



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number:
IA/28523/2014

THE IMMIGRATION ACTS

**Heard at Phoenix House
On 11 May 2015**

**Determination
Promulgated
On 17 June 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MR KULSHAAN SINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms S Najma, Legal Representative

For the respondent: Mr A McVeety, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department. The respondent is a national of India born on 30 September 1987. However for the sake of convenience I shall refer to Mr Singh as the appellant and the Secretary of State as the respondent which are the designations they had before the First-tier Tribunal.

2. The appellant appealed against the decision of the respondent, dated 8 July 2014 for leave to remain in the United Kingdom as a Tier 1 (entrepreneur) Migrant. First-tier Tribunal Judge Boyd allowed the appellant's appeal under the Immigration Rules.
3. A Judge of the First-tier Tribunal Ransley granted the appellant leave to appeal on 27 January 2015 stating that it is arguable that the Judge erred in law in taking into account post-decision evidence which is precluded by section 85A, being evidence that had not been lodged with the application and which did not come within paragraph 245AA of the Immigration Rules.

First-tier Tribunal's findings

4. The Judge made the following findings in his determination which I summarise. In order for the appellant to succeed he has to establish, on a balance of probabilities that he meet the requirements of paragraph 245 ED of the Immigration Rules. It is not disputed that the appellant meets the requirements of Appendix B and Appendix C of the Immigration Rules. His refusal solely relates to appendix A attributes under access to funds, funds held in regulated financial institutions and funds disposable in the United Kingdom and also paragraph 245 ED (a) and (i) of the Immigration Rules. As this is a case under part six A of the Immigration Rules in relation to a points-based application, I cannot take into account any documents not lodged at the time of the application under is permitted under paragraph 245 AA of the immigration rules.

Grounds of appeal

5. Despite correctly directing himself at paragraph 16 of the determination that he cannot take into account any documentation not lodged with the application and is permitted by paragraph 245 AA of the immigration rules, the Judge proceeded to take into account evidence which is precluded by section 85A in his assessment of the general business of otherwise of the appellant's business. Specifically, he has referenced to the following evidence. That the appellant's father statement regarding the origin of the funds (paragraph eight of the determination and page 27 of the appellant's bundle) letter from the contractor regarding the contract paragraph 23 and page 222 of the appellant's bundle), NatWest accounts paragraph 23 referring to page 70 of the appellant's bundle) letter from DSP regarding an application for a business account at paragraph 27 and page 278- 280 of the appellant's bundle) he further refers to the evidence in the round including the very substantial bundle of documents provided for the appeal hearing.
6. None of the above evidence was submitted with the application. All of the above evidence has been included in the Judge's

assessment as to whether or not the business is genuine, such that points under appendix A ought to be awarded. None of the cited evidence was permitted under Rule 245 AA. The respondent relies on and **Ahmed and another (PBS: admissible evidence) [2014] UKUT 00365**. Given that the appellant has arrived at his conclusion by considering evidence which was excluded, it is submitted that had he not consider the evidence, he may have arrived at a different conclusion on the issues at hand.

Decision as to whether there is an error of law

7. At the hearing Ms Najma did not dispute that the Judge took into account post-decision evidence but said that there was evidence before the Judge which was submitted with the application from which he was entitled to make a positive finding for the appellant.
8. While it may be true that there was sufficient evidence before the Judge for him to make a decision in favour of the appellant, the fact that he took into account post decision evidence, which he was not entitled to do, as well as evidence submitted with the application, it remains unclear upon which evidence he based his conclusions.
9. The Immigration Rules are very clear that post decision evidence is not permitted under section 85A of the Immigration and Nationality Act. It is equally clear that the post-decision evidence provided by the appellant does not come within paragraph 245 AA of the Immigration Rules.
10. I found that there was a material error of law in the determination, and I set it aside in its entirety. There was no dispute between the parties that the appeal should be remitted back to the First-tier Tribunal to be heard again given that the determination is materially flawed and no findings of fact can be preserved.
11. Pursuant to Paragraph 7.2 of the Practice Statements of the Immigration and Asylum Chamber of the Upper Tribunal I remit the case to the First-Tier Tribunal for a rehearing and for the decision to be remade.
12. The appeal to be listed before a First-tier Judge other than Judge Boyd on the first available date.
13. The First-tier Tribunal has not made an anonymity order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed

A Deputy Judge of the Upper Tribunal

Mrs S Chana

Dated this 3rd day of June 2015