



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/26439/2013
IA/26440/2013

THE IMMIGRATION ACTS

Heard at Field House
On 11 July 2014

Determination Promulgated
14th July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

**RAMALINGAM RAMESH THEERPALAYAM
LOGANATHAN KANDASAMY
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr, Counsel

For the Respondent: Mr, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are Indian citizens born on 18 December 1981 and 25 July 1981 respectively. They have each appealed with the permission of the First-tier Tribunal against decisions of Judge of the First-tier Tribunal C M Phillips, who dismissed their appeals against decisions of the respondent to refuse to vary their leave to remain and to remove them under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellants both came to the UK in 2009 in order to study and they were both granted further leave undertake post-study work. They made in-time applications for further leave as Tier 1 (Entrepreneur) Migrants, having jointly formed a business teaching computing skills tailored to the needs of students. They each contributed approximately £25,000 towards the business. They provided bank letters as evidence of the £50,000 they needed to show they could invest in the business. The appellants provided a letter from the Nationwide Building Society, dated 25 April 2013, confirming they held £16,780 in an account as at that date. They also provided a letter from Axis Bank, Bodhupatty Branch, dated 9 April 2013, confirming they held the equivalent of approximately £35,000 in an Indian Rupees account as at that date.
3. The respondent refused the applications by reference to paragraphs 245DD(b) and Appendix A of the Immigration Rules, HC395, because the bank letters were not considered to show the appellants had access to the £50,000 they needed to secure points for Attributes. That is because the letters had different dates and therefore did not show they had access to the funds on the same day. The appellants appealed. The grounds focused on issues of evidential flexibility and also that removing the appellants would breach their rights under article 8 of the Human Rights Convention.
4. Judge Phillips considered the arguments and found the rules were not met because the bank letters did not “provide evidence that the appellants had £50,000 of funds available on any date” (paragraph 32). She found paragraph 245AA(c) applied so there was no requirement for the respondent to have requested further documents. She also dismissed the appeals on article 8 private life grounds.
5. The grounds seeking permission to appeal argue the judge erred in her application of the rules. Essentially, the rules did not say the letters had to be written on the same date and therefore the judge was creating rules. The grounds also argue that, where the rules do not provide an answer, fairness demanded the respondent should have given the appellants the opportunity to provide letters dated the same date. First-tier Tribunal Judge Grimmett granted permission to appeal on the first ground but did not prevent the appellants arguing their other ground.
6. The respondent has filed a Rule 24 response opposing the appeal.
7. I heard submissions on the question of whether the judge made a material error of law requiring her decision to be set aside. Mr Miah’s point was essentially that the judge had invented a rule which did not exist. Mr Avery argued the judge did not err. This was not a question of specified documents. The fundamental requirement to provide evidence of £50,000 had not been met because the two letters did not tally.
8. I find the judge did make a material error of law for the following reasons.
9. This case turns on a narrow point of interpretation. The rules must be given their natural meaning. They state as follows:

"245DD. Requirements for leave to remain

To qualify for leave to remain as a Tier 1 (Entrepreneur) Migrant under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) ...
- (b) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A."

"Appendix A

41. An applicant will only be considered to have access to funds if:

- (a) The specified documents in paragraph 41-SD are provided to show cash money to the amount required (this must not be in the form of assets); ..."

"41-SD. The specified documents in Table 4 and paragraph 41 are as follows:

- (a) The specified documents to show evidence of the money available to invest are one or more of the following specified documents:

- (i) A letter from each financial institution holding the funds, to confirm the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). Each letter must:

- (1) be an original document and not a copy,
 - (2) be on the institution's official headed paper,
 - (3) have been issued by an authorised official of that institution,
 - (4) have been produced within the three months immediately before the date of your application,
 - (5) confirm that the institution is regulated by the appropriate body,
 - (6) state the applicant's name, and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix,
 - (7) state the date of the document,
 - (8) confirm the amount of money available from the applicant's own funds (if applicable) that are held in that institution,
 - (9) confirm the amount of money provided to the applicant from any third party (if applicable) that is held in that institution,
 - (10) confirm the name of each third party and their contact details,

including their full address including postal code, landline phone number and any email address, and

(11) confirm that if the money is not in an institution regulated by the FSA, the money can be transferred into the UK;

or

(ii) For money held in the UK only, a recent personal bank or building society statement from each UK financial institution holding the funds, which confirms the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). The statements must satisfy the following requirements:

- (1) The statements must be original documents and not copies;
- (2) The bank or building society holding the money must be based in the UK and regulated by the Financial Services Authority;
- (3) The money must be in cash in the account, not Individual Savings Accounts or assets such as stocks and shares;
- (4) The account must be in the applicant's own name only (or both names for an entrepreneurial team), not in the name of a business or third party;
- (5) Each bank or building society statement must be on the institution's official stationary and confirm the applicant's name and, where relevant, the applicant's entrepreneurial team partner's name, the account number, the date of the statement, and the financial institution's name and logo;
- (6) The bank or building society statement must have been issued by an authorised official of that institution and produced within the three months immediately before the date of the application; and
- (7) If the statements are printouts of electronic statements from an online account, they must either be accompanied by a supporting letter from the bank, on company headed paper, confirming the authenticity of the statements, or bear the official stamp of the bank in question on each page of the statement;

or ..."

10. As can be see, there is no requirement in the rules for the bank letters to have been issued on the same day. I can see that any such requirement could potentially create substantial difficulties for applicants given that it would require banks to cooperate with requests to provide letters on a particular day. In any event, if it had been intended that the letters should be dated the same day then it would have been a simple matter to include this in the rules. In the Points-Based System, there are detailed requirements regarding what documents must be produced and what they must show. Additional requirements should not be written in by judges.
11. I fully understand the point being made by the judge in this case and echoed in his submissions by Mr Avery. Whilst there is no suggestion of such practice in this case, my interpretation could open the rules up to abuse by enabling applicants who do not have access to the required level of funds to move money between accounts so as to create an artificial impression as to the total funds actually held. However, it is not correct to say the appellants have not shown they held £50,000. They have done so by reference to the exigencies of the rules as drafted. The only requirement as to time was the three month window during which the letters must have been dated. This requirement was met by both letters.

12. Having found the judge erred and set aside her decision, it is a short step to substituting a decision allowing these appeals. The only point by reference to which the appellants failed under the rules was the one discussed. I have come to the opposite conclusion to that of the First-tier Tribunal as to the correct interpretation of the rules. I find the appellants did meet the requirement to show they had access to £50,000 by reference to the rules as set out above and I allow the appeals.

DECISION

The Judge of the First-tier Tribunal made a material error on a point of law and her decision dismissing the appeals is set aside.

The following decision is substituted:

The appeals brought under the Immigration Rules are allowed.

No anonymity direction has been made.

Signed

Date 11 July 2014

Neil Froom, sitting as a Deputy Judge of the Upper Tribunal

Fee Award

Note: this is **not** part of the determination.

In the light of my decision to re-make the decisions in the appeals by allowing them, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make a fee award of £140 in respect of each appellant.

Reasons: The appeals have been allowed.

Signed

Date 11 July 2014

Neil Froom, sitting as a Deputy Judge of the Upper Tribunal