



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

Appeal Number: IA/22177/2013

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 28 August 2014

On 03 October 2014

**Before
UPPER TRIBUNAL JUDGE JORDAN**

Between

The Secretary of State for the Home Department

Appellant

and

Hetel Jayeshkumar Kataria

Respondent

Representation:

For the Appellant: Mr S. Whitwell, Home Office Presenting Officer

For the Respondent: Mr Z. Nasim, Counsel

REASONS FOR FINDING AN ERROR OF LAW

1. The Secretary of State appeals against the determination of First-tier Tribunal Judge Herbert, OBE, promulgated on 27 May 2014 allowing the appeal of Mrs Kataria against the decision made by the Secretary of State refusing her leave to remain as a Tier 1 (Entrepreneur). For the sake of continuity, I shall refer to Mrs Kataria as the appellant, as she was before the First-tier Tribunal.
2. The Secretary of State's decision was made on 22 May 2013. Under Appendix A: Attributes, the decision maker, Ms Laura Malik, awarded the appellant none of the 25 points the appellant claimed. Her reason for doing so related to the requirement in Appendix A to the Immigration Rules, found in Table 4 (d) that the applicant was required to demonstrate (i) her job title and (ii) the Standard Occupational

Classification code of the occupation that the applicant was working in drawn from the list of occupations skilled to NQF level 4 or above. In addition, the applicant was required to provide one or more contracts showing trading which contracts were required to contain certain specified information such as the name and address of the business and the service provided by it. Finally, the applicant was required to have registered a new business in which she was a director within the period of three months immediately prior to the application.

3. In her decision, the decision maker stated that the appellant did not answer question G 21 of the application form and therefore did not specify either her job title or the Standard Occupational Classification so as to establish it fell within the categories of those of NQF level 4 or above. Secondly, the decision maker stated that the application did not contain a contract sufficient to demonstrate that her business was trading. Thirdly, the refusal was made on the basis that the documentation provided from Companies House established the incorporation of a company on 13 August 2012 which did not fall within the period of three months immediately prior to the date when the application was made.
4. In paragraph 15 of his determination, the Judge recited his conclusion that he found the appellant had supplied the necessary documentation in the correct format at the date of the decision. Whilst acknowledging that the respondent's bundle did not contain a copy of the application in which section G 21 had been completed, the Judge said in paragraphs 15 and 16

I am satisfied [the form] was in existence at the date of decision and was authorised and signed by the appellant in a tick box with the occupational code set out.

I am also satisfied that the other documentation was in order.

5. This falls lamentably short of a reasoned assessment of the issues in this case.
6. It is not, perhaps, surprising that this occurred given the fact that the Judge did not set out what those requirements were, did not make any findings of fact as to what documents were submitted at the date of the application, what documents were considered by the decision maker, and in what way the decision maker was wrong in the 3 respects in which it was said by her the application fell short.
7. The applicant has not had a properly reasoned decision on her appeal.
8. This is all the more surprising since the evidence relied upon by the applicant called out for proper findings to be made upon it. The decision maker stated in terms that the application did not contain a completed G 21. That admits of no qualification. It appears to be supported by

what the Judge said in paragraph 12 of the determination when he stated:

The appellant submitted that the section G 21 of the application was returned blank by the Home Office, however the original had been filled in and was available and reproduced to demonstrate that she had not only filled that in but obtained a code on the G 21 part of the application illustrating what entrepreneurial code applied to her work.

9. The fact that the appellant accepted a copy of the form was returned to her with section G 21 left blank is material. How could this arise if the form completed by her had a completed section G 21? The Judge was however provided with a copy of a document with section G 21 completed in which the appropriate box states

MANAGEMENT ACCOUNTANT-SOC CODE

10. In this copy, the SOC code was not provided.

11. This copy in the bundle contains the following manuscript addition:

I confirm that this was the page we completed when we submitted the form. This form was also e-mailed to client for confirmation before submission.

(Signed)
D. Kadikar
HSMP Services Ltd

12. There is also a letter dated 7 June 2013 from Mr Kadikar in which Mr Kadikar had confirmed he e-mailed a copy of the completed application form to the appellant with the further completion of the SOC code before its submission to the Home Office.

13. The Judge was also provided with a different copy of a document with section G 21 completed in which the appropriate box states

MANAGEMENT ACCOUNTANT-SOC 2422

14. In this copy, the SOC code was provided. This copy does not contain the manuscript addition which I have set out in paragraph 11 above.

15. No dates are provided as to when this correspondence took place.

16. This evidence is in contrast to the statement of Miss Laura Malik in the refusal decision who said the form before her did not contain a completed G 21. Was she mistaken? Was she lying? How does the Judge's comment in paragraph 12 to the effect that the appellant told him that the application form was returned with section G 21 left blank?

17. The Judge made no attempt to resolve any of these issues.

18. I am quite satisfied that this is sufficient to render the determination fatally flawed. Unless adequate findings of fact are made on these issues, I do not consider that it is either appropriate or necessary to deal with the other issues raised in the refusal letter which were not adequately dealt with by the Judge.
19. I was told by Mr Nasim that the appellant had answers to all of the points raised by the Secretary of State in the refusal decision. If she does or did, they are not referred to by the Judge. In the absence of what I consider to be an adequate hearing upon the issues raised in the appeal, I remit the matter back to the First-tier Tribunal for consideration in the re-making of the decision. Inevitably, it will require oral evidence to be provided.
20. On 28 August 2014, I was provided with a copy of an e-mail from Mr Nasim sent at 13hrs40 on 27 August 2014 to the Tribunal which included the decision of the Upper Tribunal in *Budhathoki (reasons for decisions)* [2014] UKUT with which I am familiar and does not make good the absence of adequate reasons in the Judge's determination as well as documentation from the Home Office (which will be material at the re-making of the decision) as to the requirement for a new company to be registered in the 3-month period ending with the application.

DECISION

The appeal of the Secretary of State is allowed. The Judge made an error on a point of law and his determination of the appeal will require re-making. No findings of fact are preserved but the determination shall stand as prima facie evidence of what the appellant told the Judge in evidence.

DIRECTIONS

1. The appellant has 28 days in which to submit a comprehensive indexed and paginated bundle containing all the documents upon which the appellant intends to rely before the Tribunal. Documents not material to the issues which have previously been submitted in earlier bundles must be omitted.
2. The bundle is to include witness statements the contents of which will stand as their evidence-in-chief.
3. The appeal is to be set down for hearing at Taylor House on the First Available Date after 28 days. No interpreter. Time estimate 90 minutes.

ANDREW JORDAN

JUDGE OF THE UPPER TRIBUNAL
28 August 2014