



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/23861/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8<sup>th</sup> July 2015

Decision & Reasons Promulgated  
On 12<sup>th</sup> August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

MUSTAPHA ABDULSALAM  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Cole, Counsel for Westkin Associates, London  
For the Respondent: Mr Kandola, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Nigeria born on 19<sup>th</sup> May 1985. He appealed against the decision of the Respondent dated 20<sup>th</sup> May 2014 refusing the Appellant leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant. His appeal was heard by Judge of the First-tier Tribunal Hands on 30<sup>th</sup> October 2014. The appeal was

dismissed under the Immigration Rules and on human rights grounds in a determination promulgated on 18<sup>th</sup> November 2014.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Foudy on 16<sup>th</sup> February 2015. The permission states that it is arguable that the judge erred in that she made numerous factual errors that suggests she had mixed up the Appellant's appeal with another appeal and/or had copied parts of her determination from another person's determination. The permission states that because of these errors the judge's findings may have been contaminated.
3. There was an error of law hearing at Field House on 20<sup>th</sup> May 2015 before me. I issued a determination on 17<sup>th</sup> June 2015. I found that there were material errors of law in the First-tier Tribunal's decision and directed a second stage hearing before the Upper Tribunal on all issues. None of the findings in the First-tier determination are preserved.
4. This is the second stage hearing

### **The Hearing**

5. There were no preliminary matters.
6. The Appellant took the stand and asked that his statement of 26<sup>th</sup> June 2015 be used as evidence for the hearing.
7. The Presenting Officer referred to the refusal letter which states that a large part of the money which the Appellant will be investing, comes from his father. This amounts to £42,500 but instead of the money going directly to the Appellant or his company from his father it was transferred to the account of the Appellant's cousin Mohammed Abdullahi by a money transfer company. The Appellant's evidence is that his cousin knew people in the money transfer company and that is why it was transferred into his name.
8. The Presenting Officer asked the Appellant if his father is in Nigeria and he said he is. He was asked why his father did not directly transfer the money into the Appellant's UK bank account. He said that finance is highly regulated in Nigeria and you can only transfer £5,000 at a time every three months from there, so he would have had to transfer the money in bits. He said this only applies to individuals not companies but his father does not own a company in Nigeria. The Appellant said that his father works for Nestles. The Appellant said he had put £7,500 with his father so his father had sent the £50,000 in one lump and this consisted of £7,500 belonging to the Appellant and £42,500 belonging to his father. He said that the money was transferred from his father's Nigerian bank account to the money transfer company. He said his father's name is Abdulrazak Abdulsalam. He said his bank is the FCMB Bank. He was asked if there is evidence of this and I was referred to the Appellant's bundle in which there is a letter from the Appellant's father, "To Whom it May Concern", stating that he has transferred £50,000 to the

Appellant into his Lloyds bank account. The Presenting Officer asked if there is a bank statement to support this letter and I was referred to page 169 of the Appellant's bundle. On 10<sup>th</sup> January 2014 the sum of 12,024,900 NGN was taken out of the Appellant's bank account. It is described as "CD Express Ltd". The Presenting Officer said that this had not been submitted with his application and the Appellant said that correct. The Presenting Officer stated that this is therefore postdecision evidence and is inadmissible in a PBS case. He referred to Section 85A(4)(d) of the 2006 Act. Counsel for the Appellant argued that this is a non-points based issue and that this evidence should be accepted. The Presenting Officer referred me to the case of **Ahmed and Others** in which this point was settled and submitted that although this may not be a points scoring issue, in a PBS case only evidence submitted with the application can be considered. The Presenting Officer also submitted that the letter from the Appellant's father, at page 160 of the Appellant's bundle, postdates the application. The Appellant's representative submitted that all the documents in Annex A were submitted with the application but in Annex B some of the documents were not submitted with the application. I asked what date the money was transferred on and was told it was 10<sup>th</sup> January 2014. The Presenting Officer submitted that what was submitted with the application is in the Respondent's bundle on file. I am disregarding Annex B.

