



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

**Appeal number: IA/50965/2013  
IA/50966/2013  
IA/50967/2013  
IA/50968/2013  
IA/50969/2013  
IA/50970/2013  
IA/50971/2013**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On November 21, 2014**

**Decision and Reasons Promulgated  
On November 24, 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR NESIMEYE OBAKPORORO EMEFE  
MRS OBERORO ROSE EMEFE  
MISS OGHENEKEVWE EMEFE  
MISS OGHENERUKEVWE EMEFE  
MISS EJIROGHENE EMEFE  
MR VICTOR OGHENETEGA EMEFE  
MASTER DIVINE OGHENEYOMA EMEFE  
(NO ANONYMITY DIRECTION MADE)**

**Appellants**

**and**

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

**Respondent**

**Representation:**

**For the Appellant: Mr Afzal (Legal Representative)**

**For the Respondent: Mrs Pettersen (Home Office Presenting Officer)**

## DETERMINATION AND REASONS

1. The first-named appellant (hereinafter referred to as the appellant), born July 24, 1964 is a citizen of Nigeria. He applied for leave to remain as a Tier 1 (General) Migrant on September 13, 2013. The remaining appellants are his wife and children and they applied to remain as wife/children of a Tier 1 (General) migrant. The appellant had originally come to the United Kingdom as a student having been granted leave to enter on September 21, 2007. He was then granted further leave to remain as a Tier 1 (General) Migrant until October 20, 2013. The respondent rejected these applications on November 15, 2013 under paragraph 245CA of the Immigration Rules, as the appellant did not satisfy the requirement of paragraph 245CA(b) and Appendix A. At the same time a decision was taken to remove them under Section 47 of the Immigration, Asylum and Nationality Act 2006.
2. The appellants appealed to the First-tier Tribunal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on November 29, 2013. On March 18, 2014 Judge of the First Tier Tribunal Lloyd-Smith (hereinafter referred to as the "FtTJ") heard their appeals. She refused all of their appeals under the Immigration Rules and article 8 ECHR in a determination promulgated on March 19, 2014.
3. The appellants lodged grounds of appeal on April 2, 2014 and on April 16, 2014 Judge of the First-tier Tribunal Osborne granted permission to appeal finding it arguable the FtTJ had possibly erred in her approach to assessing the question of whether the appellant had a profitable and viable business.
4. The appellant attended the hearing before me and was represented by Mr Afzal.

## SUBMISSIONS

5. Mr Afzal adopted his grounds of appeal and submitted:
  - a. The FtTJ should have given the appellant some leeway because he had been acting in person when he submitted the applications. He did not appreciate he had to specify the period he wished the respondent to consider. He did produce ample evidence of his business and he had, with the leave to appeal application, submitted evidence of the accountant's qualification.

- b. The FtTJ erred because she failed to have regard to the fact the appellant's wife helped him run the business.
  - c. The FtTJ had erred in finding that the appellant had only submitted a couple of invoices when in fact there were six invoices in the bundle. The appellant believed a business card had been submitted with his application but accepted that there were no photographs, literature or evidence that he had paid his NI contributions or tax as a self-employed person.
  - d. The appellant had been told by his accountant to pay his NI at the end of the year and now he had evidence that this and the corporation tax had been paid. He should not be blamed for the advice of his accountant and the FtTJ should have given him some leeway.
  - e. There was evidence that his income was over £30,000 and the fact it was for the wrong period was not something that should have been held against him.
  - f. The FtTJ had sufficient evidence to show the appellant was running a successful business and the FtTJ erred.
6. Mrs Pettersen responded to the appellants' grounds of appeal and submitted there was no error in law. She submitted:
- a. Mr Afzal missed the point the FtTJ made in her determination namely the appellant had failed to provide the specified documents and failed to demonstrate that he received the income he claimed to have received.
  - b. The appellant failed to provide evidence that his accountant was a member of a recognised association and the fact evidence was now submitted did not mean the FtTJ had erred.
  - c. The appellant had to show he had a successful business by providing the specified documents.
  - d. Any error on the invoices was minor and was not material.
7. I reserved my decision on all issues.

