



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

Appeal Number: IA/26333/2013
IA/26348/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 6 December 2013**

**Determination Promulgated
On 25 March 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**SUNIL SITARAM SHETTY
ROHAN JERACO PAIS**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah, Counsel

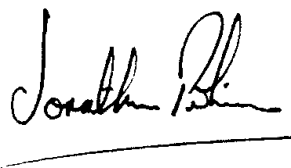
For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by two citizens of India against a decision of the First-tier Tribunal dismissing their appeal against a refusal to grant them leave to remain under the Rules relating to entrepreneurs.
2. I am satisfied that the whole approach of the Secretary of State to this case has been entirely wrong. The applications were supported by a letter. The letter was dated 9 May 2013 and was headed “entrepreneurial team members”. It then identified the appellants. The appropriate application form was completed and, although very slightly confusingly because of the way the form is laid out, it spelled out absolutely unequivocally that the applications were made as part of an entrepreneurial team. For example, question G1 on page 22 requires a box to be ticked if the person making the application is part of an entrepreneurial team. The box was clearly ticked. The next question required the members of the team to be identified and that was done.

3. Given this clear steer as well as other things in the application form that confirmed that the applications were made as part of a team it is slightly surprising that the decision was made not on the basis of a team application but on the basis of an individual application. It should have been. The respondent's approach was clearly wrong.
4. The respondent recognised that to some extent in the Rule 24 notice that appeared before me but the respondent tried to salvage the position by saying that, in any event, the applications would have been refused because the applicants did not satisfy the requirements of the rules relating to team members. That may turn out to be right but Ms Jegarajah has given very good reasons to suggest that it is not. The rules, supported or hindered by policy documents, have to be read very careful to work out precisely what is required at each stage.
5. I am satisfied that this is a case where it really is incumbent upon the Secretary of State to make a proper decision on the application that was made. When that decision is reached then, if appropriate, it can be appealed but I am not in any way determining the outcome of the application. I am satisfied that the decision that has been made is completely wrong because the purpose of the application is not reflected in the decision.
6. Mr Walker realistically conceded that the applications made as team members had not been decided and he could not really say very much to support the suggestion that the application should be decided first by the Upper Tribunal. Indeed he agreed that in this area of untested law, where there are still contentious points to be resolved, the appellants are at the very least entitled to a clear decision on the application they have made, which they have not got.
7. I set aside the decision of the First-tier Tribunal in each case and I substitute a decision allowing the appeals to the extent that the decision of the Secretary of State is not in accordance with the law and the applications remain outstanding to be decided properly.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 21 March 2014