9. I was referred to the refusal letter. The company was registered on 24<sup>th</sup> June 2013 and the Appellant's father transferred the money in January 2014. The company started trading in August 2013 and the Presenting Officer asked the Appellant if he had not needed the money in August 2013. He asked why the money was transferred six months later. He asked him if it was transferred because of this application and was told that it was not. The Appellant said he had not needed the money any earlier as this was a new business and the money was only needed as the business grew. He was asked about start-up costs and the Appellant said he had had some money of his own and the £50,000 is to enable him to develop the business.
10. The Presenting Officer referred me to a Lloyds Bank letter dated 31<sup>st</sup> March 2014, addressed to Musrat Ltd, the Appellant's company. This is the letter opening the bank account. The bank statement is at page 113 of the Appellant's bundle and on 21<sup>st</sup> August 2013 when the Appellant started trading there was £416.12 in the bank and on 22<sup>nd</sup> July 2013 the balance in the account was £5.53. The Appellant was asked why he did not need more start-up money and he said he just needed bits and pieces of money when he started so he could register the company and take out insurance indemnity and the like and that the £50,000 is needed for developing the business. He said that he later needed to get a website and do some training and that is when he asked his father for financial help. He said his father then had to gather the money together and at the same time he, the Appellant, had to sort out his residence in the United Kingdom.
11. The Presenting Officer asked the Appellant about the contract between Musrat Ltd and Michael Page International Recruitment Ltd which is at page 138 of the Appellant's bundle. He pointed out that there is nothing in the contract to show it has been signed electronically although it is dated 24<sup>th</sup> February 2014. The Appellant

said that the contract has been taken as signed on that date. He was asked what services Musrat Ltd will be providing to Michael Page International Recruitment Ltd and he said financial services advice, on compliance. He said that Musrat Ltd introduced certain procedures into the recruitment company and ensured that the company was being run within the compliance Regulations so that the company would not be fined for misdemeanours. He was asked why a recruitment company would need that kind of advice and he said that he was actually doing the work for an asset management company which is one of the recruitment company's clients. He said that the asset management company is called "State Street". He said that it is a PLC and its turnover is in billions of pounds. The Presenting Officer asked him if he had been entrusted to deal with the FSA compliance procedures and he said that a company called Navigant owns the consultancy part of State Street and the Appellant's company forms a resource for that company. He said the end client is State Street and he was asked if he was advising Navigant and he said he was going through Navigant but working for State Street. He again said that the work he does forms a resource for the company. He was asked what his actual services were and he said he looked into the way the company deals with their clients under the Financial Services Act, Rules.

12. The Presenting Officer returned to the question of the transfer of the funds from the Appellant's father. The Appellant confirmed that his father works for Nestles. He was asked why his father could not send the money through Nestles and he said it is not his company, he is employed by them.
13. The Appellant was asked about his business plan and who wrote it. The Appellant said that he wrote it. It was put to him that in the refusal letter it is stated that a lot of the business plan has been taken out of the business plan belonging to another company. The Appellant said he had done research before he wrote the plan so some of the clauses have been taken out of other companies' business plans. He was asked if he has a website for Musrat Ltd and he said he has under musratltd.co.uk. The Presenting Officer said he had Googled this but it had not shown up. The Appellant said the full address has to be typed in as he cannot afford optimisation at this stage in his business. He said some of the other companies deal with private financial services. He said he had not prepared the website himself.
14. The Presenting Officer asked the Appellant about the work he was doing for Hays Recruiting Services. He said that again it was compliance management relating to financial services. It was put to him that the contract with them is very generalised and actually refers to him as a temporary worker so it looks as if he was actually an employee of that company. The Presenting Officer put to the Appellant that you cannot tell from the contract that it is for compliance management. The Appellant said that that is the way the contracts are issued by that company. He said the contract is just confirmation of him being a consultant for Hays. He said the actual work he did was for Barclays, through Hays.
15. I asked the Appellant if he had two contracts, one for Hays and one for Barclays. He said there is only one contract through Hays for Barclays. He said that before he

started his own company he had been doing temporary work with Hays for Barclays. The contract is dated 8<sup>th</sup> July 2013.

