In the Upper Tribunal (Immigration and Asylum Chamber) Judicial Review

JR 841 2020

In the matter of an application for Judicial Review

The Queen on the application of
Bhupinder Singh Arora

Applicant

versus

Secretary of State for the Home Department

Respondent

NOTIFICATION of the Judge's decision

On the application for judicial review

Following consideration of the documents lodged by the parties

Order by Upper Tribunal Judge Perkins:

This application is dismissed.

Reasons

(1) My reasons are set out in the appended judgement.

Costs AND Permission to appeal

(2) Ordinarily I would order the Applicant to pay the Respondent's reasonable costs to be assessed of not agreed.
(3) I direct that any submissions on costs are served on the Tribunal no later than 20 August 2021.
(4) I further direct than any application for permission to appeal to the Court of Appeal and any supporting grounds are served on the Tribunal no later than 20 August 2021.

Signed: *Jonathan Perkins*

Upper Tribunal Judge Perkins
Dated: 6 August 2021

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): **9 August 2021**

Solicitors:
Ref No.
Home Office Ref:

IAC-AH-SAR-V1

IN THE UPPER TRIBUNAL

RESERVED JUDGMENT

JR/841/2020

Field House,
Breams Buildings
London
EC4A 1WR

24 May 2021

THE QUEEN
(ON THE APPLICATION OF BHUPINDER SINGH ARORA)

Applicant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

(BY AN ENTRY CLEARANCE OFFICER)

Respondent

BEFORE

UPPER TRIBUNAL JUDGE PERKINS

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Mr B Hawkin, Counsel instructed by Alcott Solicitors appeared on behalf of the Applicant.

Mr B Seifert, Counsel instructed by the Government Legal Department appeared on behalf of the Respondent.

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ON AN APPLICATION FOR JUDICIAL REVIEW

APPROVED JUDGMENT

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JUDGE PERKINS: The applicant seeks judicial review of the respondent's decision on 25 November 2019, served on 2 December 2019, upholding on administration review a decision of the respondent on 18 September 2019 refusing him entry clearance as an entrepreneur.

2. He was given permission following an orally renewed application by Upper Tribunal Judge McWilliam who said:

> "While the applicant overstates the significance of the grant of leave to his business partner and that the business was trading, it is arguable that the reasons given by the respondent for refusing the application are irrational in the light of the further submissions made and the totality of the evidence".

3. Judge McWilliam issued standard directions which provided, inter alia, that the respondent served any Detailed Grounds of Defence within 35 days of the directions being sent. They were sent on 5 August 2020 and so any Detailed Grounds should have been served by (I think) 9 September 2020. Somewhat later, on 12 May 2021, the respondent sent draft Detailed Grounds and applied for the time to be extended to admit the draft as the Detailed Grounds. The chronology is a little obscure. The draft grounds are dated 17 May 2021. The application is dated 12 May 2021 and a covering letter is dated 20 May 2021.

4. On 21 May 2021 I received from the applicant's Counsel, Mr Hawkin, a "Detailed Response to Respondent's Grounds of Defence". He opposed the application and I had to decide at the start of the hearing if the respondent should be entitled to rely on the draft Detailed Grounds and if so on what terms.

5. I ruled in favour of the respondent and gave orally my reasons that I substantially repeat below.

6. I say immediately that this is not a case of the respondent losing interest and then waking up at the last minute. There

have been discussions between the parties to agree an outcome in these proceedings and I understand the respondent not rushing to spend money on something that may not be needed.

7. The respondent's covering letter reminds me, appropriately, of the decisions in **Mitchell v News Group Newspapers Limited [2013] EWCA Civ 1537** and **Denton v T H White [2014] EWCA Civ 906**. The respondent distils a threefold test from these, asserting that I should investigate first the seriousness and significance of the default and then, second, the reasons for the delay and then, third, evaluate all of the circumstances to deal justly with the application. My first concern is how the applicant is disadvantaged unfairly if I extend time.

