



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/30086/2014
& IA/30095/2014

THE IMMIGRATION ACTS

Heard at Field House
On 16 February 2015

Determination Promulgated
On 12 March 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department

Appellant

and

Alpeshkumar baldevbhai Sonara
Darshana Alpeshkumar Sonara
[No anonymity direction made]

Claimants

Representation:

For the claimants:

Mr A Hossain, instructed by A1 Law Chambers

For the appellant:

Mr I Jarvis, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State against the determination of First-tier Tribunal Judge Chowdhury promulgated 14.11.14, allowing the claimants' linked appeals against the decisions of the Secretary of State, dated 8.7.14, to refuse their Tier 1 Entrepreneur and dependant spouse applications made on 3.5.14, and to

remove them from the UK pursuant to section 47 of the Immigration Asylum and Nationality Act 2006. The Judge heard the appeal on 15.10.14.

2. First-tier Tribunal Judge Parker granted permission to appeal on 5.1.15.
3. Thus the matter came before me on 16.2.15 as an appeal in the Upper Tribunal.
4. I note two emails received by the Tribunal from the first claimant seeking an adjournment of this hearing, because he is allegedly suffering from back pain. The second email has an attachment being a copy of a sick note issued by Dr Tahir of the Brentfield Medical Centre, dated 13.2.15. This refers to 'Back pain, unspecified.' Also attached is a prescription for Naproxen and Cocodamol, but this was issued on 17.7.14, more than 6 months ago.
5. The application for adjournment was put before an Upper Tribunal Judge who refused it on the basis that in the first instance the appeal is listed for an error of law hearing, following which, if the decision is set aside, the judge can consider how the application is to proceed.
6. In the circumstances, notwithstanding the further email request for an adjournment, I consider that the hearing should proceed to the error of law consideration. At the hearing Mr Chowdhury said that he had instructions to proceed and did not pursue the adjournment application.

Error of Law

7. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Chowdhury should be set aside.
8. The application of the first claimant was refused because in claiming to have access to not less than £50,000 from a registered Venture Capital firm regulated by the Financial Conduct Authority (FCA), pursuant to Attributes under Appendix A of the Immigration Rules, the Secretary of State concluded that Nomisma Venture Capital, relied on by the first claimant, is not an independent venture capital firm directly regulated by the FCA.
9. The first claimant asserted that Nomisma is regulated by the FCA, by virtue of its management by Providentia LLP, which is authorised and regulated by the FCA. Judge Chowdhury concluded that the Immigration Rules contain no requirement that the venture capitalist firm must be "directly" regulated by the FCA. Accepting the evidence from the expert report of Howard Kennedy, referenced at §17 of the decision, the judge concluded that the first claimant met the requirements of Appendix A and thus both appeals were allowed.
10. Mr Hossain, who appeared at the First-tier Tribunal, made the same arguments and relied on the same evidence that was before judge Chowdhury in his submissions to me.

11. The grounds of appeal submit that the judge erred in law in concluding that Nomisma met the requirements. The grounds also note that this and two other venture capital companies all controlled by the same individual, form the subject of some 500 ring-fenced appeals pending the outcome of ten test cases heard in Manchester in November 2014. Evidently, the Secretary of State regards Nomisma as a bogus enterprise.
12. Whilst the wording of Appendix A does not use the words 'independent' and 'directly regulated,' it is evident that the plain intention of the words used in Table 4, "one or more registered venture capitalist firms regulated by the Financial Conduct Authority [FCA]" is that the firm must be regulated by the FCA. Nomisma is not regulated by the FCA, and the wording makes no allowance for being regulated indirectly or "through a connected firm," as suggested in §18 of the decision. The words of Appendix A do not state that the venture capital firm must be either regulated by the FCA or managed by a firm which is regulated by the FCA. In stating "I have no evidence to the contrary from the respondent that this is not possible and that the Rules cannot be read to include such an arrangement," the judge appears to be reversing the burden of proof which lies on the first claimant.
13. I am quite satisfied that the expectation of Appendix A and Table 4 is that the venture capital firm must be one that is regulated by the FCA. Whilst Mr Chowdhury relied on the evidence of a so-called expert witness, I do not accept that person is an expert in statutory interpretation. Neither does it make any sense for the issue to require expert evidence as to whether a firm is or is not regulated by the FCA.
14. In the circumstances, I find that there is an error of law in the decision of the First-tier Tribunal such that it must be set aside and remade.
15. Mr Hossain submitted that I should adjourn the remaking of the decision to enable the claimants to attend. However, I cannot see that any oral evidence would be necessary; this [is] a case that could have been done on the papers. For his part, Mr Hossain accepted that he had no different submissions to make than he made both to the First-tier Tribunal and to me in the error of law argument. There was nothing further to say about it. Similarly, the Secretary of State's position is identical to the submissions of Mr Jarvis in the error of law decision. In the circumstances, I can see no purpose in wasting time and incurring additional cost by adjourning the remaking of the decision.
16. Similarly, the very reasons why I found an error of law in the decision of the First-tier Tribunal are the same reasons why the appeal must be dismissed. It would make no sense for me to have been persuaded that there is an error of law in the interpretation of Appendix A and Table 4 to then allow the appeal on some different basis. On the facts of this case the decision in the appeal on immigration grounds must mirror the decision in relation to error of law.

17. I note that article 8 was not raised in the grounds of appeal to the First-tier Tribunal, despite the one-stop warning in the refusal decision and despite the fact there is a removal decision in this case. Article 8 does not appear to have been the subject of submissions or evidence in the First-tier Tribunal and Mr Hossain made no submissions on or even mention of article 8 when offered the opportunity to make further submissions before I remade the decision. In the circumstances I make no consideration of article 8.

Conclusion & Decision

18. For the reasons set out herein, I find that the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision

I re-make the decision by dismissing the appeal of each claimant.



Signed:

Date: 16 February 2015

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal of each appellant has been dismissed and thus there can be no fee award.

A handwritten signature in black ink, appearing to read 'Pickup', written in a cursive style.

Signed:

Date: 16 February 2015

Deputy Upper Tribunal Judge Pickup