



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/27872/2014
IA/27857/2014

THE IMMIGRATION ACTS

Heard at Field House
On 21 April 2015

Decision & Reasons Promulgated
On 5 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

MR NAUMAN MANSOOR (FIRST APPELLANT)
MR SABER MOHAMMED (SECOND APPELLANT)

(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr C Mannan (Counsel)
For the Respondent: Mr Avery (Home office presenting officer)

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is a material error of law in the decision made by the First-tier Tribunal (Judge Hussain), who in a

decision and reasons promulgated on 30 December 2014 dismissed the appeals of both appellants against a refusal under Tier 1 (Entrepreneurs) points-based scheme immigration rules.

2. The first appellant is a citizen of Pakistan and the second appellant is a citizen of India. They appealed against a decision made by the respondent on 23 June 2014 following their joint application submitted on 30 May 2014.

Reasons for refusal

3. In a Reasons for Refusal Letter dated 23 June 2014 the respondent considered that the appellants failed to meet Appendix A - attributes with reference to provision (d) in the first row of Table 4 and paragraph 245DD(b). The appellants claimed to have access to £50,000 from a third party. They provided evidence of a bank letter from the Bank of Punjab, a declaration from Mohammed Shameen Ahmed and a letter from Salam Law Associates. The respondent considered that the documentary evidence was inadequate and failed to meet the requirements of the specified evidence under paragraph 41-SD. The bank letter did not state that the institution was aware of the third party having promised to make the money available to another person. The third party declaration was not signed by both applicants. The legal representative's declaration confirming the third party signatures did not confirm the signatures of the appellants. Furthermore, as evidence of active trading, the appellants provided a photocopy of a contract between their business and FBC.Co was not signed on every page. The respondent, in a letter dated 10 June 2014, requested the correct documents to be provided by 19 June 2014. The further documents produced were not acceptable.

First-tier Tribunal

4. The appeals were initially listed for hearing on separate dates (19th November 2014 and 15th January 2015). Following a request made by the appellants on 16th October 2014 for the hearings to be listed together on 15th January, the Tribunal linked the appeals and listed the hearing for 19th November. It was a joint application and the reasons for refusal were identical. Notice of hearing was sent to both appellants, albeit to the second appellant (SM) with very short notice of one week and the hearing date was brought forward by two months.
5. At the hearing on 19th November Counsel, instructed by both appellants, made an application for an adjournment on the grounds that the second appellant had had insufficient time in which to prepare his appeal; his file had not been made available to his new solicitors from his previous representatives and he did not have the respondent's bundle.
6. In refusing the application the Tribunal had regard to the fact that notice of hearing had been issued to the first appellant only one week before the hearing date. The Tribunal noted that the reasons for refusal for both appellants were identical in that

there was a failure to meet the specified evidence Rules paragraph 41-SD [5]. The Tribunal found that in reality there was little disadvantage suffered by the first appellant notwithstanding that his representatives had not obtained the previous file and had no respondent's bundle [9]. The Tribunal made available the respondent's bundle for Counsel and he was then given time in which to peruse the same. In reaching its decision the Tribunal relied on the exceptions under Section 85A of the Nationality, Asylum and Immigration Act 2002 ("2002 Act"), which limited evidence that could be taken into account by the Tribunal under points-based scheme appeals. There was no argument that the appellants sought to obtain new evidence and it did not appear to be denied in the witness statement that the applications did not meet the Rules [14].

Grounds of Application

7. The first appellant argued that the refusal to adjourn the hearing amounted to a procedural error in law such that he was effectively denied the right to a fair hearing. Further, it was argued that the First-tier Tribunal failed to engage with further documents (items D and E) provided by the appellants following the request made in the letter dated 10 June 2014. The Tribunal erred by failing to reach a conclusion without considering all of the available evidence.

Permission

8. Permission to appeal was granted by First-tier Tribunal Judge P J G White who had regard to the circumstances set out in the grounds of appeal at paragraphs a-e of the permission. In paragraph (f) he stated:

"In all the circumstances, it is arguable that the refusal to adjourn has led to a denial of the right to a fair hearing of the appellants' appeals so as to amount to an error of law (see **Nwagwe (Adjournment: fairness) [2014] UKUT 00418 (IAC)**)."

Error of Law Hearing

9. Both appellants attended the hearing. They had instructed new representatives and were represented by Mr C Mannan of Counsel. A bundle for the hearing was served by way of a fax dated 20 April 2015. The bundle had not been served on the respondent. Submissions were made by both parties. At the end of the hearing I reserved my decision which I now give with my reasons. I indicated to the parties that in the event of finding any error of law it would be appropriate for the matter to be reheard. Otherwise I proposed to deal with the matter without further hearing.

