



IAC-AH-KEW-V1

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

Appeal Numbers: IA/36880/2014
IA/36898/2014
IA/36900/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 January 2016**

**Decision & Reasons Promulgated
On 19 January 2016**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**VIJAYAN SUSEELA BIMAL (FIRST APPELLANT)
DIVYA BIMAL (SECOND APPELLANT)
B (THIRD APPELLANT)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr K S Sreekumar, Solicitor

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of India. The first and second appellants are husband and wife and the third appellant is their daughter. The first appellant's application for leave to remain as a Tier 1 (Entrepreneur) was refused by the respondent in a decision dated 8 September 2014. The corresponding applications by the second and third appellants were also

refused. Their appeals came before First-tier Tribunal Judge Stott at a hearing on 7 July 2015 whereby the appeals were dismissed.

2. The respondent's decision refers to paragraph 41-SD of Appendix A of the Immigration Rules and states that although the first appellant had provided a job title as listed in Appendix J, the only evidence that he had submitted to demonstrate that he was active in that occupation as part of his business BS New Tech Limited, is advertising and marketing material. It went on to state that the evidence he had submitted in relation to a trading contract is not acceptable because it does not cover a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of the application, as required by the Rules. The contract is dated 11 July 2014 and the services commence on that date.
3. Furthermore, the appellant had not demonstrated that he met the requirements of the Rules in terms of the business having a UK bank account of which he is a signatory, and/or relevant alternatives.
4. Accordingly, he was not awarded the necessary 25 points for access to funds, with corresponding decisions in relation to points for funds in other categories. He was awarded the claimed 10 points for English language and Maintenance.
5. Judge Stott accepted that (some) documentation was submitted with the first appellant's application, that being those documents listed at Section 7 of the application form. However, he concluded that that list does not include the invoices or receipts or the Halifax Bank account which the appellant relied on at the hearing before him. He noted that in relation to the Halifax account at page 24 of the appellant's bundle, the earliest date on the account is 18 July 2014.
6. At [9] he accepted that the appellant had founded a business and that the business has been trading. However, although the appellant had wanted to submit further documents showing the continued activity of the business, the judge decided that he was precluded from considering that evidence in the light of s.85A of the Nationality, Immigration and Asylum Act 2002.
7. Furthermore, at [10] he concluded that he was unable to find that the personal bank statement which was submitted by the appellant and dating from 18 July 2014 was included in the material submitted to the respondent when the application was made. In any event, the earliest date shown on the account post-dates the relevant date of 11 July 2014. As regards the invoices, he found that those invoices were not available for the respondent's consideration when the application was made. Although the first of them is dated 9 July 2014, and therefore would potentially have been relevant, the invoices are not listed on the documentation produced when the application was made and accordingly they could not be taken into account.

8. In relation to receipts produced at the hearing, of which legible copies were provided in place of the blank ones in the appellant's bundle, the earliest date on them is 22 July 2014. Again, the judge concluded that there was no evidence that that material was submitted with the application.
9. In the light of those findings the judge dismissed the appeal under the Immigration Rules.
10. The appellant's grounds refer to the judge's finding that the appellant had founded a business and that the business has been trading. The grounds also refer to the invoice dated 9 July 2014, prior to the relevant date of 11 July 2014, suggesting that this "proves the requirement of trading."
11. At [10] of the grounds the assertion is made that "The Respondent did not produce all the documents submitted by the Appellant in their bundle."
12. In submissions on behalf of the appellants, Mr Sreekumar relied on the grounds. He also sought to rely on arguments not the subject of the grounds, and incidentally not the subject of any application to amend the grounds. The first of these new arguments, as I understood them, was that the Rules which governed the application for further leave under Tier 1 came into effect at 12.15am on 11 July 2014 but the contract relied on came into being at 12 midnight on the same day. Accordingly, so the argument goes, his contract came into effect fifteen minutes prior to the implementation of the relevant Rule. It was further submitted that the signing of the contract was preceded by the appellant having provided services under it. Accordingly, if it was accepted that the contract was in existence before 11 July 2014, the appellant had complied with all the requirements of the Rules.
13. Mr Wilding submitted that the Rules required that the contract be dated before 11 July 2014 and in this case it was dated actually on that date. The appellant was unable to show therefore, that he had a business that was trading before 11 July 2014 as required by paragraph 41SD(iv).
14. So far as the invoices are concerned, it is not the case that invoices were sent with the application, as the grounds suggest. Section 7 of the application form makes no mention of invoices and there are none on the respondent's file.
15. So far as the bank statement is concerned, a print-out from a Halifax account was provided to the Secretary of State, although it is not in the form that is in the appellant's bundle.
16. Paragraph 41SD(e)(vii)(2) of Appendix A requires the account to show transactions for the business, which the account does not do. Nothing in the documents demonstrates that the account was used for the purposes of a business as required by the Rules. The bank account does not show anything other than funds in and out.