## MY FINDINGS ON ERROR IN LAW

8. Permission to appeal was given in this case because Judge of the First-tier Tribunal Osborne found it was arguable the FtTJ may have erred in her assessment of the appellant's business. Mr Afzal agreed with this finding whereas Mrs Pettersen submitted that the appeal had failed because the appellant had failed to provide the documents specified in the Rules.
9. The FtTJ indicated at paragraph [10] of her determination that the appellant had to demonstrate that he received at least £30,000 over a specified twelve-month period and he had to demonstrate with reference to documents that he had actually received this money. Paragraph [22] of Appendix A of the Immigration Rules makes clear that if the appellant does not indicate a period of assessment of earnings then his earnings will be assessed against the twelve-month period immediately preceding their application and if the specified documents are not provided then no points would be awarded.
10. The appellant failed to specify a period and the respondent and FtTJ correctly applied the Rules. Mr Afzal submitted the appellant should have been given some leeway but the Rules are the same for everyone. The fact the appellant did not understand the Rules is something he should have considered when making his application. There can be no differential between represented and unrepresented appellants otherwise the Rules would be unfair. The FtTJ was entitled to uphold the decision to issue no points.
11. The appellant also failed to provide the documents required in Section 19 and Section 19-SD of Appendix A. Paragraph 19(b) of Appendix A makes it clear that "where a person is claiming points for self-employed earnings he must provide the specified documents in paragraph 19-SD to show that:
  - (i) he is registered as self-employed
  - (ii) he was registered as self-employed during the period(s) of self-employment used to claim points, and
  - (iii) he was paying Class 2 National Insurance contributions during the period(s) of self-employment used to claim points."
12. The appellant acknowledged at the hearing before me he had not provided evidence to the FtTJ that he had been paying his Class 2 NI contributions although his explanation to me through Mr Afzal was that

his accountant had told him not to make monthly payments. In normal circumstances this may not have presented a problem but because it is a mandatory problem it becomes a non-compliance with a mandatory requirement.

13. Ignorance of the Rules does not assist the appellant. The fact he may have a viable business is not the test. Meeting the Immigration Rules and providing the specified documents proves the viability of the business.
14. Mr Afzal argued the FtTJ erred when she stated there were only a couple of invoices whereas there were in fact six. However, these six invoices only covered a two-day period and the finding by the FtTJ remains a valid finding as these hardly supported his claims about the business.
15. Mr Afzal accepted specified documents were not submitted and there was no specified evidence demonstrating he received the monies he claimed.
16. The appellant also failed to provide evidence his accountants were regulated as required by paragraph 19(g) of Appendix A. The Rules requires the appellant to provide evidence that his accountant must be either "a fully qualified chartered accountant or certified accountant who is a member of a registered body". The two letters submitted to the appellant did not do this and the FTTJ was entitled to make the finding she did regardless of the fact the appellant later submitted a further document with his permission to appeal that purports to comply with the Rule. It is arguable that even that document does not comply with the mandatory requirement because the letterhead makes no reference to the named person in the most recent letter and all letters are signed in the name of the firm only.
17. The FtTJ found the appellant did not satisfy the Rules and Mr Afzal accepted that required documents had not been submitted. Various reasons were provided but ultimately these were excuses and did not address the fact the Rules were not met.
18. This appeal was refused for not meeting the Rules. Nothing I have heard today suggests the Rules were met and consequently the appeals under the Immigration Rules are dismissed.
19. There was no appeal under human rights and that decision shall also stand.

**DECISION**

20. There was no material error of law and the original decision shall stand both in respect of the Immigration Rules and article 8 ECHR.
21. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated: **November 24, 2014**

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**

I do not alter the fee award decision.

Signed:

Dated: **November 24, 2014**

Deputy Upper Tribunal Judge Alis