



IAC-AH-SC-V1

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

Appeal Numbers: IA/18641/2013
IA/22598/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 16 March 2016**

**Decision & Reasons
Promulgated
On 12 April 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SYED SHAH KHALID HASSAN (FIRST APPELLANT)
MUHAMMAD AWAIS (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer
For the Respondents: Mr Ahmed, instructed by Lex Immigration Specialists

DECISION AND REASONS

1. The appellants, Syed Shah Khalid Hassan and Muhammad Awais, are citizens of Pakistan. They sought leave to remain in the United Kingdom as part of an entrepreneurial team under the points-based system. Their

applications were refused by decisions of the respondent dated 28 May 2013. The appellants appealed to the First-tier Tribunal (the late Judge Upson) which, in a determination promulgated on 23 October 2013 allowed the appeal. The Secretary of State appealed to the Upper Tribunal (Deputy Judge Pickup) set aside Judge Upson's decision and remade the decision dismissing the appeal. The appellants appealed to the Court of Appeal where by consent order dated 15 January 2016, it was directed that the appeal should be remitted to the Upper Tribunal for a *de novo* hearing, Deputy Judge Pickup's decision having been set aside.

2. Granting permission to appeal to the Court of Appeal on 28 January 2015, Underhill LJ wrote [21]:

However, I would certainly not allow the case to proceed on that basis unless I believe there was a good prospect of its success – one that satisfied the second appeals test – in relation to the error actually made – that is the omission of Mr Hassan's signature. ... I frankly do not understand the reason given by Judge Upson for that being 'overcome': see paragraph 8 above. But, on reflection, I do accept that there was real force in the argument based on Section 245AA(b)(ii). At first blush the absence of a signature would not seem to come under the rubric 'format' but I am not sure that first impressions are reliable here. ... Against that background it seems to me that the term may well be wide enough to cover such things as the absence of a signature; and it seems to me that it would arguably be within the general mischief of the provision if it did so. I note that paragraph 245AA(b) does no more than say the border agency 'may' require corrected documents but Mr Ahmed submits that it is arguable that that discretion should generally be exercised unless there is a good reason not to [do so].

3. Before the Upper Tribunal, Mr Ahmed, for the appellant Mr Hassan (the appellant Mr Awais did not attend and was not represented), submitted that the matter should have been remitted to the Secretary of State so that she might consider the discretion conferred by paragraph 245AA(b) as regards the omission of Mr Hassan's signature. In the light of Underhill LJ's comments, it is clear that the First-tier Tribunal should not have allowed the appeals outright but it should have found (as I do) that the decisions were not in accordance with the law because the Secretary of State had not considered the exercise of a discretion under paragraph 245AA and that the matters should be remitted to the Secretary of State so that she may consider the exercise of that discretion. I make the decision in respect of both appellants though I fully acknowledge that Mr Ahmed and those instructing him appear only for Mr Hassan. I am aware also that there is now no entrepreneurial relationship between the appellants in this case but I do not see that that affects the consideration of the Secretary of State as to how she should exercise her discretion.

Notice of Decision

The decision of the First-tier Tribunal, which was promulgated on 23 October 2013, is set aside. I have remade the decision. The decision of the Secretary

of State to refuse the appellants' decisions were not in accordance with the law. The appeals are allowed to the limited extent that the matters are returned to the Secretary of State so that she may consider the exercise of the discretion conferred upon her by paragraph 245AA of HC 395 (as amended).

No anonymity direction is made.

Signed

Date 20 March 2016

Upper Tribunal Judge Clive Lane