



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/17264/2013

THE IMMIGRATION ACTS

Heard at Field House
On 3 February 2015

Determination Promulgated
On 4 February 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Azhar Mahmood
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr S Ali

For the respondent: Mr P Nath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Azhar Mahmood, date of birth 2.4.74, is a citizen of Pakistan.
2. This is his appeal against the determination of First-tier Tribunal Judge Khawar promulgated 17.6.14, dismissing his appeal against the decision of the respondent, dated 30.4.13, to refuse Tier 1 entrepreneur application. The Judge heard the appeal on 6.2.14.

3. First-tier Tribunal Judge Hollingworth refused permission to appeal on 21.8.14, but when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Clive Lane granted permission to appeal on 16.12.14.
4. Thus the matter came before me on 3.2.15 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Khawar should be set aside.
6. The Tier 1 application was refused for failure of the appellant to comply with the specified evidence requirements of paragraph 41-SD of Appendix A.
7. Judge Khawar found in the appellant's favour in respect of two issues, set out at §14 and §15 of the decision. However, between §16 and §18 the judge found that in respect of the required letter from a legal representative confirming the validity of the signature of the third party on the third party declaration, the requirements of paragraph 41-SD(b)(ii) had not been met and thus dismissed the appeal.
8. In granting permission to appeal, Judge Lane found it arguable that at §18 the First-tier Tribunal Judge may have misunderstood the appellant's evidence, as asserted in the grounds of application for permission to appeal.
9. I am satisfied, for the reasons set out herein, that there is no material error of law in the decision of the First-tier Tribunal.
10. I do not agree with Judge Khawar's conclusions on the first two specified evidence issues. The judge purported to find that as the missing required information could be obtained elsewhere or from other documents, the requirements were met. The judge has no power to dispense with the strict requirements of 41-SD which specify format and content of required documents. The judge was wrong to excuse those failures. However, as the appeal was ultimately dismissed these errors are not material.
11. The grounds wrongly assert that the judge applied the wrong provision of 41-SD to the third party declaration. Whilst the Rules now in force have changed the layout and content of 41-SD at the date of decision, 30.4.13, the Rules then in force are as stated by the judge, i.e. that the relevant requirement is 41-SD(b)(ii).
12. Mr Ali seems to have misunderstood the decision of the First-tier Tribunal to attack the third party declaration document at G3 of the respondent's bundle. In fact, the deficiency the judge referred to was the legal representative's letter at H1. The author, Shafiq Ahmed asserts in that letter, dated 30.11.12, that the declaration was made under oath and signed before him on 30.11.12. However, the document as copied in the bundle at G3 shows the signature of a different legal representative, Mr Syed Tanweer Akhtar. It was explained to me that this was the legal representative witnessing the signatures of the entrepreneurial team applicants, including the

appellant. But that is not the issue. The document does not show that the legal representative in Pakistan, Mr Ahmed, was present or that he witnesses the making of the declaration or the signature of the third party investor. When the original document was produced from the Home Office file, it turned out to be foolscap and thus the witnessing signature of the legal representative had been missed off when photocopied onto A4 paper. However, rather than the signature of Mr Ahmed, as Mr Ali asserted, the original shows a third person, Shahida Kanwal as notary public, but this is dated 1.12.12, after the claimed date of the signature of the third party.

13. In the circumstances, Judge Khawar was entirely correct to find that the appellant had failed to prove that the letter at H1 was of a legal representative who could confirm the validity of the signature of the third party investor in the declaration. The judge was also correct to conclude that the matter could not have been rescued by the application of paragraph 245AA, as the appellant had provided a document from an entirely different individual than those shown on the document purporting to have been present and witnessing the making and signing of the third party declaration.
14. In the circumstances, it is inevitable that the application was doomed to failure and Judge Khawar was correct to dismiss the appeal. There is no material error of law in the decision of the First-tier Tribunal.

Conclusions:

15. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



Signed:

Date: 3 February 2015

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

A handwritten signature in black ink, appearing to read 'J. Pickup', written in a cursive style.

Signed:

Date: 3 February 2015

Deputy Upper Tribunal Judge Pickup