



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

Appeal Numbers: IA/22408/2013
IA/22410/2013
IA/22414/2013
IA/40183/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 18 December 2013**

**Determination
Promulgated
On 6 February 2014**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**SH
DA
SDA (A MINOR)
DNA (A MINOR)**

(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Bassiri-Dezfouli instructed by One Temple Avenue
Chambers

For the Respondent: Mr K Norton, Senior Home Office Presenting Officer

Anonymity Direction

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, these appellants have been granted anonymity throughout these proceedings and after their conclusion, absent any order to the contrary by the Upper Tribunal or any other Court seised of relevant proceedings. No report of these proceedings, in whatever form, either during the proceedings or thereafter, shall directly or indirectly identify the appellants or their family members. Failure to comply with this order could lead to a contempt of court.

DETERMINATION AND REASONS

1. The appellants, who are citizens of Sri Lanka, appeal with permission against the decision of First-tier Tribunal Judge Alis who dismissed their appeals against the refusal of the respondent to vary the principal appellant's leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant and his dependent wife and children, under the Points-Based System. The second appellant is the first appellant's wife; the third and fourth appellants are his minor children. All their applications fell with that of the principal appellant.
2. The respondent also set removal directions under s.47 Immigration Asylum and Nationality Act 2006, as amended by the Crime and Courts Act 2013. The First-tier Tribunal found that the notices given were lawful under the amended s.47.
3. The reason why the application to vary failed was that the principal applicant's documents did not meet the requirements of paragraph 245DD(b) of the Immigration Rules HC 395 (as amended) and certain documents, submitted after the application, did not fall within paragraph 245AA(b), which is an exhaustive list of the circumstances in which late-produced documents can be accepted. Paragraph 245AA(b) is as follows:

245AA. Documents not submitted with applications

(a) Where Part 6A or any appendices referred to in Part 6A state that specified documents must be provided, the Entry Clearance Officer, Immigration Officer or the Secretary of State will only consider documents that have been submitted with the application, and will only consider documents submitted after the application where they are submitted in accordance with subparagraph (b).

(b) If the applicant has submitted specified documents in which:

- (i) Some of the documents in a sequence have been omitted (for example, if one bank statement from a series is missing);

(ii) A document is in the wrong format (for example, if a letter is not on letterhead paper as specified); or

(iii) A document is a copy and not an original document; or

(iv) A document does not contain all of the specified information;

the Entry Clearance Officer, Immigration Officer or the Secretary of State may contact the applicant or his representative in writing, and request the correct documents. The requested documents must be received at the address specified in the request within 7 working days of the date of the request.”

4. Paragraph 245DD(b) requires the applicant to show a minimum of 75 points under paragraphs 35-53 of Appendix A. In this case, points were not awarded for being a director of a United Kingdom company, because the appellant failed to meet paragraph 41SD(e)(v) and provide a printout of a current appointment report from Companies House, dated no earlier than three months before the date of the application, listing him as a director of the company and confirming the date of his application. There were additional requirements which are not relevant to this appeal.
5. In this case, the appellants’ solicitors’ letter accompanying the application mentioned the correct document but the document which was enclosed (if any) was not the document listed. The principal appellant claimed that a ‘company summary’ had been produced instead and that discretion ought to have been exercised in his favour.
6. The position was not corrected by the principal appellant promptly and when the respondent asked for the document, four months later, it took him a month to produce a later document which could not, in any event, have been produced at the date of application.
7. On that basis, the First-tier Tribunal dismissed the appeal, having heard oral evidence from the principal appellant. There was no suggestion before the First-tier Tribunal that Article 8 ECHR or Appendix FM to the Rules could have assisted him. A partial anonymity direction was made in relation to the minor appellants: I do not consider that sufficient and I have of my own motion extended it to all four appellants.

Grounds of appeal

8. The appellants submitted that the document omitted was part of a series and that its omission was a genuine mistake. They argued that the respondent ought to have known that, and could easily have checked the position herself on the Companies Registry online. They relied on *Rodriguez (Flexibility policy)* [2013] UKUT 00042 (IAC).
9. Designated Judge Zucker granted permission on the basis that such was arguable.

Upper Tribunal hearing

10. Before me, Mr Norton relied on the refusal letter and in addition, on the decision of the Upper Tribunal in *Nasim & Ors (Raju: reasons not to follow?) Pakistan* [2013] UKUT 610 (IAC), which deals with the evidence regarding the date of conferring an award, which also must occur before the date of application. He relied in particular on [38]-[46] and [51] in that determination. The respondent had been entitled to apply the Rules as they stood at the date of decision and there was no 'near miss' principle. He expressed some sympathy with the appellants' position but the rule was simply not met.
11. For the appellants, Ms Bassiri-Dezfouli stated that the principal appellant had now found the missing company summary on his laptop which did predate the application. She accepted that it was not the document which the Rules required and that the Rules were plain. She relied on *Rodriguez* and on *Nasim* at [50]-[52]. She accepted that the grounds of appeal did not challenge the finding of fact that the correct document was not sent, but she asked me to look at a letter dated 19 May 2011 in the appellants' bundle indicating that applicants would be contacted where mandatory evidence was missing. If the respondent had requested the evidence promptly, the application would have succeeded. She referred me to submissions in her rule 24 reply regarding the *Rodriguez* decision.
12. I reserved my determination, which I now give. The problem for these appellants is that they have never, at any time, produced a document which meets the requirements of the Rules. The company summary which is said to have been enclosed with the original application is not an appointment report from Companies House, printed out in the required period of three months before the application, and the appellants have still been unable to produce such a document. It follows that no matter how much flexibility as to time is applied, they have not met the requirements of the Rules.
13. This appeal therefore simply cannot succeed. There is no material error of law in the First-tier Tribunal determination and I uphold it.

Conclusions

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I do not set aside the decision.

Date

Signed

Judith Gleeson
Judge of the Upper Tribunal