16. The Presenting Officer asked the Appellant if his business has accounts and he said it has and details were put in with his application. He then said that the accounts were not completed before he made his application but they have been submitted to Companies House. He said he made the application on 13<sup>th</sup> March 2014.
17. Once the money was paid by the Appellant's father to his cousin it was then transferred to the Appellant but shortly after that it was again transferred out of the Appellant's account to a friend of his. I asked him about this. He said his friend is a research student and needed the money as he wanted to move stuff to Nigeria. He said he had lent him the money but he did not do the deal so he gave the money back. I asked him what would have happened if his friend had done the deal and he said his friend had wanted to buy goods and resell them and it would have been very quick so he would have got the money back quickly. I asked him for evidence of this but he was unable to give me any. I put to him that he was taking a big risk lending this sum of money to his friend and he said he trusted his friend and had compassion for his situation.
18. There was no re-examination by Counsel.
19. The Presenting Officer made his submissions relying on the refusal letter. He submitted that the Respondent is not satisfied that the Appellant intends to establish a business. He submitted that the Respondent does not believe that the Appellant has a genuine intent to invest the money or that the money is available to him based on the evidence which has been produced. He submitted that there are no documents showing where the £50,000 came from i.e. the provenance of the funds. The Appellant has now given an explanation stating that the funds came from his father's bank account but the bank statement and the letter from the bank which have now been provided were not submitted with the application and no good reason has been given as to why they were not submitted. He submitted that there has been some suspicious activity relating to this money. He submitted that it is not clear why the money was transferred from the money transfer company to the Appellant's cousin and that no sooner was the money in the Appellant's account then it was transferred to a friend before it came back to the Appellant. He submitted that if the money is indeed intended for the Appellant to establish a new company and is needed for that, it is not credible that he would take the risk of transferring it to a friend and he submitted that the Respondent does not believe that these funds are available to the Appellant.
20. He submitted that the Appellant's father transferred the funds in January 2014 but the Appellant was trading in June 2013. He submitted that based on the bank statements for the company it is not credible that the Appellant did not need the money at the outset to set matters up. He submitted that start-up costs are expensive. He submitted that based on what is before me it seems that the money was put forward purely to boost this Tier 1 application. He submitted that the

Appellant's business is not a genuine business. The business plan was copied from another company's business plan and the website was copied from another company's website. He submitted that everything has been manufactured and he referred to the services which the Appellant states he provided for Michael Page International and Hays Asset Management Company. He submitted that the contracts are in very general terms and the answers to the questions the Appellant was asked at the hearing were vague and general. There is no evidence of Navigant being an arm of the asset management company and there are no details in the evidence which are specific and for this kind of business that would be necessary. The Appellant referred to his client as a PLC but no details have been given about this. It is not clear relating to the Hay/Barclays contract how the complaints mentioned by the Appellant were settled. He submitted that the contracts are not specific and there has been no explanation about why the Appellant did not get any documents from Hays or from Michael Page about what work was done.

21. The Presenting Officer submitted that this application does not show that the Appellant genuinely intends to start a business or that the funds are genuinely available to him.
22. I was asked to dismiss the appeal under the Rules.
23. He submitted that there are no Article 8 matters in this claim and this has been accepted by the Appellant and his solicitor.
24. The Appellant's representative made his submissions submitting that the Appellant's application is viable and credible. He submitted that it is credible that his father, who works for Nestles, would give his son money to set up a company in the United Kingdom. He submitted that there is nothing to disprove that and although the refusal letter states that the Respondent has difficulties with this money being a gift to the Appellant from his father, there is nothing to say that that is not the case. He submitted that money has been given by one family member to another to help that family member get on in life and this is not incredible and should be accepted by the Home Office. He submitted that the money was transferred into the Appellant's account and is in the Appellant's possession and he submitted that all that is required in terms of the Rules is that the money is in the Appellant's possession.
25. With regard to the question of why the money was transferred a long time after the company had started, Counsel submitted that the Appellant has fully explained this at the hearing today. He submitted that the Appellant was able to pay the start-up costs himself for the company and at the present time the company has traded very little and is a small company. He submitted that the Appellant's statement that the money will be used to grow his business is a credible, sensible explanation. He submitted that the fact that the money was transferred after the company started trading should not raise any credibility issues.
26. Counsel submitted that the insurance documents are on file, as are bank statements and that the viability of the funds should be accepted.

