Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/37790/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 29 May 2014	**On 26 June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

MUHAMMAD TAIMUR
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Grace Brown, Counsel, instructed by Farani Javid Taylor Solicitors LLP
For the Respondent: Mr Lawrence Tarlow, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal that was allowed at the First-tier. The appellant before the Upper Tribunal is therefore the Secretary of State. For clarity and convenience, however, I will refer to the parties as they were at the First-tier.

2. The appellant, a citizen of Pakistan, was in the UK as a student between 2008 and 2011, and then for post-study work (Tier 1) until 12 July 2013. Just before the expiry of this leave he applied for leave to remain as a Tier 1 Entrepreneur, but this application was refused on 4 September 2013.

3. The appeal was allowed, following a hearing at Taylor House, by Judge of the First-tier Tribunal Devittie, in a determination promulgated on 5 March 2014.

4. The respondent applied for permission to appeal. The point at issue concerned a printout of the appellant's website, which was submitted with the application. The complaint in the grounds was that the judge had failed to identify the evidence which established that the details claimed to exist on the website at the time of the application were, in fact, in existence at that time.

5. Permission to appeal was granted by Judge of the First-tier Tribunal Landes, who commented as follows:

> "It is right that it appears to have been the appellant's case that the information was on the website at the time of the application but the judge did not make any explicit findings that this was the case. Although the tenor of his determination would suggest that he may have made such a finding and therefore that the respondent may not ultimately succeed I do not consider that I can say that the point is unarguable."

The Hearing

6. The main submission made by Mr Tarlow, for the respondent, was that the judge had erred in law by considering the printout of the entirety of the website provided at the hearing. In doing so he had looked at evidence that had not been submitted with the application. In response to submissions as to the relevance of evidential flexibility his submission was that this was not applicable. It was beyond what should be expected of a caseworker to go to the website itself. The onus was on the applicant to provide everything that was needed.

7. Ms Brown, for the appellant, defended the determination, submitting that the reasons were adequate. There was no evidence to show that the website had altered. The printout of the home page of the website, at page 2 of the appellant's bundle, showed that there were contact details available. Since the website had been submitted, this was admissible evidence that had been submitted at the date of application. In addition paragraph 245AA(b)(iv) was relevant, because the document could be said not to have contained all of the specified information.

Decision and Reasons

8. I have decided that the judge did err in law, in a manner material to the outcome.

9. Although there were other issues, it was agreed that the sole remaining ground of refusal was that the printout of the appellant's business website,

provided with the application, did not include the appellant's name and contact details. The basis on which the judge allowed the appeal was the following finding in paragraph 6 of the determination:

> "The appellant has explained that he omitted to print out all the pages from the website. He has now provided these, and in my view they fully address the concerns of the respondent. I find that the printouts of the website are admissible and are not post-decision evidence, as the details of the website were provided to the respondent at the date of application."

10. I appreciate that there are different ways of looking at this point, but it appears to me that the appellant can only be said to have actually submitted the printout of a single page from his website with the application. This provided the website address, but making a reference to a website does not appear to me to be the same as submitting it with the application. The appeal was concerned with the points-based system, and more specifically with the allocation of points. As a result the question to be addressed was, strictly, whether the evidence was submitted in support of the application to which the immigration decision related (section 85A(4)(a)). The legal issue as to admissibility was not strictly concerned with whether the evidence was "post-decision evidence" but rather whether the evidence adduced at the appeal had been submitted in support of the application. It appears to me that the other pages of the website were not submitted in support of the application, and the judge therefore erred in law in regarding them as admissible, with the consequence that the decision to allow the appeal under the Immigration Rules rested on an error of law.

11. I therefore set aside the judge's decision allowing the appeal under the Immigration Rules.

12. The parties were invited, at the hearing, to make submissions as to the remaking of the decision. Mr Tarlow, for the respondent, submitted that the decision could be remade without the need for further evidence or submissions. Ms Brown, on the other hand, asked for an opportunity to make further submissions, but not to call further evidence.

13. In the circumstances, given the narrow point at issue, I have decided that there is no need for a resumed hearing, and I am proceeding to remake the hearing on the basis of the documentary evidence.

14. Having considered the submissions by both sides in relation to paragraph 245AA of the Immigration Rules I have decided that the decision was not in accordance with the law and the Immigration Rules, in particular paragraph 245AA(b)(iv), and (d)(iii).

15. Under paragraph 245AA(b)(iv), where a document does not contain all of the specified information, the decision maker has a discretion to ask for

the correct documents to be submitted within seven days. This would appear to me to be an example of a situation where a document did not contain all of the specified information. The printout of the website contained an indication that contact details were available. It was therefore far from speculative to conclude that there were other pages to the website. If the decision maker did not want to look up the website itself, then a full printout of all of the pages from the website could have been requested. There is no indication that this was considered by the decision maker, and no reasons have been given for not making such a request.

16. As an alternative paragraph 245AA(d)(iii) gives the decision maker a discretion to grant the application where there is missing information that is verifiable in other ways. One of these is listed as the website of the organisation issuing the document. This suggests, contrary to the submission made at the hearing, that, within the Immigration Rules, decision makers are expected, in some circumstances, to look at websites. Once it became clear that this was to become an important ground of refusal, it does not appear to me to be unduly onerous to have expected a decision maker to look at the website, where the home page printout had been provided, but the contact details had not. It would have been a quick and simple matter to go to the home page, and then click through to the contact details.

17. Again there is no indication in the refusal that this aspect of paragraph 245AA was considered, and no reasons were given for not using this discretion.

18. For these reasons I have decided, in remaking the decision, that the appeal falls to be allowed on the basis that the decision was not in accordance with the law and the Immigration Rules, and the application therefore remains outstanding awaiting a lawful decision. The appeal cannot be allowed under the Rules outright because Paragraph 245AA involves the exercise of a discretion, and that discretion has not been exercised. I cannot, therefore, say that the discretion should have been exercised differently. Although the full printout of the website is not admissible at an appeal because of section 85A, there is no such restriction on the Secretary of State, who is at liberty to consider this evidence in reaching a lawful decision.

Decision

19. The appeal of the Secretary of State is dismissed.

20. The decision allowing the appeal outright under the Immigration Rules contained a material error of law and is set aside. The decision is remade as follows.

21. The appeal is allowed to the limited extent that the application remains outstanding, awaiting a lawful decision.

Signed Date 25.06.2014

Deputy Upper Tribunal Judge Gibb