



IAC-FH-NL-VI

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

Appeal Numbers: IA/16935/2014
IA/16926/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14th September, 2015**

**Decision & Reasons Promulgated
On 7th October 2015**

Before

Upper Tribunal Judge Chalkley

Between

**KAMALDEEP KAUR RAKHRA
PRABJOT RAJ
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Iqbal of Counsel instructed by Britton Solicitors

For the Respondent: Mr K Norton, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant is the mother of the second appellant. They are both citizens of India. The first appellant was born on 15th December, 1978. The second appellant was born on 8th July, 2006. The second appellant's appeal is dependent on that of her mother and future reference to "the appellant" in this determination is a reference to the first appellant.

2. The appellant entered the United Kingdom as a student on 13th September, 2008 and her daughter joined her as a dependant in March 2009. Leave was extended until 19th May, 2010 and before leave expired the appellant made application to settle in the United Kingdom. That application was refused and her appeal against that decision was dismissed in November 2013. The appellant then applied for leave to remain as an entrepreneur offering a tuition service in the Hounslow area catering mainly for children living locally. The appellant was interviewed in connection with that application which was subsequently refused on 2nd April, 2014.
3. The reason the application was refused was because the respondent was not satisfied that the appellant genuinely intended setting up such a business. The respondent assessed the application by considering the requirements of paragraph 245DD(h) and the factors listed in paragraph 244DD(i) of Statement of Changes in Immigration Rules HC 395 (as amended) ("the Immigration Rules"). Reference was made in the refusal letter to the viability and credibility of funds held by the applicant which were said to be the result of a gift of £50,000 from her sister-in-law with whom she lives in the United Kingdom. Concerns were expressed about the appellant's business plan and market research and her relatively limited experience of teaching or setting up a business. No points were awarded for attributes.
4. The appellant appealed and her appeal was heard at Hatton Cross on 17th November, 2014 by First-tier Tribunal Judge Widdup.
5. The judge's determination was promulgated on 28th November 2014. He found that a home tuition business was entirely credible. He found that there was no evidence that the appellant had any previous experience in setting up a business on the scale she proposed. He noted that paragraph 245DD(h)(ii) requires that the appellant show that she generally intends to invest £50,000 in the business. He said:

"This part of the appellant's case was damaged by her own evidence that she could have financed the business with £10,000 and that initially she would only need £5,000 or £6,000. She could not justify her calculation of needing £50,000 and accepted that the need for that amount was to meet a requirement of the rules."

He found that the appellant had acquired the £50,000 from her sister-in-law to meet the requirements of the Rules rather than because there were particular business needs which would make such a sum necessary for the business.

6. Although not required to submit a business plan, the appellant did submit one. The judge found its credibility to be undermined in three aspects. At page 3 reference was made to a "devoted and well-trained team of teachers". The judge found that that was not a proper reflection of the state of the appellant's business. It did not add to the credibility of the business plan but the appellant's case was that business plans were all much the same and that hers was "taken off the shelf" by requiring it online. The last damning aspect was that the appellant told the judge that she had read the business plan but that she had not had much time. He believed that the business plan lacked credibility and cast further doubt on the genuineness of the appellant's

intentions. He found that on the balance of probability the appellant was not a genuine entrepreneur and he dismissed the appellant's Article 8 appeal.

7. Dissatisfied with the decision, the appellant lodged Notice of Appeal. Upper Tribunal Judge Lindsey granted permission and in doing so she said this:

"Judge Widdup found that the first appellant's home tuition business was entirely credible at paragraph 38 of the decision; that the appellant had transferrable skills from teaching and that she had access to £50,000. It is arguable, given these findings, that it was irrational to find that use of an off the shelf business plan as the starting point for the appellant's business plan; obtaining students initially through personal recommendation rather than through advertising; the fact that the first appellant had not yet established her team of teachers or invested the full funds meant that the business was not genuine."