27. With regard to the business plan, Counsel submitted that when the Tier 1 interview record is considered it appears that the experienced interviewer's opinion is that this is a credible entrepreneur. He states that the customer answered the majority of the questions satisfactorily and states "I therefore deem him to be a credible entrepreneur at the interview stage of his application." I was asked to give this considerable weight. He submitted that it is not unusual to take clauses from another business plan for your own business plan when you are setting up a company. He submitted that the Appellant did not set up the website himself and again the fact that some of the clauses come from other websites does not make them wrong. He submitted that the Appellant placed himself in the shoes of a larger company when setting up his business as he hopes to expand his business considerably in the future.
28. He referred to the Appellant's accountant being based in Scotland and submitted that this person was recommended to the Appellant and documents can be sent back and forwards and the fact that the accountant is in Scotland should not be held against this application.
29. I was referred to the refusal letter in which the Respondent is concerned about the Appellant's business experience. I was referred to the Appellant's witness statement in which it is made clear that he has two degrees from the United Kingdom in finance and business, being a degree in accountancy and a masters degree in finance and management and he submitted that this must be sufficient for this project.
30. I was asked to find that the application is credible and viable and I was asked to allow the appeal.

### **Decision and Reasons**

31. The burden of proof is on the Appellant and all the terms of the Immigration Rules relating to Tier 1 entrepreneurs, have to be satisfied. The standard of proof is the balance of probabilities and the Respondent is not satisfied that on the balance of probabilities the Appellant genuinely intends and is able to establish, take over or become a director of one or more businesses within the next six months or that he genuinely intends to invest the money referred to in table 4 of Appendix A of the Immigration Rules in his business or businesses.
32. The first issue is the £50,000 which has to be in his own possession or in the financial accounts of a UK incorporated business of which he is a director or has to be available from a third party or parties named in the application under the terms of the declaration referred to in paragraph 41-SD(b) of Appendix A.
33. The Appellant has explained why his father used a money transfer company to send the money to the Appellant. The transfer company however did not pay the money from the Appellant's father into the Appellant's or his company's bank account. Instead the money was paid into the Appellant's cousin's account. The Appellant's explanation is that it was this cousin who introduced him to the transfer company but I do not find that it makes sense for the transfer company to have done this and I

have noted that no objections were made by the Appellant when this was done although this must surely have been an error on the part of the transfer company. His cousin then passed the money to the Appellant who very quickly moved it out of his account into the account of a person the Appellant describes as a friend who wanted to export goods from the United Kingdom to Nigeria and sell them and needed the money urgently. This is not a credible explanation. The Appellant is depending on this £50,000 to enable his visa application to be successful and I find it to lack credibility that he would take this kind of risk with the money if his application was genuine. The money is now in the Appellant's possession which is what is required by the Rules but, I have difficulty finding that he genuinely intends to invest the money in his business. I find that it is likely that the money has been obtained by the Appellant solely to satisfy this application.

34. When the Appellant started up his business he had very little money in the bank. Start-up costs, especially insurance indemnity premiums are normally very expensive but the Appellant's evidence is that he did not require much money and it was only when he started thinking about developing his business that he asked his father to lend him some money. This was six months after the start-up of the business. The Appellant states that £7,500 of his own money forms part of the £50,000 but this £50,000 was all paid to the Appellant from his father and, there is no evidence that any of the money belonged originally to the Appellant. We have now been given a letter from the Appellant's father and a bank statement in the Appellant's father's name but I am unable to take these into account as in terms of the Rules, all required documents have to be submitted with the application otherwise they cannot be relied on. There is therefore a lack of evidence of where the money came from.
35. The Appellant has certainly registered a company called Musrat Ltd. I have to decide whether he genuinely intends to establish a business, before his visa can be granted to him.
36. I have noted the Respondent's objection to the business plan and website using clauses from other companies' business plans or websites. This is quite a normal thing and I am not unduly concerned about this.
37. The Appellant was not asked any questions about any market research he might have done but when he was interviewed, he appeared to be unaware of how many other businesses traded in his area as financial consultants. When his contracts are considered these are extremely general and when the Appellant was asked about what work he did for Michael Page International Recruitment Ltd and Hays Recruiting Services, his answers were in general terms and there is nothing from either of these companies to state what work they wanted done, what work he actually did and what exactly the Appellant was advising these companies about. Companies like Barclays and Navigant Consulting Europe Ltd are big companies and I find that it would be normal for there to be evidence from the companies themselves of exactly what business was transacted by the Appellant on their behalf. The Respondent states that the Hays contract is an employment contract. It certainly



