



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/11509/2014

THE IMMIGRATION ACTS

Heard at Field House
On 11 February 2016

Decision & Reasons Promulgated
On 22 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

RAVINDRABHAI DIPESHKUMAR PATEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S. Muquit, Counsel.
For the Respondent: Mr. P. Duffy, Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a citizen of India who appealed against a decision of the respondent contained in a notice dated 7 March 2015 cancelling his leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant. He appealed that decision and following a hearing at Hatton Cross Judge of the First-tier Tribunal M. P. W. Harris, in a decision promulgated on 26 August 2015, dismissed the appellant's appeal.

2. The appellant sought permission to appeal which was granted by Designated Judge of the First-tier Tribunal Garratt in a decision dated 18 December 2015. His reasons for so granting are:-
 - “1. The appellant applies in time to appeal against the decision of Judge of the First-tier Tribunal M P W Harris in which he dismissed the appeal against the decision of the respondent to cancel leave to remain as a Tier 1 (Entrepreneur) Migrant.
 2. The grounds argue that the judge was wrong to conclude (paragraph 20) that the appellant had not invested any of the £50,000 he had amassed for his business venture in a period of almost two years from the time he was granted leave. That is because the judge wrongly stated (paragraph 6) that the appellant’s leave was cancelled on 15th November 2015 when, in fact, it was curtailed when he returned from India on 7th March 2014.
 3. The grounds are arguable. Bearing in mind the judge’s conclusion about the appellant’s failure to invest funds are material to his conclusions in paragraph 21 the arguable error would appear to be material.
 4. Permission is granted.”
3. Thus the appeal came before me today.
4. Mr. Muquit relied on the grounds seeking permission to appeal and in particular that the judge was wrong to conclude at paragraph 20 of his decision that the appellant had not invested any of the £50,000 he had amassed for his business venture in a period of almost two years from the time he was granted his leave. That being as a consequence of the judge wrongly stating at paragraph 5 of his decision that the appellant’s leave was cancelled on 15 November 2015 when, in fact, it was curtailed when he returned to the United Kingdom from India on 7 March 2014.
5. This argument was resisted by Mr. Duffy who relied on the respondent’s Rule 24 notice dated 29 December 2015. He argued, amongst other things, that the First-tier Tribunal Judge had directed himself appropriately and that the inadvertent error in relation to the expiry date of the appellant’s leave does not amount to a material error. The salient finding is that despite having the intention to invest in the claimed business the appellant has not done so over a considerable period of time. At the date of hearing the appellant had not invested in the “alleged business” which was clearly close to two years after the leave was granted and this was inconsistent with someone investing in his own business. This was a finding open to the judge and albeit that the judge granting permission to appeal found an arguable error of law the position is that such error cannot be said to be material.
6. I do not accept Mr. Duffy’s submissions. The judge here has made an error of fact which has led him into making a legal error in assessing the appellant’s intentions and investment. It is a material error which has infected the decision as a whole and as Designated Judge Garratt says in the third of his reasons for granting permission to appeal:-

“... Bearing in mind the judge’s conclusion about the appellant’s failure to invest funds are material to his conclusions in paragraph 21 the arguable error would appear to be material.”

That is the position that I find here.

7. Consequently the appellant has been deprived of a fair hearing before the First-tier Tribunal. The decision of the judge contains errors of law and I set it aside in its entirety. In the circumstances the appropriate way forward is for the appeal to be considered afresh by the First-tier Tribunal.

Decision

8. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Harris.
9. No anonymity direction is made.

Signed

Date 15 February 2016.

Deputy Upper Tribunal Judge Appleyard