



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

Appeal Number: IA 24796 2013

THE IMMIGRATION ACTS

Heard at Field House

On 19 May 2014

Determination

Promulgated

On 26 June 2014

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

VARINDERPAL SINGH MALHI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Makol, legal representative from Maalik & Co, solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

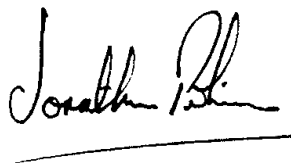
1. This is an appeal by a citizen of India against a decision by the First-tier Tribunal dismissing his appeal against refusal of leave to remain as an entrepreneur. The immigration decision and the explanation given for the decision identified two deficiencies in the application. Firstly, the appellant did not disclose a telephone number for his business. The Secretary of State said that he should have done. Secondly the appellant did not sign all the documents that he should have signed in support of his application.
2. The Rules are precise to the point of being pedantic, one might even say infuriatingly pedantic, but they are part of a legitimate attempt to simplify the decision-making process. There is a very heavy obligation on applicants to read the Rules carefully, understand them and do as they are told. This the appellant did not do.

3. When the case got to the First-tier Tribunal, by some mechanism which is not entirely clear, a third ground of contention was raised and it is that the business was not a genuine business at all.
4. The First-tier Tribunal Judge found for the respondent on all three points.
5. I deal first with the failure to sign the document. The Rules do provide a mechanism for relief where there had been minor or simple mistakes subject to certain conditions including the condition in this case that the truth can be verified from the documents already before the Secretary of State. Here the missing item was the missing signature of the appellant and the signature I am told, I have not checked this, was before the Secretary of State on other documents in any event.
6. I think this is exactly the kind of thing which comes within the province of the Rules. It is something which can be checked against the information already available, readily corrected and capable of being corrected. However, it is not for me to make a finding on that. It is for me simply to say that the Rule requires the Secretary of State to consider asking, giving the appellant an opportunity to rectify their documents in certain circumstances and a decision that fails to do that is a decision that is not in accordance with the law. That criticism I think is made out but it may not be material.
7. The failure to provide a telephone number is a failure to comply with a qualified obligation. The obligation only exists to disclose a number where it is available and the appellant had said here through his witnesses that it is not available because it does not exist. He says there is no telephone landline because "we do not use landlines to run our business", and that is something that the First-tier Tribunal Judge found surprising to the point of being unbelievable.
8. Whilst that is not a decision everybody would have reached on that evidence I would have found it hard to describe that as a perverse finding if that was all that was before me. The problem is, from the point of view of preserving the decision, that it is a credibility finding and credibility rarely is decided on discrete issues but decided from looking at the case as a whole. Here there are adverse credibility findings relating to the bona fides of the business which I think are unreliable or unsafe findings in law because the appellant was not on notice before the hearing that these were points that he had to answer. If he had been on notice he may have done things differently.
9. Mr Makol for the appellant was somewhat vague about precisely what would have to be done. He has pointed out that there is before the Tribunal very detailed evidence about the appellant's skills as an IT operative and these are important matters but they do not necessarily go to the bona fides of the business.
10. I am satisfied that now the point is clearly in issue that the appellant ought in fairness to have an opportunity to prepare the case that he now has to answer and to deal with that element of his case. How he fares there may well impact on the credibility of the evidence that there is no landline

available although I do make the observation for the benefit of anybody looking at this case that the suggestion that there must be a landline is based on speculation. A judge might want to think carefully in concluding without evidence that landlines are commonly available to businesses in India and business are unlikely to be contactable by mobile 'phone alone. I just do not know if they are, and it may be something that needs particular thought.

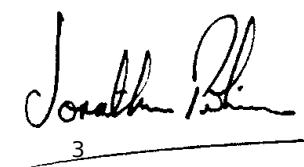
11. It follows therefore that I am remitting the case to the First-tier because this is a case where the appellant has not had a fair hearing and all issues will be decided again. As far as I can see, if those issues result in the appellant's favour it will not result in the appeal being allowed except to the extent that it would be an unlawful decision for the Secretary of State to remedy by considering the operation of 245A.
12. It follows therefore for the reasons given that this is an appeal that I allow and I substitute the decision saying that the case must be decided by the First-tier Tribunal. I set aside the decision of the First-tier Tribunal and remit it to be decided again in the First-tier.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Jonathan Perkins

Dated 24 June 2014



Jonathan Perkins

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