



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

Appeal Numbers: IA/18174/2014
IA/18175/2014
IA/18176/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 22nd January 2015**

**Decision & Reasons Promulgated
On 11th February 2015**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SYED ASAD ALI NAQVI
SYEDA ALIHA FATIMA NAQVI
IRUN FATIMA SYEDA**

Respondents

Representation:

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer
For the Respondents: Ms A Patel instructed by AMT Lawyers

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Simpson made following a hearing at Manchester on 20th June 2014.

Background

2. The claimants are citizens of Pakistan. The principal claimant arrived in the UK as a Tier 4 (General) Student on 24th September 2009 with leave until 31st January 2011. He was subsequently granted further leave to remain as a Tier 1 (Post-Study) Work Migrant until 4th January 2013.
3. On 13th November 2013 he and his wife made a combined application for leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant and dependant under the points-based system and for biometric residence permits. They were refused on 28th March 2014.
4. In order to qualify for leave to remain as a Tier 1 Migrant the applicant must score 75 points for attributes. He has to show, *inter alia*, that he has access to not less than £50,000.
5. Under paragraph 41 an applicant will only be considered to have access to funds if they are available to him which means, *inter alia*, that they are in his own possession.
6. Paragraph 41-SD(c)(ii)(4) states that the relevant account must be “in the applicant’s own name only (or both names for an entrepreneurial team) not in the name of a business or third party.”
7. If a third party is involved the Rules set out various specified documents which must be produced.
8. The refusal letter states that:

“As your £50,500 investment funds are held in a joint account with Dr S Ayyoub the funds are not in your own possession only. Therefore evidence of third party funding is required under paragraph 41-SD(d) to demonstrate that you have permission to use the money held in this joint account to invest in a business in the UK.”
9. The underlying facts in this case are not in dispute. The relevant funds were held in a joint account with Dr Ayyoub and the claimant did not provide the specified evidence.
10. The claimant argued successfully before Judge Simpson that banking law was clear and all of the money in a joint account was available to either account holder in its entirety. The judge concluded that in terms of satisfying the Secretary of State as to whether or not the funds were available to him and in his own possession the fact that the funds were held in a joint account did not prevent him from meeting the requirements of the Rules.

The Grounds of Application

11. The Secretary of State sought permission to appeal. The first ground is a mistake, arguing that the judge had incorrectly considered the Immigration Rules in force as at the date of application rather than as at the date of decision but it is accepted that in fact those Rules were one and the same, although they have since changed.

12. Second, it was argued that the judge had erred in finding that the requirements of the Immigration Rules were met because the claimant simply could not meet them. Evidence of third party funding was required to demonstrate that the claimant had permission to use the money held in the joint account to invest in a business in the UK. The letter provided by the claimant was not acceptable because it did not confirm the amount of money available to the claimant from the third party's funds. Furthermore no third party declaration had been provided nor any declaration from a legal representative to establish that the letter of permission supplied was valid as specified under paragraph 41-SD(d)(ii) of Appendix A of the Immigration Rules. Since the claimant had failed to submit the specified evidence to establish access to the funds the appeal ought to have been dismissed.

Submissions

13. Mr Diwnycz relied on the grounds and submitted that the Rules were plain on their face.
14. Ms Patel submitted that the bank account was not in the name of a business or third party and so evidence of third party funding should not have been required. Money in the joint account was available to the claimant in its entirety. The claimant did meet the requirements of the Rules because the cash in the joint account was in his possession and the underlying purpose of the Rule was therefore satisfied.
15. The judge was entitled to conclude that the caseworker had misinterpreted paragraph 41-SD(d) since neither the Rules nor the guidance specify what documentary evidence is required in the case of a joint account. The Immigration Rules' silence as to the situation regarding joint accounts was a lacuna in the law and the caseworker ought to have asked for further information under paragraph 245AA, under the evidential flexibility policy as stipulated under the Rules. She pointed out that since this decision was made the Rules have in fact changed to clarify the position so far as joint accounts were concerned.
16. So far as the specified evidence was concerned the claimant provided that evidence at the appeal hearing.
17. Finally, it would be a breach of the claimant's Article 8 rights if he was removed since he was responsible for two very successful businesses with six employees and their dependants all of whom would suffer if he was not able to continue to operate here as a successful businessman.

Findings and Conclusions

18. Unfortunately for the claimant the Rules are entirely clear. Paragraph 41-SD(c)(ii)(4) states in terms that the account must be in the applicant's own name only. There is no ambiguity. In this case the investment funds were held in a joint account.
19. The Rule then goes on to specify particular evidence where third party funding is required. There is no dispute that the specified evidence was not produced.

20. In order to succeed in his appeal the claimant has to identify a provision of the Rules under which he could succeed. The Secretary of State considered two Rules and the claimant did not meet either of them.
21. Ms Patel argued that third party funding was not required since the terms of the joint bank account are that each has access to the whole sum, and that Dr Ayyoub should not be considered a third party, but it is difficult to see what else he could properly be described as. He was a third party as the joint signatory to the account.
22. Ms Patel's second argument was that in these circumstances the Secretary of State had a duty under paragraph 245AA to request further information from the applicant. However she could not realistically point to any part of the Rule which obliges the Secretary of State to go back to the claimant save to say that this was a document in the wrong format. It was not a document in the wrong format. A joint account and an account in a sole name are different entities. She also referred to paragraph 245DD(j) which says that the Secretary of State reserves the right to request additional information, but that is far from establishing a duty to do so in these circumstances.
23. Finally she argued that the decision was a breach of the claimant's Article 8 rights. This must necessarily be on the basis of the private life which he has established whilst being in the UK but under paragraphs 117B(4) of the 2014 Immigration Act little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. Moreover the claimant has the opportunity of making an application to the Secretary of State complying with all of the specified evidence Rules.
24. The claimant was obliged under the Rules to provide all of the evidence with his application and may not rely on evidence produced at a later date.

Decision

25. The original judge erred in law. Her decision is set aside. It is re-made as follows. The claimant's appeal is dismissed.

No anonymity direction is made.

Signed

Date **11th February 2015**

Upper Tribunal Judge Taylor