



Upper Tribunal  
(Immigration and Asylum Chamber) Appeal No's: IA/20580/20584/20586/20590/2013

**THE IMMIGRATION ACTS**

Heard at Glasgow  
on 23 May 2014

Determination promulgated  
on 27 May 2014

Before

**UPPER TRIBUNAL JUDGE MACLEMAN**

Between

**IQUO EMOKPAE + 3 dependants**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr S Osifeso, of Lannex Immigration and Legal Advice Services  
For the Respondent: Mr Mullen, Senior Home Office Presenting Officer

No anonymity order requested or made

**DETERMINATION AND REASONS**

1. This determination refers to the principal appellant as “the appellant”; the other cases depend on hers. She appeals against a determination by First-tier Tribunal Judge Agnew, dismissing her appeal against refusal of a Tier 1 (Entrepreneur) Migrant application.
2. At ¶13 the judge based her decision on guidance issued by the respondent about “evidential flexibility” regarding documents submitted in the “wrong format”.
3. This case did not turn on guidance but on paragraph 245AA, incorporated into the Rules on 6 September 2012. It did not involve a document in the “wrong

format” - 245AA(b)(ii) - but a document which “does not contain all of the specified information” - 245AA(b)(iv).

4. Such a situation gives the decision maker discretion to request the correct documents. The appellant had already been called for interview and written to about aspects of her application which she was able to put right. The point on which she failed, absence of her name from her business advertisement, was part of the application from the time it was made but was never raised prior to the refusal. Discretion should have called for the appellant to be given an opportunity on a point which she could justifiably have thought by that stage not to be an issue, and which should have been seen as likely to be capable of rectification. The appellant was able to produce in the FtT an advertisement which did meet the requirements of the Rules by including her name.
5. The determination of the First-tier Tribunal is set aside. The appeals, as brought by the appellants to the First-tier Tribunal, are allowed under the Immigration Rules.



23 May 2014  
Judge of the Upper Tribunal