



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

Appeal Numbers: IA/11389/2014
IA/11393/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 13 April 2015**

**Determination Promulgated
On 21 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

**MUHAMMAD KAMRAN ASGHER
MARIAM MUNIR
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mrs H Price, Counsel instructed by Mayfair Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

The History of the Appeal

1. The Appellants who are citizens of Pakistan appealed, the second Appellant as the dependant of the first, against a decision of the Respondent of 18 February 2014 to refuse the application of first Appellant for leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant under the points-based system.

2. The ensuing appeal was heard at Taylor House on 9 October 2014 by Judge Canavan. Both parties were represented, the Appellant by Mrs Price, who appeared before me at the error of law hearing. The Appellant was not called to give evidence, so that the hearing took the form of submissions. In a determination promulgated on 11 December 2014 Judge Canavan dismissed the appeal under the Immigration Rules.
3. Grounds of appeal, not settled by Mrs Price, resulted in the grant of permission to appeal on 30 January 2015 by Judge Hollingworth in the following terms:

“An arguable error of law has arisen in relation to the scope of consideration by the Judge of the factors identified in paragraph 245DD. This is further relevant in the context of analysing the relationship between the current operations of any business being carried on and the scope of the business plan. A further arguable error of law arises since Article 8 was raised in the Grounds of Appeal but the decision is only concerned with a dismissal under the Immigration Rules.”
4. In two Rule 24 responses of 18 and 20 February 2015 the Respondent submitted that the judge directed herself appropriately and made findings which were properly open to her.
5. The Appellant, together with his wife and children, attended the error of law hearing before me, which took the form of submissions. I have taken these into account, together with the grounds of application for permission to appeal and the Rule 24 responses.

Error of Law

6. The decision of 18 February 2014 stated that the Appellant did not have access to the requisite funds, with the result that his application was not genuine. It accepted that he met the criteria of the Immigration Rules for English language and maintenance (funds).
7. As to funds, the Refusal Letter extracted from the Appellant's interview and concluded that, as he had provided business bank statements showing large amounts of money transferred from four different bank accounts but without any evidence that he had money in those four different accounts, the viability and credibility of his funds and where the money came from was brought into question. In paragraph 15 of her determination the judge stated that the Appellant's witness statement confirmed only that the funds were genuinely available but provided no further details about how the Appellant had accrued his savings or where they had been transferred from.
8. The requisite provision of the Immigration Rules is paragraph 245DD(h) (iii), which requires that the requisite money 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. At his interview the Appellant explained the

different sources of his funds. There was no apparent reason for this to be challenged, either by the Respondent or by the judge. The Immigration Rule requires only that the funds are genuinely available and will so remain. The evidence was to that effect. The finding by the judge to the contrary was against the evidence and introduced an irrelevant requirement of an explanation of how the savings had been accrued, which in any event the Appellant gave at interview. This was, I find, an error of law.

9. This fed into the requirements in paragraph 245DD(h)(i) that the applicant genuinely intends and is able to establish a business within the next six months or has established a business which he continues to operate. The Refusal Letter listed at pages 2/3 nineteen documents relevant to his business which the Appellant submitted with his application. The permission application lists at paragraph 8 and 10 thirteen of them which were not referred to, even generically, by the judge in her determination. Whilst recognising at paragraph 13 that the Appellant had an MBA qualification which might give him some basic understanding of how a small business is run – itself an unjustifiably marginalised finding – the judge at paragraphs 12 and 13 discussed his lack of business experience. This was again to introduce an irrelevant consideration, because the requirement of the Immigration Rules is not experience but a genuine intention to establish a business or having genuinely established one. Had the judge taken into account the copious documentary evidence about the business, it is hard to see how it would have been open to her to find that the Appellant did not genuinely intend and was not genuinely able to establish a business or had not genuinely established one. The failure to take account of relevant evidence was a material error of law.
10. So also was the finding at the end of paragraph 13 of the determination that the Appellant had not addressed the enquiries made by the Respondent of his previous employer. The Respondent had not produced any direct evidence of these enquiries, and the onus was upon the Respondent to establish their import, not upon the Appellant to disprove it.
11. Cumulatively, these errors of law were material, because they were capable of affecting the decision, as I find that they did. I accordingly find that the determination cannot stand, and I set it aside.

Decision

12. The Respondent has exercised a discretion, which the Tribunal must, if unpersuaded that it should have been exercised differently, uphold, or alternatively reach a different decision in the exercise of its own discretion: **Ukus (discretion: when reviewable)** [2010] UKUT 00307 (IAC). For the reasons which I have stated, I conclude that the discretion should have been exercised differently. I therefore exercise the discretion and, for the reasons stated above, allow the appeal under the Immigration Rules.

13. I do not therefore need to address the arguments adduced in relation to Article 8 of the 1950 Convention.
14. The original determination contained an error of law. I set it aside and re-make the decision.
15. The appeal is allowed under the Immigration Rules.
16. As the Appellants have paid a fee, I make a full fee award.

Signed

Dated: 20 April 2015

Deputy Upper Tribunal Judge J M Lewis