Submissions

10. Mr Mannan contended that there were two issues, firstly the fairness of refusal of the adjournment and secondly the evidence in support of the appeal. Mr Mannan

outlined the procedural history set out in the grounds of appeal with regard to the adjournment issue. As to the second issue, he submitted that it was unclear what material the Tribunal had considered in terms of the response to the letter dated 10 June 2014. The appellants had now produced a certificate of postage for a letter dated 17 June 2014 attached to which were three separate documents. It was unclear whether this evidence had either been considered by the Tribunal or was in the respondent's bundle, which the appellant did not have. Mr Mannan submitted that the material sent with the letter dated 17 June conclusively dealt with the three issues raised in the refusal letter. As to the failure to provide the original contract (which had now been provided), it was argued that the letter dated 10 June was unclear as it failed specifically to draw the appellants' attention to the failure to provide the original contract.

11. Mr Avery clarified that the position when the appellants originally submitted their applications the documents listed as E and F in the Secretary of State's bundle had not been provided. This prompted respondent's letter dated 10 June 2014. The appellants then produced documents E and F which were respectively dated 26 May and 23 May (postdating the appellants' application dated 21 May). Mr Avery argued that the respondent was under no obligation to identify defects in the material provided. The respondent's letter dated 10 June informed that photocopies were not adequate and that originals should be provided. The letter dated 17th June (together with enclosures) were not received by the respondent. The respondent's bundle contained all the evidence that was put before the Tribunal. In the event that further documents were sent or delivered, it was clear that they were not before the Tribunal and therefore could not contribute to any error of law.
12. As regards the adjournment issue Mr Avery submitted that both appellants were represented by the same solicitors and whilst accepting that the first appellant's appeal had been brought forward to be heard within a relatively short timescale, in light of the fact that the circumstances for both appellants were identical, it remained difficult to see how the appellant could be disadvantaged. There was no disadvantage to either appellant and the refusal of the adjournment was not material to the outcome. Mr Avery submitted that the assertion that documents were sent on 17 June should be treated with a degree of scepticism, particularly given that the bank documents provided were in an amended form meeting concerns raised in the letter dated 20 June.
13. Mr Mannan relied on the certificate of posting. He contended that by 23 June the appellants had provided at least 75% of the material capable of meeting the requirements. The respondent ought to have pointed out to the appellants that the original contract was required.

Discussion and Decision

14. I consider the guidance in **Nwaigwe (Adjournment: fairness) [2014] UKUT 00418 (IAC)**. I am satisfied that the Tribunal justly and fairly considered the circumstances of both appellants and found in reality that there was no disadvantage suffered by either appellant notwithstanding that the second appellant had not obtained his file from solicitors previously instructed and had no respondent's bundle. The Tribunal made the respondent's bundle available to the appellants and his representative who was acting jointly for both appellants and was given the opportunity to peruse the same. There was no unfairness to the appellants in this regard. Counsel's withdrawal from the proceedings after the refusal of the adjournment was as a result of the appellants taking a clear decision to that effect. I find this a little odd in light of the fact that Counsel was instructed to represent both appellants and the application for an adjournment was instigated by the second appellant. There was no argument raised before the Tribunal that the first appellant, whose appeal hearing had always been listed for November, required further time in which to prepare. As the application and appeal were jointly made, I am satisfied that there could be no real disadvantage to the second appellant, given that his case was identical to that of the first appellant. In any event I am satisfied that the appellants understood the reasons for refusal and were sent letters which confirmed the outstanding issues to be dealt with at the hearing. The Tribunal had in mind that the application for adjournment was in the main based on the need for additional time to obtain the file of papers from the previous solicitors.
15. In considering the application the Tribunal properly took into account the issues in the appeal and the application of Exception 2 Section 85A of the 2002 Act. Having taken into account the matters raised and considering the same in light of the guidance in **Nwaigwe** I am satisfied that there was no unfairness leading to an error of law, following the refusal to adjourn. The Tribunal's decision was entirely fair and compatible with the overriding objective in Rule 2 (Tribunal Procedure Rules 2014) and the parties obligation to cooperate. The Tribunal took into account all material considerations and the appellants were not denied a fair hearing.
16. I find no merit in the second ground. The Tribunal considered the evidence put before it included in the respondent's bundle to which both parties and their representative had access. No issue was raised before the Tribunal that further evidence was sent in letter dated 17 June 2015, which was not before the Tribunal. This was not an issue raised specifically in the grounds of appeal but was introduced at the hearing before me in a letter dated 20 April 2015 which had neither been served on the respondent or in accordance with the Upper Tribunal's standard directions.
17. The appellants failed to meet the requirements to establish third party funding under paragraph 41-SD(c) and (d) of Appendix A. They were subsequently contacted by the respondent and asked to produce further documents; they were reminded of the requirement for original documents to be produced. The appellants instructed

solicitors throughout and the decision taken for Counsel to withdraw from the hearing was a clear choice made by the appellants. There was no unfairness created by the Tribunal. The burden is on appellants to make and to prepare their application and to submit all relevant documents in accordance with the requirements of the Rules and to pursue their appeal. I am satisfied that the Tribunal considered all the relevant evidence in reaching its decision.

Notice of Decision

I find no material error of law in the Tribunal's determination. The determination shall stand.

No anonymity direction is made.

Signed

Date 30.4.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

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

Signed

Date 30.4.2015

Deputy Upper Tribunal Judge G A Black