



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

Appeal Numbers: IA/00910/2014
IA/00915/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 17 February 2015**

**Decision & Reasons Promulgated
On 25 February 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SIKANDAR BASHIR
AQFA BASHIR
(NO ANONYMITY DIRECTION MADE)**

Respondents

Representation:

For the Appellant: Miss Johnstone, Senior Home Office Presenting Officer
For the Respondents: Dr Thorndike, instructed by Ryan Adams, Solicitors

DECISION AND REASONS

1. The respondents, Sikandar Bashir and Aqfa Bashir, are citizens of Pakistan. They are husband and wife. The second respondent is the dependant on the appeal of the first respondent who applied in June 2013 for further leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant. His application was refused on 3 December 2013. I shall hereafter refer to the appellant as the respondent and to the

respondents as the appellants, as they appeared respectively before the First-tier Tribunal.

2. The appellants appeal to the First-tier Tribunal (Judge PJG White) which, in a determination which was promulgated on 9 May 2014, allowed the appeals under the Immigration Rules. The Secretary of State now appeals, with permission, to the Upper Tribunal.
3. Permission was initially refused in the First-tier Tribunal because the application for permission was made out of time. Judge Goldstein, in the Upper Tribunal, extended time and granted permission. I am not persuaded that I have any jurisdiction to interfere with that decision. The point was not pressed by Dr Thorndike, who appeared for the appellants before the Upper Tribunal at Manchester, and I shall make no further reference to it.
4. The first appellant's appeal foundered because the Secretary of State decided that he did not satisfy the genuineness test contained within paragraph 245DD(h)(i):

(h) Except where the applicant has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator and is being assessed under Table 5 of Appendix A, the Secretary of State must be satisfied that:

(i) the applicant genuinely:

(1) intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months, or

(2) has established, taken over or become a director of one or more businesses in the UK and continues to operate that business or businesses; and

(ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);

(iii) the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent for the purposes of his business or businesses.

(iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DE.

5. The refusal letters quotes at length from an interview carried out by the respondent's officers with the first appellant. The Secretary of State was not satisfied that the appellant was a genuine entrepreneur applicant. It was noted, *inter alia*, that he had only placed advertisements for his new business in newspapers three days before he had made his application for further leave to remain whilst his business plan appeared to be "speculative" and was not supported by market research; the appellant only had one contract and had made little effort to enter additional contracts; the appellant had worked as a store manager and, although he had a

qualification in information systems management, his work experience did not appear relevant to the business which he intended to pursue.

6. In short, Judge White accepted the explanations the appellant gave in his written and oral evidence for these concerns of the Secretary of State. He acknowledged that the appellant's business plans were likely to be "somewhat speculative" [22]; he accepted that the appellant's experience as a store manager would give him an insight into the needs of customers "from the other side of the counter"; he accepted that the appellant's business activities were likely to be restricted by uncertainties over his leave to remain whilst he was not in a position to enter into long term contracts which might not be completed should he be required to leave the United Kingdom. As regards the funding of the business, the judge observed [26] that the respondent had taken:

no issue concerning the adequacy of the letter from Habib Bank Ltd dated 21 June 2013 who indicates that the first appellant has the equivalent of more than £50,000 in his Pakistani bank account that is disposable/transferrable in the United Kingdom.

7. Dealing with the funding issue first, it is the case that the grounds of appeal do not take issue with the judge's findings. The grounds criticise the judge for having found that the appellant was restricting his business activities because he (wrongly) believed that he could not work after awaiting the outcome of his application for further leave to remain and the instant appeal. In the light of the Tribunal's decision in *Ahmed and Another (PBS: admissible level)* [2014] UKUT 00365 (IAC) the Secretary of State now accepts that at [25] of the determination the judge did not (as the grounds of appeal assert at [6]) err in law in his interpretation of the restriction on the admissibility of documentary evidence in the appeal.
8. As regards the remaining grounds, it may well be the case that the appellant was wrong to believe that he might commit an immigration offence by working pending the determination of his appeal. However, my reading of the decision is that Judge White found that the appellant himself genuinely believed (whether or not he was right to do so) that he could not press ahead with his business until such time as the matter of his leave to remain had been settled. The judge does not offer his own opinion on the law and does no more than to find that the appellant has demonstrated *bona fides* by restricting his business activities in order to avoid the possibility of acting illegally; it is not of importance whether he was or was not able to work, only that he genuinely believed that he could not do so. In the light of the judge's finding, the rejection of the appellant's application on "genuineness" grounds cannot be sustained; any lack of progress in the appellant's business was the result of a genuine mistake on the appellant's behalf and did not occur because his application as an entrepreneur is not genuine.
9. I find that Judge White has written a sound determination which is supported by adequate reasoning and which is not flawed by any error of law either as asserted in grounds or at all. The Secretary of State's appeal is dismissed.

NOTICE OF DECISION

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 25 February 2015

Upper Tribunal Judge Clive Lane