



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

Appeal Numbers: IA/29766/2013
IA/29767/2013
IA/30140/2013

THE IMMIGRATION ACTS

Heard at Field House

On 17 February 2015

**Determination
Promulgated**

On 19 February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**CHIRAG GULABRAI PANDIT
RISHITA CHIRAG PANDIT
KRUPALKUMAR RAJENDRABHAI PATEL
(ANONYMITY ORDER NOT MADE)**

Respondents

Representation:

For the Appellant: Mr N Bramble, Home Office Presenting Officer

For the Respondents: Mr R Rai of Counsel, instructed by Farani Javid Solicitors LLP

DECISION AND REASONS

1. These are appeals against decisions of First-tier Tribunal Judge Majid promulgated on 14 November 2014 allowing each of the linked appeals of Mr Chirag Pandit, Mrs Rishita Pandit and Mr Krupalkumar Patel against

decisions made by the Secretary of State for the Home Department, in respect of Mr and Mrs Pandit on 1 July 2013, and in respect of Mr Patel on 2 July 2013, to refuse variation of leave to remain and to remove each of them pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

2. Although before me the Secretary of State is the appellant and the Pandits and Mr Patel are the respondents, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to the Pandits and Mr Patel as the Appellants and the Secretary of State as the Respondent.

Background

3. The respective personal details and immigration histories of the Appellants are a matter of record on file and accordingly I do not propose to rehearse those matters here, but will refer to them as is incidental for the purposes of this decision.
4. The First Appellant and the Third Appellant form an 'entrepreneurial team', and in that regard made applications for variation of leave to remain under the Tier 1 (Entrepreneur) Migrant category of the Points Based System under the Immigration Rules on 21 June 2012. The Second Appellant was included as a dependant in the application of the First Appellant.
5. The Respondent refused the applications of the First and Third Appellants for reasons set out in respective combined Notices of Immigration Decision and 'reasons for refusal' letters dated 1 and 2 July. The Second Appellant was refused variation of leave to remain 'in line' with her husband for reasons set out in a separate letter also dated 1 July 2013. The removal decisions were taken in consequence.
6. The Appellants appealed to the IAC. The First-tier Tribunal Judge allowed the appeals for reasons set out in his decisions. (He promulgated a decision in respect of the First and Second Appellants and a separate decision in respect of the Third Appellant. I see no reason or purpose in keeping the decisions separate any further, and accordingly this single document will serve to determine all three cases, which in any event have been linked now for some time.)
7. The Respondent sought permission to appeal which was granted by First-tier Tribunal Judge Robertson on 8 January 2015. (Judge Robertson in fact made two decisions, one in respect of the First and Second Appellants and one in respect of the Third Appellant.)

Consideration

8. A feature of the Respondent's decision in respect of the First Appellant relates to an allegation that a false document was submitted in the

context of an earlier application. The combined Notice of Immigration Decision and 'reasons for refusal' letter in respect of the First Appellant states this:

"On 11 January 2012 you supplied documents to provide evidence of holding an account with Dhruv Co-op Bank Ltd, however these were found not to be genuine as the bank has not been actively trading for two years.

In light of this the Secretary of State has deemed that refusal is appropriate under paragraph 322(2) and is not prepared to exercise discretion in your favour."

9. The Respondent also considered other elements of the application, but awarded the First Appellant no points except in respect of Appendix C - Maintenance (Funds). The Respondent also observed, as he did in respect of Mr Patel as well, as follows:

"In line with paragraph 245DD(l) of the Immigration Rules, we have not carried out an assessment as detailed in paragraph 245DD(h) of the Immigration Rules as your application has been refused. We reserve the right to carry out this assessment in any challenge of this decision or in future applications for Tier 1 (Entrepreneur)."

In other words because the application was being refused in respect of the points to be awarded and also with reference to paragraph 322(2), the Respondent did not undertake a full assessment of the business in which it was planned that the entrepreneurial team would be investing.

