



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

Appeal Numbers: IA/46866/2013
IA/46867/2013

THE IMMIGRATION ACTS

Heard at Field House

On 25th June 2014

Determination

Promulgated

On 23rd July 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ZOHAIB WAHID
AYESHA ZOHAIB**

Respondents

Representation:

For the Appellant: Ms Everett, HOPO

For the Respondent: Mr Iqbal, Farani Javed Taylor

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Birk made following a hearing at Birmingham on 12th March 2014.

Background

2. The Claimants are nationals of Pakistan. The second Claimant's appeal is dependent on her husband.
3. The first Claimant entered the UK on 9th March 2008 with leave to remain as a student valid until 30th June 2011. He was granted further leave to remain as a post-study work migrant until 16th May 2013. His wife joined him on 25th March 2012.
4. He applied for further leave to remain as a Tier 1 (Entrepreneur) but was refused on 11th June 2013. The Secretary of State said that the evidence of registration as the Director of a new company did not meet the requirements as specified under Appendix A of the Immigration Rules and in any event was not acceptable because the Companies House company details provided did not show a current appointment report and did not list him as a director. Furthermore the Claimant had not provided evidence of business activity with his application in the form of a contract as specified under Appendix A of the Immigration Rules. He was also refused on financial grounds.
5. The judge said that the missing bank statements for the relevant period had now been provided and the Secretary of State should have applied paragraph 245AA and requested the missing documents. There is no challenge to that aspect of the decision.
6. The judge also stated that the Companies House document fell within the ambit of paragraph 245AA(b)(iv). He then wrote as follows:

“As for the contracts, I do not find that this is covered by the application of paragraph 245AA. The Appellant failed to submit these as evidence of his business trading. I do not accept that without any explanation from the Appellants of the difficulties that they had, the Respondent should have realised that there were oral contracts available which could be put into writing.

Accordingly, due to my other findings, I find that the Respondent's refusal was not in accordance with the law and that the appeal is allowed to the extent that this application is required to be remitted to the Respondent for further consideration of the documents.”

The Grounds of Application

7. The Secretary of State sought permission to appeal on the grounds that the judge had erred in finding that the appointment report fell within the scope of paragraph 245AA(b)(iv) which concerns instances where a document does not contain all of the specified information. It is not the case that the Claimant provided documents which failed to include all the relevant information, rather that he failed to provide the document at all. Additionally he accepts that he was unable to provide contracts with the application and the requirements of the Rules were therefore

unambiguously not met. He should have found that the Claimant did not meet the requirements of the Rules and dismissed the appeal accordingly.

8. Permission to appeal was granted by Judge Levin for the reasons stated in the grounds.

Submissions

9. Miss Everett relied on her grounds. She accepted that, with respect to the Companies House details, they were not a specified document as such and there was a certificate of incorporation before the Secretary of State. She also accepted that there was a relevant policy at the date of decision which was arguably more generous than the Rules and conceded that the Claimant was entitled to benefit from the generosity of the policy as held in AA (Nigeria) v SSHD [2010] EWCA Civ 773.
10. However she submitted that, so far as the contracts were concerned, the application was bound to fail. The Claimant accepted that as at the date of his application he could not provide any contracts. At paragraph 9 of his witness statement he said that he had approached a number of potential business clients who would be more than happy to enter into contracts with him once he obtained leave to remain as a Tier 1 (Entrepreneur) Migrant but not any earlier. If the case owner had in fact contacted him requesting further information the Claimant could only have said that the contracts were not available.
11. She accepted that he had now put forward evidence which might potentially meet the requirements of the Rules and the proper course was therefore a reapplication.
12. Mr Iqbal relied on his skeleton argument and submitted that in relation to the missing contracts, the Claimant was entitled to rely on the relevant policy which was:

“Under the evidential flexibility process, if there are minor errors or omissions on a valid application but there is enough evidence to show the application would otherwise be granted, you may contact the migrant, Sponsor or representative as appropriate for clarification or to request missing documents and/or information.”

13. He submitted that the substantive requirements of the Rules were met and the Claimant had shown that he was a bona fide entrepreneur. The missing documents were de minimis because he could show that he met the substantive requirements of the Rules.

Findings and Conclusions

14. The Secretary of State confines her challenge to the decision in respect of the company’s appointment report and the missing contracts. With regard to the former, the judge was entitled to conclude that, given that there was evidence of incorporation and the Companies House details are not a

specified document as such, the missing evidence of directorship fell within the ambit of paragraph 245AA.

15. However on the judge's own findings, the missing contracts did not. On the evidence, they did not exist at the time, and even if the Secretary of State had approached the Claimant, the evidence could not have been produced. He could not meet the requirements of the Rules.
16. The missing evidence was not de minimis but an essential element of the Rule which requires evidence of trading.
17. The judge therefore erred in law in allowing the appeals to the extent that he did.

Decision

The judge's decision is set aside. It is remade as follows. The appeals are dismissed.

Signed

Date

Upper Tribunal Judge Taylor