8. Mr Iqbal submitted that the judge had erred in failing to find that the appellant was a genuine entrepreneur. He submitted that the appellant was entitled to the benefit of the doubt. But the judge failed to find on the balance of probabilities that the appellant was a genuine entrepreneur. He accepted that the appellant has the money, that she has transferrable skills and that she has the necessary experience to run the business. What the judge failed to understand, he submitted, was that the appellant did not need to invest the full amount of money within three years. She was starting her business on a small scale that inevitably would grow and would require the full £50,000 which had been secured by her. Mr Norton told me that he simply relied on paragraphs 40 and 41 of the determination. I reserved my decision.
9. Paragraph 245DD(h) and (i) provide as follows:-

"(h) Where the applicant is being assessed under Table 4 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.

(i) The applicant must provide a business plan, setting out his proposed business activities in the UK and how he expects to make his business succeed.

(j) In making the assessment in (h), the Secretary of State will assess the balance of probabilities. The Secretary of State may take into account the following factors:

- (i) the evidence the applicant has submitted;
- (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
- (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;
- (iv) the applicant's previous educational and business experience (or lack thereof);
- (v) the applicant's immigration history and previous activity in the UK;
- (vi) where the applicant has already registered in the UK as self-employed or as the director of a business, and the nature of the business requires mandatory accreditation, registration and/or insurance, whether that accreditation, registration and/or insurance has been obtained; and
- (vii) any other relevant information.

10. It will be noted that 245H(ii) requires that the applicant genuinely intends to invest the money referred to in the business. Paragraph 245DD(i) directs the Secretary of State to take into account (inter alia) viability and credibility of the appellant's business plan and market research into her own chosen business sector and also any other relevant information (vii). The difficulty for this appellant is that at the hearing when giving evidence she accepted that she could have financed the business with £10,000 and that initially she would only need £5,000 or £6,000. She could not justify her calculation of needing £50,000 and accepted that the need for that amount was to meet the requirement of the Rules.
11. The Rules do not permit anyone to remain in the United Kingdom simply because they are starting a business. Mr Iqbal suggested to me that the money could be invested over a period of three years. So it can, but that does not mean that this business will require £50,000 to be invested in it over the next three years; the appellant is satisfied that it could have been financed with £10,000. As Judge Widdup said at paragraph 47 of the determination, "there would also appear to be a gap between the claims in the business plan and the reality of the business". The business plan is full of advertising "puff". The business may very well provide one or two people with a modest income but that is not the purpose of the Immigration Rules. The judge was entitled to make the findings he did at paragraphs 40 and 41 of the determination. Although not relied on by Counsel in addressing me it is right that I should deal with the other challenges to the decision on which permission was granted. Criticism is made of what the judge says at paragraph 35 of the determination where the appellant made no mention of her home tutoring during a previous appeal hearing. It is suggested that the appellant should not be unfairly penalised for this. With respect, she was not penalised at all because of this.

12. The poorly drafted grounds suggest that the business plans are something prepared for the future, three or five years, and that the sum of £50,000 may well be required in the future. With respect, this wholly misunderstands the purpose of the Rule. The Rule is to encourage business creativity and entrepreneurship. It is not a means by which people who wish to stay in the United Kingdom can start a little business and remain here. If the appellant had proposed to start a new college, acquiring premises, employing staff and embarking on an advertising campaign to recruit students, then the sum of £50,000 (or possibly higher) would be required. The appellant herself said that her business could be financed on £5,000 or £6,000.
13. The rule do require the production of a business plan, setting out the appellant's proposed business activities in the UK and how she expects to make her business succeed, and the Secretary of State was entitled to take account of it and the judge was entitled to make the comments he did in respect of it. The business plan contained misleading statements. The appellant does not have, "a devoted and well-trained team of teachers". The judge was entitled to find that a genuine entrepreneur setting up a business which would require an investment of £50,000 would not acquire a business plan from "an expert" off the shelf and submit it for consideration, even though it was inaccurate. The fact that she did so inevitably cast doubt on the genuineness of her intentions, as the judge found.
14. Having carefully read the determination I am satisfied that it does not contain any material error on a point of law. I uphold the determination. The appellant's appeal is dismissed.

Notice of Decision

The appellant's appeal is dismissed.

No anonymity direction is made.

Richard Chalkley
Upper Tribunal Judge Chalkley

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley
Upper Tribunal Judge Chalkley