



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

Appeal Numbers: IA/15688/2014
IA/15691/2014
IA/15697/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 21 April 2015
Dictated 21 April 2015**

**Decision & Reasons
Promulgated
On 27 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUHAMMAD IMTIAZ
SANA RAZAQ
ADEEL BASHIR
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer

For the Respondents: Ms S Iqbal, Counsel, instructed by Hiren Patel Solicitors

DECISION AND REASONS

1. Although the appellant before the Upper Tribunal is the Secretary of State, I will refer to the parties as they were at the First-tier.

2. The appeal, of two business partners (the first and third appellants), and the spouse of the first appellant, were allowed by First-tier Tribunal Judge Symes, in a decision promulgated on 17 November 2014. The appeals were concerned with applications to remain under the Tier 1 (Entrepreneur) Rules, which are a part of the points-based system. The applications were refused under the genuineness provisions, referred to in the refusal letters as “non-points scoring reasons for refusal”. The refusal had concluded that the applicants were not genuine entrepreneurs.
3. Permission to appeal was granted by First-tier Tribunal Judge Pirotta, on 20 January 2015. The grounds were concerned with the case of **SSHD v Ahmed & Another (PBS: admissible evidence) [2014] UKUT 00365 (IAC)**. This case, which was promulgated a few months before these appeals, had decided that even the genuineness aspects of a refusal, although they appeared to be non-points scoring matters, were in fact inextricably linked to the award of points. As a result it was decided that the restriction on the admissibility of evidence not submitted with the application, to be found in section 85A of the 2002 Act (as amended) was also applicable to genuineness reasons. In granting permission reference was made to this case, and to it being arguable that the judge had not taken it into account.

Error of Law

4. It was agreed between the parties, at the start, that the judge had erred in law. In the second part of paragraph 34 of the decision the judge had taken a view on section 85(4) as an exception to the general inadmissibility of evidence not submitted with an application. Although this was a view of the law taken by many before the **Ahmed** case, and although the **Ahmed** case was not brought to the judge’s attention, nevertheless **Ahmed** is a reported Upper Tribunal decision, and it was promulgated some time before this decision. For these reasons it was correctly agreed that the second half of paragraph 34, in treating post-application evidence as admissible in these appeals, amounted to an error of law.
5. The rest of the error of law hearing was concerned with the issue of whether this error was material to the outcome. Ms Iqbal, for the appellant, submitted that it was not. Ms Everett submitted that there were difficulties in attempting to separate those aspects of the decision that rested on admissible evidence, from those that did not.
6. Having listened to the submissions by both representatives, and having considered the judge’s decision in some detail, I came to the view that the identified and agreed error of law was not a material one.
7. The judge’s decision summarised the grounds of refusal for the first and third appellants at paragraphs 3 and 4. From paragraph 27 onwards the judge went through the refusal reasons in the order that they had been

summarised. The judge then dealt with all of the adverse points between paragraphs 28 and 34. These paragraphs were concerned with the interview of the third appellant, the concerns raised about the origin of the funds, concerns based on the fact that the investment fund had not yet been spent, and concerns about initial clients and equipment.

8. Until the middle part of paragraph 34 it appears to me that the judge's reasoning and findings rest on an analysis of the two refusals, and consideration of the interviews, and documentary evidence submitted with the applications. There was one possible point of concern about admissibility within this, which concerned the question of whether oral evidence was admissible. I did not hear full submissions on this point, but Ms Everett did not seek to put forward a position that oral evidence was inadmissible, and neither did she ask for an adjournment to take instructions or research the matter. No point was raised in the grounds as to the inadmissibility of oral evidence. In short this point was, by agreement, put to one side. In all other respects it appeared to me that the judge's decision on the genuineness grounds did not rest on inadmissible evidence, but instead on a proper analysis of the refusal, the documents submitted with the applications, and the interviews (not inadmissible because they were adduced by the respondent not the appellants).
9. If the observation in the second part of paragraph 34 is taken away, it appears to me therefore that the outcome would be the same, and it has not been shown that it rested on any matter giving rise to an error on a point of law. As a consequence the identified error was not material, and there is no basis to set aside the judge's decision allowing the appeals.
10. Neither side made any points about anonymity or fees.

Notice of Decision

The Secretary of State's appeal is dismissed. There was an error of law but not one material to the outcome, and the decisions allowing the appeals therefore stand.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Gibb