10. The appeal was listed in front of the First-tier Tribunal on 24 December 2013. On that occasion the Respondent's representative produced, seemingly for the first time in these proceedings, a document verification report ('DVR') that had been the foundation of the allegation of use of a false document in the context of the First Appellant's earlier application. It is apparent from the Record of Proceedings from that date that the Appellants' representative drew to the Tribunal's attention the fact that the First Appellant had not seen the DVR previously, and in the circumstances the appeal was adjourned.
11. In response to the DVR the First Appellant prepared a supplementary witness statement signed on 10 March 2014 which was forwarded to the First-tier Tribunal under cover of letter dated 12 March 2014. In the body of that witness statement there is engagement with the terms of the DVR.
12. Unfortunately there does not appear to have been any due and proper consideration of this particular issue by First-tier Tribunal Judge Majid. Whilst it is correct to say that the Judge was alert to the fact that an allegation had been made in the Notice of Immigration Decision and 'reasons for refusal' letter, it is not apparent on a reading of the Judge's decision that he was alert to the contents of the DVR. No express reference is made to it, and indeed no express reference is made to the First Appellant's rebuttal by way of his witness statement of 10 March

2014. Instead the Judge confines his consideration of this, and indeed it seems all issues so far as the testimony of the First Appellant is concerned, to the contents of the First Appellant's initial witness statement dated 17 December 2013 – see for example paragraph 14 of the First-tier Tribunal decision. Necessarily that witness statement pre-dates the production of the DVR, and necessarily therefore does not engage with it.

13. It follows that the First-tier Tribunal Judge did not engage properly with an important issue that was significant in the Respondent's decision, and was plainly of material significance in the outcome of the appeals.
14. In those circumstances Mr Rai on behalf of the Appellants accepts that in all the circumstances no aspect of the fact-finding of the First-tier Tribunal can be said to be 'safe' such that it could be preserved into further consideration of the issues in the appeal.
15. In the circumstances it is unnecessary for me to consider other areas of challenge, for example the apparently inadequate way in which the Judge approached the English language requirements, and the lack of clarity as to the application of the relevant Immigration Rules to the facts in the case, and indeed whether the judge was allowing the appeal pursuant to the Rules or pursuant to Article 8 of the ECHR. Suffice it to say I find that the decisions of the First-tier Tribunal Judge in respect of all of the Appellants were flawed for material errors of law and must be set aside.
16. The decisions in the appeals require to be re-made. It is common ground before me that the most appropriate form for that is the First-tier Tribunal.

Notice of Decisions

17. The decisions of First-tier Tribunal Majid contained material errors of law and are each set aside.
18. The decisions in the appeal are to be re-made before the First-tier Tribunal and before any judge other than First-tier Judge Majid with all issues at large.

Consequent Directions

I also give the following consequent Directions for the future conduct of the appeal, which in part are an attempt to reproduce something of the Directions given after a hearing on 19 June 2014. I should briefly observe in this context that by letter dated 11 March 2014 the Respondent raised some further issues in respect of the source of the investment to be made by the Appellants, the relationship of that investment with the nature of the business and the third party investor, and the position of the First and Third Appellants within the structure of the business. It was suggested that there was an appearance of disguised employment. There also

appears to be a suggestion that there might have been an element of fraudulent behaviour. Mr Rai tells me that those allegations were subsequently withdrawn by the Presenting Officer. Mr Bramble is unable immediately to confirm that from his own records and whilst I see no reason to doubt what Mr Rai has told me, I have found it difficult to decipher the various Records of Proceedings from different hearings. In any event, irrespective of whether the matter has previously been withdrawn, some clarity would be helpful from the Respondent as to what if anything is said about the source of the funds said to be invested, bearing in mind that to date the Respondent has not embarked upon a full assessment of the nature of the entrepreneurial team's proposed business. With those matters in mind it is directed that this matter will be in the first instance listed for a case management review hearing at Taylor House with the following Directions.

(1) The Respondent is to file and serve within 28 days of today a brief statement identifying the issues being relied upon, together with a supplementary bundle incorporating all documentation relevant to the document verification report and all documents relevant to any allegation still being pursued - if that be the case - further to the letter of 11 March 2014, and also to incorporate any other relevant materials not otherwise filed and served.

(2) The Appellants, 14 days thereafter or in the event of default on the part of the Respondent at least 7 days before the CMR hearing, are to file and serve a consolidated bundle and Skeleton Argument addressing all relevant issues.

(3) The CMR is to be listed on the first available day after 7 April 2015.

The above represents a corrected transcript of an ex-tempore decision given at the hearing on 17 February 2015.

Signed

Date: **18 February 2015**

Deputy Upper Tribunal Judge I A Lewis