My assessment

17. There is nothing to support the appellant's sweeping contention in the grounds that the respondent did not produce in her bundle all the documents submitted by the appellant in support of the application. That *may* be true for one document only, produced at the hearing before me, being the Halifax bank statement (referred to at [15] above). The application for leave at section 7 lists the documents provided with the application, as was pointed out by the First-tier Judge at [7]. The appellant has not provided any positive evidence of other documents having been submitted to the respondent in support of the application and which were not taken into account by the respondent. It was Mr Wilding who referred me to the Halifax bank statement, but the appellant's own case as disclosed by the documents in the bundle before the First-tier Tribunal, did not rely on that document.
18. The appellant was required by paragraph 41SD(e)(iv) of Appendix A to provide, for example, a contract showing that the business was trading before 11 July 2014 and traded continuously throughout the period leading up to the date of his application. The appellant's contract does not show that to be the case and documents intended to support the contention that there had been previous trading were not submitted in support of the application. That is even accepting that they could be taken into account to fortify what is in the contract. The contract itself is undoubtedly dated 11 July 2014.
19. The appellant was also required by paragraph 41SD(e)(vii)(2) to provide evidence that the business has a UK bank account which shows transactions for the business. Mr Wilding provided to me a copy of a print-out from a Halifax account with transactions dated from 16 April 2014 to 17 July 2014. However, there is nothing to indicate that the transactions on them are related to business.
20. The argument in relation to the appellant's contract having been signed on 11 July 2015 at midnight, whereas the Rules did not come into effect until 12.15am, is not an argument that was put before the First-tier Tribunal. The document provided at the hearing before me on behalf of the appellant said to support the date of the coming into force of the Rules is a screenshot from UK Visas and Immigration website. However, that document actually relates to the coming into force of relevant guidance, not the Rules.
21. In any event, regardless of the precise time that the Rules came into force relative to the appellant's contract, that argument on behalf of the appellant does not begin to deal with the fact that the contract does not comply with the Rules. That is also aside from the fact that this is not an argument raised in the appellant's grounds to the Upper Tribunal, and there was no application to amend the grounds.

22. Likewise, the new argument to the effect that the contract was in existence before 11 July 2014 was not an argument that was put before the First-tier Judge and is not the subject of the grounds before the Upper Tribunal. Again, there was no application to amend the grounds. In any event, there is nothing to support the contention that the contract was in existence before 11 July 2014, which is the date of it. Furthermore, the argument that the contract was in existence before 11 July 2014 is inconsistent with the suggestion that the contract came into being at midnight on 11 July 2014.
23. The fact of the matter is that the evidence before the First-tier Tribunal did not demonstrate that the appellant was able to meet the relevant requirements of the Rules in terms of provision of specified documents. There is nothing to support the suggestion that the respondent had not identified or included documents submitted in support of the application, aside from the Halifax bank statement produced at the hearing before me, which is not a document that could have assisted the appellant. The First-tier Judge had no option but to dismiss the appeal on the basis that the appellant was unable to comply with the Rules in terms of the required documentation provided in support of the application.
24. Accordingly, I am not satisfied that there is any error of law in the decision of the First-tier Tribunal. The decision to dismiss the appeal therefore stands.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision to dismiss the appeal therefore stands.

Upper Tribunal Judge Kopieczek

18/01/16