



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

Appeal Number: IA/00194/2017

THE IMMIGRATION ACTS

Heard at Field House

On 30 January 2019

**Decision & Reasons
Promulgated
On 08 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

MR UMER JUNAID

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mr A. Chohan, Counsel

For the Respondent: Mr S. Walker, Home Office Presenting Officer

REASONS FOR FINDING ERROR LAW

1. The appellant is a citizen of Pakistan. He appeals against the determination of First-tier Tribunal Judge Wyman following a hearing that took place on 22 August 2018. The determination was promulgated some three weeks later on 13 September 2018.
2. It is apparent from paragraph 13 of the determination that, during the course of the hearing on 22 August 2018, the appellant's counsel explained that there had been a change in circumstances following the grant of indefinite leave to remain to his partner in the entrepreneurial

team. This resulted in the appellant now being the sole director of the company.

3. In paragraph 14 of the determination, the judge appears to have treated Counsel's request as an application that the appeal be remitted to the Secretary of State to consider the matter again. The inference arises from the judge's use of the word '*remitted*'. She refused that request. This was unsurprising since there is no power, on the basis of the change of circumstances, to remit an appeal to the Secretary of State for a fresh decision.
4. The judge went on to consider the documentary evidence before her at the hearing before dismissing the appeal on the basis that the appellant had not submitted relevant information to the requisite standard.
5. The appellant has now produced the attendance note of the appellant's counsel, Mr J. Waithe. I am satisfied that this accurately represents a discussion that took place during the course of the hearing. There was no attendance on the part of a Presenting Officer. The judge questioned the appellant about his failure to provide up-to-date information and indicated that the appellant should provide the missing information by Friday (24 August 2018) of that week. Counsel was present when the judge's clerk advised the appellant how to send the relevant information for the attention of the First-tier Tribunal Judge.
6. There is now on the file a letter from SBM solicitors dated 24 August 2018 recording that they had tried to fax the documents on Friday but the fax was not going through. On account of the bank holiday intervening, the letter went on to assert a further attempt would be made on the next working day, 28 August 2018. This was the date on which the letter and its enclosures were submitted to the Tribunal. The fax enclosed some 131 pages of material.
7. The determination was promulgated on 13 September 2018, well after the material was supplied to the Tribunal. The solicitor's covering letter clearly evidenced Counsel's understanding of what had taken place at the hearing. Unfortunately, it is not as recorded in the Record of Proceedings which merely recites '*Not prepared to accept application. Need to proceed.*'
8. In her determination, the judge made no reference to the material submitted after the hearing. In any event, it is plainly unfortunate that a suggestion is made to submit fresh material, all the more so when it is of so voluminous, when the judge has no opportunity to hear submissions as to its contents and relevance and the Secretary of State is not afforded an opportunity to consider it or make submissions upon its relevance, authenticity or adequacy. This is particularly apparent when the Immigration Rules themselves may be complex and challenging.

9. I am satisfied that the circumstances as I have recited above have resulted in a determination flawed by an error of law. I set it aside and direct the re-making of the decision.

Directions

- (i) The appellant is to file and serve a skeleton argument by 23 April 2019 identifying the requirements that the appellant has to establish by reference to the applicable Immigration Rules, the relevant parts of which are to be set out.
- (ii) The skeleton argument is to identify in narrative form by reference to a paginated bundle of documents how those requirements have been met. Each requirement is to be referenced by a numbered page (or pages) in the bundle.
- (iii) If necessary, the skeleton argument should be supported by a witness statement which will stand as the maker's evidence in chief.
- (iv) The skeleton argument is to make express reference to the requirement that the appellant did not intend to take employment other than under the terms of paragraph 245DE.
- (v) The respondent is to reply 21 days thereafter setting out the reasons (if any) for the failure of the appellant to meet the requirements of the Rules and/or why the appeal should fail.
- (vi) The appeal is remitted to Hatton Cross on the First Available Date after 42 days.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL
1 April 2019