



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

Appeal Number: IA/47025/2014  
IA/47033/2014  
IA/47035/2014  
IA/47043/2014  
IA/47055/2014  
IA/47062/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 February 2016**

**Decision and Reasons  
Promulgated  
On 15 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

**HUMAIRA NASIR BAIG  
MIRZA NASIR BAIG  
HN  
TN  
MSB  
MHB**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Chaudhry of Counsel

For the Respondent: Mr Staunton a Home Office Presenting Officer

## **DECISION AND REASONS**

### Background

1. The Respondent refused the Appellants' applications for leave to remain on 8 November 2014. The First Appellant (referred to below at [2] by Judge Shimmin as "the appellant") sought a Tier 1 Entrepreneur visa and the rest of the Appellants sought leave to remain as her dependents. They were all required to leave the United Kingdom. Their appeals were dismissed by First-tier Tribunal Judge Oakley ("the Judge") following a hearing on 19 August 2015.

### The grant of permission

2. First-tier Tribunal Judge Shimmin granted permission to appeal (29 December 2015) on the ground that it is arguable that the Judge:  
"... misunderstood the arguments made by the appellant in respect of the decision not being in accordance with the law. It was submitted that the decision was unfair because the appellant had not been given an opportunity to address the concerns raised in the refusal letter. The basis of the refusal was solely on the interview conducted with the appellant after she submitted her application. The refusal letter raised issues which were not put to the appellant during the interview. The appellant was prohibited from relying on any documentation not submitted with the application and therefore could not deal with these issues".

### Respondent's position

3. Mr Staunton relied on the rule 24 notice. The Judge was unable to take account of further evidence from the First Appellant as a result of s85A of the Nationality, Immigration and Asylum Act 2002. The Respondent had clear and serious concerns over the viability and genuineness of the First Appellant's business and the availability of her claimed funds. The First Appellant was invited to interview to address the Respondent's concerns and could have been expected to have assembled all relevant evidence to support her contention that she was a genuine entrepreneur. He orally added that her answers in interview were misleading and vague.

### Appellants' position

4. It was procedurally unfair for the Respondent to make adverse findings against the First Appellant without giving her the chance to address the concerns in her interview. The Judge did not look at her explanation within her appeal statement for the matters of concern raised in the interview. Reliance was placed upon Miah (interviewer's comments: disclosure: fairness) [2014] UKUT 00515 (IAC) and R (on

the application of Mushtaq) v Entry Clearance Officer of Islamabad, Pakistan (ECO – procedural fairness) (IJR) [2015] UKUT 00224 (IAC).

## Discussion

5. The Judge noted [26] that the First Appellant had been written to prior to the interview explaining that she could:

“... bring any further documents to the interview in support of the application”

and

“... if other documents had been brought then I would have expected them to have been recorded but since none have been recorded clearly the First Appellant has not brought any other documents to the interview.”

6. Contrary to that which was asserted on behalf of the Appellants the Judge did consider the explanation given within the First Appellant’s appeal statement for the matters of concern raised in the interview. The Judge stated [17]:

“...the First Appellant has made a statement dated the 14 August 2015 but notwithstanding the fact that she attended the Appeal she did not give evidence and was therefore not cross-examined and consequently I attach little weight to the statement that has been made by her.”

7. In addition, the Judge applied his own mind to the issues in the case. He identified the matters of concern that arose from the interview regarding what she did [24], what set her apart from other competitors [25], her rate of pay and reason for having premises in the infancy of the business [27], her poor market research [28], and her lack of work experience [29]. The Judge was entitled to find her answers unclear, evasive, inconceivable, and lacking in credibility.
8. I am satisfied that the Judge was entitled to find that there was nothing procedurally unfair in the manner in which the Respondent considered the application. The First Appellant was given the opportunity to provide whatever documents she wanted prior to and at the interview, and could say anything she wished at the interview to explain how the documents showed that it was a genuine business. The Judge did consider the First Appellant’s explanations for the shortcomings identified. The Judge was entitled to place little weight on her explanations as she chose not to give evidence or consequently make herself available for cross-examination. The Judge applied his mind to all the evidence before him and did not slavishly simply accept the Respondent’s concerns.

## Decision:

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The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed:  
Deputy Upper Tribunal Judge Saffer  
9 February 2016