



IAC-AH-KEW-V1

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

Appeal Numbers: IA/42518/2014  
IA/42371/2014  
IA/42394/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17<sup>th</sup> November 2015**

**Decision & Reasons Promulgated  
On 18<sup>th</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**(1) MISS AMINA ASHRAF  
(2) MR MUHAMMAD SOHAIL  
(3) MRS REENA KHALID  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr R Sharma (Counsel)

For the Respondent: Miss A Everett (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge N J Osborne, promulgated on 3<sup>rd</sup> June 2015, following a hearing at Columbus House, Newport, on 29<sup>th</sup> May 2015. In the determination, the judge allowed the appeals of Miss Amina Ashraf, Mr Muhammad Sohail, and Mrs Reena Khalid. The Respondent Secretary of State, subsequently applied,

and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellants**

2. The Appellants are all citizen of Pakistan, being born respectively on 3<sup>rd</sup> November 1985, 29<sup>th</sup> June 1984, and 14<sup>th</sup> October 1985. The Second Appellant and the Third Appellant are both husband and wife respectively. The application with respect to the First and Second Appellants is for leave to remain as Tier 1 (Entrepreneur) Migrants under paragraph 245DD of HC 395. The Third Appellant is a dependant of a Tier 1 Migrant under the points-based system.

### **The Appellants' Claim**

3. The Appellants' claim is in relation to evidence with respect to third party funding which was necessary for their application to succeed before the Secretary of State. Their case is that they are an entrepreneur team. They prepared their applications together. They confirm that they are 100% sure that all third party documents were collated in accordance with the Home Office guidelines for entrepreneurs. When all the documentary evidence had been collated, all three applications were sent to the Home Office in the same envelope (see paragraph 12(iv)).
4. The case on behalf of the Appellants is that they had studied in the UK and had successfully completed masters degree qualifications. The Second Appellant has an MBA in International Business from Anglia Ruskin University. The First Appellant, Miss Ashraf, has an MA in Marketing and Innovation from Anglia Ruskin University. They both researched what was needed and complied with the requirements. They compiled the evidence together and submitted it together.

### **The Judge's Findings**

5. The judge heard submissions that, in the circumstances whereby the Respondent Secretary of State maintained that no documentary evidence had been properly submitted, that the evidence of the Appellants was that, "the First and Second Appellants agreed that having submitted the applications it seems to be the case that the Respondent mislaid the original evidence that was submitted to comply with the requirements in respect of third party documents" (see paragraph 12(iv)).
6. The judge went on to conclude that, "having been referred to all the documents in the Appellants' bundle I find that this is a relatively thoroughly prepared appeal. The decision I make is (as it must be) on the basis of the evidence" (see paragraph 12(vi)).
7. The judge went on to note that the Appellants are the directors of a lawful company registered in the name of Multas Limited. They are engaged in business as directors of that company (see paragraph 16).

8. The judge allowed the appeal under the Immigration Rules (see paragraph 13) and also allowed the appeal under Article 8 of the ECHR (see paragraph 17).

### **Grounds of Application**

9. The grounds of application state that the judge was in error in considering the oral evidence and witness statements under the PBS and that such evidence was specifically excluded except under specific circumstances as set out in Section 85(a)(4) of the Nationality, Immigration and Asylum Act 2002. Reliance was placed upon the case of **Ahmed [2014] UKUT 365**.
10. On 12<sup>th</sup> August 2015, permission to appeal was granted.
11. On 1<sup>st</sup> September 2015, a Rule 24 response was entered by the Appellants' Counsel, Mr R Sharma. He submitted that there was a conflict of evidence before the judge, namely, as to whether third party documentary evidence had been properly submitted. It was for the judge to resolve that conflict. The judge did so on the basis of the evidence that he specifically referred to. He had referred to the case as having been thoroughly well prepared. Second, the reference to Section 85A of the 2002 was a misreading of that provision.

### **Submissions**

12. At the hearing before me on 17<sup>th</sup> November 2015, Miss Everett, appearing on behalf of the Respondent Secretary of State, relied upon her grounds of application. She submitted that the judge was not entitled to take into account oral evidence, in circumstances where the documentary evidence had not been properly filed. She also stated that she had herself gone through the Home Office bundle and could not find the documents that the judge appears to have relied upon. The judge was wrong to find the Appellants' claim to be credible when the documentary evidence was missing. She relied upon the case of **Ahmed [2014] UKUT 00365**. She asked me to find there to be an error of law, and to re-make the decision, by dismissing the appeal.
13. For his part, Mr Sharma submitted that he would draw attention to his Rule 24 response and simply repeat that the analysis by the judge was focused upon whether or not the documentary evidence had been properly submitted in relation to third party support. The judge had concluded that it had been and had gone on to say that this was "a relatively thoroughly prepared appeal" (see paragraph 12(vi)). He had even stated that the "Respondent mislaid the original evidence" (see paragraph 12(iv)). The reference to **Ahmed** was entirely misconceived because that was a case where the judge was not entitled to hear the oral evidence which she did hear. Since that oral evidence could not be heard, the absence of documentary evidence was clearly telling (see paragraph 9). This was not the position here.

### **No Error of Law**

14. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of **TCEA [2007]**) such that I should set aside the decision. My reasons are as follows. This is a case where the essential question was in relation to the production of third party support. The judge had evidence before him that the applications had been properly compiled by all three Appellants who are acting in consort as entrepreneurs. They had properly put in the evidence in relation to third party support themselves.
15. Second, the judge had gone on to say that his inspection of the file before him showed this evidence to be in existence and that this was a “thoroughly well-prepared appeal.”
16. Third, he also adverted to the possibility that, insofar as the evidence was missing on the part of the Respondent Secretary of State, the possibility was that this must have been mislaid.
17. Finally, the judge considered the position in relation to Article 8 rights and concluded that the appeal could also succeed under human rights grounds. In the case of **Shahzad [2013] UKUT 00005**, it was determined that, “the UT would not normally set aside a decision unless the conclusions the judge draws from the primary data were not reasonably open to him or her.” Plainly these conclusions were open to the judge. It was for the judge to make findings of fact. The judge did do so. The decision is entirely sound. There is no error of law.

### **Notice of Decision**

There is no material error of law in the original judge’s decision. The determination shall stand.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

8<sup>th</sup> December 2015