly showed both issue and expiry dates which Mr Mahmood circled for me.

The evidence was credible and the dates showed clearly on these. It is therefore unclear why the respondent refused the application on these grounds given that the information was readily available and put before them. I therefore find that the appeal must be allowed given that the application should not have been refused in the first place”.

5. Mr Saunders submitted that this is where the Judge erred because, as set out in the grounds seeking permission, there was a failure on the part of the Appellant to follow the specific wording of paragraph 245DD (d). This meant that the application must be refused. The Judge had erred in accepting the evidence contained in the identity cards. The identity cards did not form part of the legal representative’s letter. That letter therefore did not contain the required information as set out in the Rules.
6. Mr Mahmood on behalf of the Appellant submitted that the Respondent had confused herself on the requirements to be met. He submitted there was no requirement under the Rules that the third parties passport or national document with issue and expiry should be written in the legal representative’s letter. He further submitted (and I take this to be in the alternative) that the Secretary of State’s refusal decision is a violation of the Appellant’s Article 8 rights under his family and private life. In setting out particulars, he said the Appellant came to England originally on 28th February 2011. He has lived and worked in the United Kingdom during his stay here. He has also completed his higher education in this country and made many friends. Therefore he has established a very strong private life. I will refer to the Article 8 submission made by Mr Mahmood in the course of this determination.

Has the Judge Erred?

7. I am satisfied that the decision of the First-tier Tribunal must be set aside for error. Where third party financial support is relied upon, the requirements of paragraph 41-SD are very precise.
8. The relevant part of the Rules states as follows:

“(d) If the applicant is applying using money from a third party, he must provide all of the following specified documents:

 - (i) ...

and

 - (ii) A letter from a legal representative confirming the validity of signatures on each third-party declaration provided, which confirms that the declaration(s) from the third party or parties contains the signatures of the people stated. It can be a single letter covering all third-party permissions, or several letters from several legal representatives. It must be an original letter and not a copy, and it

must be from a legal representative permitted to practise in the country where the third party or the money is. The letter must clearly show the following:

- (1) the name of the legal representative confirming the details,
- (2) the registration or authority of the legal representative to practise legally in the country in which the permission or permissions was or were given,
- (3) the date of the confirmation letter,
- (4) the applicant's name (and the name of the applicant's team partner's name where relevant) and, where (b) applies, that the applicant is a director of the business named in each third-party declaration,
- (5) the third party's name,
- (6) that the declaration from the third party is signed and valid, and
- (7) if the third party is not a Venture Capitalist Firm, Seed Funding Competition or UK Government Department, the number of the third party or their authorised representative's identity document (such as a passport or national identity card), the place of issue and dates of issue and expiry".

9. It is clear to me, that looking at the terms of the Legal Representative's letter it did not contain the dates of issue and expiry of the third party's national identity document as required under the Rules. The Judge erred in not following the specific requirements of the Rule and taking into account identity cards of the third parties, which it can be seen, are separate documents and thereby cannot form part of the Legal Representative's letter. It was not open to the Judge to consider the identity cards as being able somehow to supplement the Legal Representative's letter. As a consequence the Judge fell into material error and the determination must be set aside and the decision re-made. I find I am in a position to re-make the decision on the evidence which was before the FtT.
10. So far as Article 8 is concerned, the Judge noted that this was cited in the grounds of appeal, but Mr Mahmood made no arguments under this heading during his submissions at the hearing before the FtT Judge. The Judge therefore quite properly made no findings under this heading. Mr Mahmood now submits before me that in the alternative, the Appellant's appeal should be allowed under Article 8 (Private life). This issue was not argued before the Judge and no evidence was produced in respect of it. It therefore must be the case that the Judge would have concluded that there were no arguably good grounds for granting leave to remain outside the Immigration Rules, nor any compelling circumstances not sufficiently recognised under them. Nothing has been put before me to show this to be the case. Therefore following the decision in *Gulshan (Article 8 - new*

rules - correct approach) [2013] UKUT 00640 (IAC) the Judge would not have been required to consider the Appellant's Article 8 ECHR rights. It is hard to see how it can be claimed that the Judge erred here.

11. For the foregoing reasons I am satisfied that the appellant did not meet the requirements of paragraph 41-SD of Annex A of the Immigration Rules and his appeal against that decision must be dismissed.

DECISION

12. The making of the decision of the First-tier Tribunal involved an error of law on a material point. I set aside the decision and remake it. This appeal is dismissed.
13. Appeal dismissed.

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.

Signature

Judge of the Upper Tribunal

Dated

I have dismissed the appeal and therefore there can be no fee award.

Signature

Dated