



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

Appeal Number: IA/26557/2013

THE IMMIGRATION ACTS

Heard at : Field House

On : 30 June 2014

Determination

Promulgated

On : 2 July 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MOHAMMED JEWEL MELON

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr A Sayem of Uzma Law Ltd

For the Respondent:

Mr L Tarlow, Senior Home Office Presenting

Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh born on 1 February 1986. On 7 December 2012 he made an application for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant. His application was refused on 6 June 2013 on the grounds that he was unable to meet the requirements of

paragraph 245DD with reference to Appendix B and C of the Immigration Rules.

2. The appellant's appeal against that decision was heard in the First-tier Tribunal on 14 October 2013 and was dismissed under the immigration rules, but with respect only to the decision under Appendix B (the requirements of Appendix C having been found to have been met), and on human rights grounds. The appellant then applied for permission to appeal to the Upper Tribunal.

3. Permission was granted in relation to the grounds of refusal under Appendix B of the Immigration Rules and the appeal was listed for hearing before the Upper Tribunal on 2 April 2014.

4. In an emailed rule 24 response on 21 March 2014 the respondent advised the following:

"The Secretary of State has sought policy advice in this case and has concluded that the decision is unsustainable. I have withdrawn this with a view to further leave being granted and on that basis was wondering whether consideration could be given to taking this case out of the list for 2 April."

5. On 26 March 2014 directions were issued to the parties inviting a response, as follows:

"The parties are therefore invited to advise the Tribunal as to the manner in which it is to dispose of the proceedings. In the absence of any reasonable response within 5 days following the issue of these directions, the Tribunal proposes to treat the respondent's letter as an indication of a lack of challenge to the appellant's case before the Upper Tribunal, with the effect that the decision of the First-tier Tribunal shall be set aside. The Tribunal intends to substitute a decision formally dismissing the appeal for lack of jurisdiction, given the withdrawal of the original decision, whilst noting that that is not a reflection on the merits of the appellant's case."

6. The appellant's representatives, in a letter of response dated 31 March 2014, requested that the First-tier Tribunal's decision be set aside, that the respondent's withdrawal of the original decision be accepted and that confirmation be given that the respondent had no sustainable case. The Tribunal was invited to make directions that the appellant be granted further leave as a Tier 1 (Entrepreneur Migrant).

7. In a decision made on 23 April 2014 I set aside the decision of the First-tier Tribunal but, in view of the lack of an agreed course for the disposal of the appeal, I made directions for the matter to be listed for a resumed hearing at which the disposal of the appeal could be concluded.

8. At the hearing on 30 June 2014 Mr Tarlow confirmed the withdrawal of the respondent's decision but advised me that no grant of leave to remain had yet been made to the appellant. Both parties agreed that the decision in

the appeal could be re-made by the appeal being formally dismissed on the basis that the decision giving rise to the appeal had been withdrawn.

9. Accordingly, the respondent's decision having been withdrawn, no appeal against it can succeed and I therefore formally dismiss the appeal whilst making it clear that this is not a reflection on the merits of the appellant's case. The appellant's application remains outstanding and the appellant awaits a grant of leave by the Secretary of State, as indicated in the email of 21 March 2014.

DECISION

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision has been set aside. I re-make the decision in the appeal by formally dismissing it on the limited basis stated above.

Signed
Date
Upper Tribunal Judge Kebede