



IAC-AH-KRL-V1

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

Appeal Number: IA/50675/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 October 2014**

**Decision & Reasons Promulgated  
On 27 October 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**MR NABEEL SHAMSHAD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Ranshawa (Sky Solicitors Limited)  
For the Respondent: Mr C Avery (Senior Home Office Presenting Officer)

**Determination and Decision**

1. This matter comes before me for consideration as to whether or not the determination discloses a material error of law.
2. In a determination promulgated on 30 July 2014 before First-tier Tribunal (Judge Doran) the appellant's appeal against a refusal to grant him leave to remain in the

UK as a Tier 1 (General) Migrant was dismissed. The Tribunal also dismissed the appeal on human rights grounds and confirmed that the issue of removal directions under Section 47 of the 2006 Act was lawful.

3. The appellant is a citizen of Pakistan and his date of birth is 7 October 1985.

### **Background**

4. The Secretary of State considered the application made by the appellant on the basis of documentation submitted and thereafter in an interview conducted on 24 October 2013. The respondent was not satisfied that the appellant's self-employed earnings were credible as they had not been earned by genuine means, as admitted by the appellant in interview. His motivation for that work was to meet the Immigration Rules. Essentially the respondent did not consider that the responses given by the appellant in the interview established that he ran a genuine and credible business providing tuition.
5. In a determination which set out the appellant's evidence and submissions made, the findings appear at [36]. In terms of documentary evidence the appellant produced invoices, bank statements and accounts. The Tribunal undertook a cross-referencing exercise with each and every invoice produced with the appellant's bank statement. All were verified, save for five invoices totalling £6,710.08, a shortfall identified by the Tribunal at [37]. On the basis of those deficiencies the Tribunal was not satisfied that the appellant established in full his claim to previous earnings for self-employment because of the shortfall in his funds. The Tribunal was not satisfied that the appellant had undertaken the tuition specified in the 5 invoices. The Tribunal then considered the evidential flexibility policy approach. The Tribunal took into account that the appellant had been requested and indeed attended an interview under the provisions of paragraph 19(k) of Appendix A of the Immigration Rules. The Tribunal found that there was no further obligation on the respondent to apply evidential flexibility.
6. The Tribunal considered the application of Article 8 and followed the approach in **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 (IAC)**. The Tribunal found nothing in his private life that was exceptional and/or that could not be replicated in Pakistan. There were no arguably good grounds for granting leave outside of the Rules and no grounds for considering a second stage Article 8 assessment.

### **Grounds for Permission**

7. Ground 1 - the Tribunal erred in the cross-referencing of the invoices against payment dates shown in the appellant's bank statements. All five invoices highlighted in [37] are reflected in the bank statements. Had the Tribunal not misread the documentary evidence the outcome of the appeal would have been favourable to the appellant.

8. Ground 2 – the Tribunal erred by limiting its assessment of the appellant’s private life under paragraph 276ADE. It ought to have considered paragraph 276B of the Immigration Rules.

### **Permission to Appeal**

9. Permission to appeal was granted by First-tier Tribunal Judge Coates on 2 September 2014.

### **Error of Law Hearing**

10. At the start of the hearing Mr Avery conceded that the First-tier Tribunal had erred in the cross-referencing of invoices and bank statements, which was inaccurate. Mr Avery conceded that the documentary evidence established that all of the invoices could be cross-referenced and matched with payments made into the appellant’s bank statements.
11. Mr Ranshawa submitted that the focus of the determination was on the documentary evidence and the cross-referencing exercise was significant. The Tribunal performed this exercise on the basis that the appellant was engaged in genuine employment and received genuine earnings.
12. Mr Avery relied on the Reasons for Refusal Letter in which the main concern was the credibility and genuineness of the appellant’s business.
13. Mr Avery conceded that he was in some difficulty and could not realistically support any argument that the determination should stand. The Tribunal in his view placed weight on erroneous considerations and failed to consider the main objections raised by the Secretary of State.
14. In response Mr Ranshawa argued that the Tribunal’s approach was sustainable particularly in light of all of the evidence produced in the appellant’s bundle which included independent confirmation of his accounts and proof of his earnings.

### **Discussion and Decision**

15. At the hearing before me Mr Ranshawa sought to pursue only the first ground of appeal and did not raise the second ground, namely Article 8. For the sake of completeness I am satisfied that the Tribunal’s consideration of Article 8 issues discloses no material error of law.
16. Turning to the main ground of appeal, I find that there was a material mistake of fact in the Tribunal’s determination such that the outcome would have been different were it not for the error made.

17. It was common ground that the Tribunal erred in the cross-referencing exercise as between the five invoices and bank statements. The Tribunal was wrong to reach a conclusion that five invoices did not show corresponding payments in the appellant's bank statements. It is clear from the determination that the Tribunal placed significant weight on the documentary evidence before it and made a clear finding that the cross-referencing exercise performed established that those specific invoices could not be verified and that the appellant had not undertaken that specific tuition.
18. Mr Avery submits that the determination cannot stand because the Tribunal failed to engage with the main concerns raised by the respondent in the Reasons for Refusal Letter, namely the genuineness and credibility of the appellant's business and earnings as evidenced in the record of interview. I reject this submission. The respondent has not sought to submit grounds of appeal and/or any cross-appeal in these proceedings relying on those grounds.
19. I accept the submissions made by Mr Ranshawa. Although the Tribunal does not specifically engage with the issue of the appellant's credibility, I am satisfied that the Tribunal has looked at all of the evidence, including the bundle of documentary evidence showing confirmation of the appellant's income and earnings, together with the evidence of invoices and corresponding bank statements. In my view the Tribunal would not have engaged in such an exercise were it not satisfied to the appropriate standard of proof that the appellant was working on a self-employed basis and earning the relevant and specified income shown in the documentary evidence. The clear implication of the findings in the determination is that in the event of the cross-referencing exercise proving to be accurate, the Tribunal intended to make a finding that the appellant had indeed established evidence of previous earnings in the total amount. Accordingly I find that the error made by the Tribunal was material. I find that the appellant had in fact adduced evidence to show he met the previous earnings requirements.

## **Decision**

20. There was a material error of law.
21. The determination is set aside.
22. I remake the decision by substituting a decision **to allow the appeal on immigration grounds.**

**No anonymity direction is made.**

Signed

Dated 27.10.2014

Deputy Upper Tribunal Judge G A Black

**TO THE RESPONDENT**  
**FEE AWARD**

No fee award made.

Signed

Dated 27. 10.2014

Deputy Upper Tribunal Judge G A Black