



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

Appeal Numbers: IA/29019/2014
IA/29027/2014
IA/29033/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 December 2015**

**Decision & Reasons
Promulgated
On 23 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

**VIMALKUMAR GOPALDAS (FIRST APPELLANT)
JIGNABEN VILMALKUMAR (SECOND APPELLANT)
J V (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Makol, Solicitor

For the Respondent: Ms Pal, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of India. The first appellant Mr Vilmalkumar Gopaldas was born on 25 June 1976. The other appellants, his wife and daughter were born respectively on 29 February 1984 and 26 August 2007.
2. The appellants appealed against the respondent's refusal to grant them leave to remain as a Tier 1 (Entrepreneur) Migrant with two dependants under the points-based system. Judge Wright in a decision promulgated

on 9 April 2015 allowed the appeals because he found the appellants satisfied the requirements of the Immigration Rules.

3. The grounds claim the judge allowed the appeals because he found the first appellant met the requirements of paragraph 245(DD) of the Rules. The first appellant's father-in-law was claimed to be providing him with financial sponsorship but it was claimed the first appellant failed to adequately show when the money was to be repaid. There was no clarification as to when the money would be sent or how it would be sent. There was no evidence to show the origin of the funds or their provenance. On that basis, the respondent argued that the funds were not accessible to the appellant such points having been raised by the Presenting Officer at the hearing but which had not been addressed by the judge.
4. Further, the first appellant's contract was not valid. The Director of the company with which he signed the contract, resigned in December 2013, whereas the contract was signed in April of 2014. The grounds claimed that as the Director resigned, he had no appointments with any companies such that the contract was not valid.
5. The appellant had failed to show any form of logical research for his business. He had failed to consider the impact of his close competitors. Merely looking at his local area was not a credible form of research.
6. Having a degree did not necessarily follow that the appellant had the necessary skills and experience to open and operate a business such as he maintained.
7. The first appellant's witness statement did not properly address the reasons for refusal.
8. Paragraph 245(DD) of the Immigration Rules had not been met, the balancing exercise had not taken place and as a result, the judge erred.
9. Designated Judge Zucker refused permission to appeal in his decision dated 2 June 2015. He found that in essence, the grounds merely took issue with the judge's findings. The judge was fully aware of the issues and made findings that were open to him, such that the grounds were nothing more than a disagreement with findings of fact which the judge was entitled to make. There was no arguable material error of law.
10. The grounds were renewed to the Upper Tribunal. In a decision dated 29 July 2015, it was said inter alia:

".....the grounds do set out an arguable basis for the complaint that the judge did not engage sufficiently with the basis of challenge that underpinned the refusal of the application. It is not altogether easy to identify what the reasoning is that leads to the findings set out at paragraph 20 of the determination. At paragraph 21 the judge sets

out a recital of evidence but it is not particularly clear that these amount to reasoned findings.”

Submissions on Error of Law

11. Ms Pal relied upon the grounds. The judge purported to make findings at [21] but failed to do so.
12. Mr Makol conceded that the judge had not engaged with the issues as he might have done, nevertheless, the appellant had addressed the issue of the Director of 1Dream Educare Ltd at [18] of his statement.
13. Mr Makol submitted that the judge did make findings, however, it might have been more appropriate if his paragraph [20] followed, rather than preceded [21].

Conclusion on Error of Law

14. I find the judge made material errors of law in his approach to the evidence because he failed to engage with the reasons for refusal and made no findings or inadequate findings on the issues to be addressed. It is inadequate to set out in detail at [21] the evidence without addressing that evidence in terms of the specific issues raised by the respondent. Further, by approaching the exercise, in a sense, in reverse, by saying he was satisfied with regard to the issues at [20(i) and (ii)] the judge carried out an inadequate analysis of the requirements of the Rules, the reasons why the application had been refused and the evidence.
15. The judge materially erred in law. I set aside his decision which must be re-made following a de novo hearing in the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and is set aside.

No anonymity direction is made.

Signed

Date 14 December 2015

Deputy Upper Tribunal Judge Peart