



IAC-BH-PMP-V1

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

Appeal Numbers: IA/30608/2013
IA/30605/2013
IA/30606/2013
IA/30607/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 10th November 2014**

**Decision & Reasons Promulgated
On 17th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

**MR LIVERA MUDALIGE RAVINDRA SARATH KUM DE LIVERA
MRS SHARMILA VAJIRANI PERERA PERERA
MISS LIVERA MUDALIGE CHATURYA YOHARI DE LIVERA
MASTER LIVERA MUDALIGE THISARA Diredra de Livera
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Kannangara of Counsel

For the Respondent: Miss C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Sri Lanka. The first Appellant is the husband of the second Appellant and the third and fourth Appellants are their children. In the

remainder of this determination, for ease of reference, I propose to refer to the first Appellant as “the Appellant”.

2. On 13th July 2013 the Appellant made a combined application for leave to remain as a Tier 1 (General) Migrant under the points-based system (PBS) and for a biometric residence permit. The other Appellants applied as his dependants. The applications were refused on 7th August 2013 and all four Appellants have exercised their right of appeal.
3. The appeals were dismissed by Judge of the First-tier Tribunal Broe in a determination promulgated on 15th January 2014.
4. Permission to appeal was granted to all four Appellants by Judge of the First-tier Tribunal V A Osborne on 26th March 2014.
5. The Appellant sought permission to appeal to the Upper Tribunal on the basis that the First-tier Judge made an arguable error of law because throughout his determination he referred to the provisions of paragraph 6A of Appendix A to the Immigration Rules which relate to attributes for Tier 1 (Exceptional Talent) Migrants whereas the Appellant was applying as a Tier 1 (General) Migrant. The necessary attributes for Tier 1 (General) Migrants begin at paragraph 7 of Appendix A. Judge Osborne concluded that the First-tier Judge’s failure to identify the correct provisions of the Immigration Rules constituted an arguable material error of law because of the different requirements. Thus the matter came before me for an error of law hearing in the Upper Tribunal on 10th November 2014.
6. The Appellant was present. Representation was as mentioned above. I have before me all the documents which were before the First-tier Tribunal.
7. The Respondent’s representative has filed and served a response under Rule 24 dated 11th April 2014. The response accepts that the First-tier Judge erred by considering the Appellant’s case under the wrong part of Appendix A (6A rather than 18, 19 and 19-SD). However, the response also refers to paragraph 19(A) which states as follows:

“In all cases, the applicant must provide at least two different types of the specified documents in paragraph 19-SD(a) from two or more separate sources as evidence for each source of previous earnings.”

It is clear from the determination that there was no other evidence which corroborated the Appellant’s dividend payment and therefore that provision could not be met. The Respondent’s representative argues that any error is therefore not material.

8. For the Appellant, Mr Kannangara argued that the First-tier Judge had applied the wrong Rules and the error was material because the Rules which he applied differed from those which he should have applied. Mr Kannangara referred to three specific documents which were submitted in support of the application. These were a dividend voucher issued by the Appellant’s company (as opposed to his accountant), an accountant’s report and a bank account. These are three items which are allowed under the correct Rules. Mr Kannangara drew my attention to the Appellant’s

application form where boxes had been ticked indicating that the application was correctly completed and those three items were clearly referred to.

9. At the end of Mr Kannangara's submission I indicated that my preliminary view was that the First Tier Judge had erred in law because the Rules relating to a Tier 1 (Exceptional Talent) Migrant differed from the Rules which applied to a Tier 1 (General) Migrant. In those circumstances, the appropriate course was for the matter to be heard afresh by a different judge in the First-tier Tribunal and for the original application to be considered against the correct Rule. Miss Johnstone, for the Respondent, did not seek to dissuade me from taking this course of action. Having taken into account paragraph 7.2 of Part 3 of the Practice Statements, I am satisfied that this is an appropriate case for remitting the matter to the First-tier Tribunal for a de novo hearing before a different judge. I do not consider it appropriate to preserve any findings of fact.

Notice of Decision

The making of the decision by the First-tier Tribunal involved the making of a material error on a point of law. I set aside the determination and remit the appeal to the First-tier Tribunal to be heard afresh before a different Judge of the First-tier.

No anonymity direction is made.

Signed

Date 13th November 2014

Deputy Upper Tribunal Judge Coates