could be, but the Appellant has stated that that is not the case. I am not satisfied with the contracts as a whole.

38. I am not concerned that the Appellant has employed an accountant from Scotland in the circumstances, although it is sometimes handy to have somebody close at hand to deal with your accounts.
39. I have noted that the Appellant has good qualifications from the United Kingdom but he has very little business experience.
40. I have noted that the Appellant was found to be credible at his initial interview on 13<sup>th</sup> May 2014. It seems that he was employed by Hays at the time he claims to have started his own company and became self-employed. In the contract for Hays/Barclays, Hays refers to him as a PAYE temporary worker for the payroll and not the contracted company. The self billing for this however was sent to Musrat Ltd from Hays. It mentions the Appellant as "the worker". On the balance of probabilities, I find that the Appellant was an agency worker and not the worker of a subcontracted company called Musrat Ltd. The evidence provided is not sufficient to demonstrate that he was operating his company by fulfilling contracts.
41. The evidence given by the Appellant today is that his father does not have a company and yet the Appellant claims to have managed his father's family business in Nigeria. His father is in full-time employment with Nestles. What the Appellant seems to have done is managed his father's financial affairs, if indeed he did that.
42. I find that the Appellant has a lack of knowledge of what he will actually be doing during his working day relating to his consultancy on the financial services of big companies like Barclays and I am concerned about the lack of detail he was able to give the Tribunal of what exactly he would be doing for these companies. I do not really understand why big companies like these would employ a new company with one director to carry out their compliance under the Financial Services Act but this is merely conjecture.
43. My main problem however is the money. The Appellant has a number of bank accounts and money is transferred from one to the other regularly. Some of the bank statements are missing. No reason has been given for the funds being moved from one account to the other and I am not satisfied with the provenance of the funds. I therefore find that on the balance of probabilities, these funds may well not be available for investment into the Appellant's business. The way the money was paid into his bank account is strange but the real credibility issue for me is that the Appellant, as soon as he received the funds, transferred them to Richard Ittaman because he needed funds to set up a business connected to Nigeria. This is totally incredible. I find that if the Appellant was setting up a genuine business he would not have done this and the fact that he has done this and the lack of credibility I am attaching thereto, gives a lack of credibility to the rest of the evidence. I accept that the Appellant has in his possession £50,000 but I am not satisfied that he intends to invest it to set up a genuine business.

44. Based on what is before me, I find that the Appellant has not satisfactorily demonstrated that he is a genuine entrepreneur as set out at paragraph 245DD(h) and when assessing, on the balance of probabilities, the points listed at paragraph 245DD(i) of the Immigration Rules, I find that I have to dismiss the appeal. The terms of the Immigration Rules have not been satisfied.
45. With regard to Article 8 of ECHR, this Appellant has been in the United Kingdom as a student and a post-study work migrant. All of his visas have a clause which states that the Appellant has to return to Nigeria when the term of the visas end. He has never had a legitimate expectation of remaining in the United Kingdom. I accept that he has private life in the United Kingdom. I know nothing about his family life.
46. Based on the Immigration Rules and the Article 8 aspect of these Rules this Appellant's application cannot succeed on human rights grounds. Both parties at the hearing accepted that there are no Article 8 matters.

**Notice of Decision**

47. I dismiss the appeal under the Immigration Rules.
48. I dismiss the human rights appeal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Murray