8. In his Response, Mr Hawkin refers to correspondence from the respondent and the Tribunal dated 6 October 2020 where the respondent says "Should this matter proceed to a hearing the respondent would rely on the position as set out in the consent order sent to the applicant on 20.4.2020" and said "In the event the applicant does not agree to settle, that the matter is struck out on the basis of the attached consent order". That "order" is, of course, a draft consent order; no agreement was reached.

9. The material part of the draft order states: "UPON THE RESPONDENT agreeing to reconsider the decision dated 25 November 2019 within six weeks of this order being sealed, absent special circumstances ...". The indication that the respondent would rely "on the basis of the attached consent order" cannot be taken literally to mean *only* on that order. The respondent has not admitted any error. She has agreed to reconsider but that is not any kind of admission of fault. The letter must mean that the respondent will seek to rely in part on the terms of the consent order not *only* on its terms. I find nothing in the Detailed Grounds that are at odds with the summary grounds.

10. In short, the Detailed Grounds set out better and clearly points that the applicant could anticipated and the applicant

has had sufficient time to consider them. Mr Hawkin failed to persuade me that there was any unfairness to the applicant in permitting the respondent to rely on the draft Detailed Grounds and I extended time to admit the Detailed Grounds of defence. There was no application for an adjournment.

11. There are some unusual features in this case. First is that the decision before me was made on an application dated as long ago as 1 February 2017. The application was refused. There was an administrative review upholding that decision. Following persistent further applications, including applications for judicial review, by the applicant's solicitors there have been three further decisions each upheld on administrative review making a total of eight in all. Whilst this is not wrong in principle and none of the applications have involved excessive delay, it really is time that this application was determined one way or another.

12. Mr Hawkin constructed his case carefully through pleadings and skeleton arguments which I have considered. I mean them no disrespect by summarising them as follows. The applicant is a citizen of India born in 1960. He has worked as a banker and retired early. He claims to have formed a plan to run a beauty parlour in the United Kingdom with a business partner, a Miss Seema Manchanda, who has relevant business and practical experience. In outline, it was their intention to each invest the sum of £100,000 into the enterprise. They formed a limited company to facilitate that plan in which they were each held 50% of the shares and they produced a business plan and similar confirmatory documents. The applicant's application was refused and has been refused in its renewed forms. A similar application by the business partner succeeded and indeed the business has been established.

13. Mr Hawkin's submission, in outline, is that not only does the decision seem unfair from a lay perspective but, more importantly, it is wrong in law when all the circumstances are considered. In particular, the last refusal was in the face

of accepted evidence that the business had been established and was succeeding.

14. Again in summary outline it was Mr Seirfert's position that there was no public law error, there was merely a decision that the applicant does not like.

15. I remind myself that I am not required to make a decision on the merits of the application for leave to enter the United Kingdom and how I might have decided such an application is of little, if any, importance. I have to decide if the Secretary of State's decision was irrational or unlawful in any other way as the applicant contends that it is.

16. The Immigration Rules have changed but the parties agreed that the relevant Rules are set out in the application. The Rules made various requirements that the applicant has met and other requirements that the respondent says are not satisfied.

17. Paragraph 245DB(f) provides:

> "(f) Where the applicant is being assessed under Table 4 of Appendix A, the Entry Clearance Officer must be satisfied that:
>
> (i) the applicant genuinely intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months;
>
> (ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);
>
> (iii) that the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent for the purposes of his business or businesses;

(iv) if the applicant is relying on one or more previous investments to score points, they have genuinely invested all or part of the investment funds required in Table 4 of Appendix A into one or more genuine businesses in the UK;

(v) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DC".

18. The Immigration Rules at 245DB(h) provide:

"(h) In making the assessment in (f), the Entry Clearance Officer will assess the balance of probabilities. The Entry Clearance Officer may take into account the following factors:

(i) the evidence the applicant has submitted;

(ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;

(iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;

(iv) the applicant's previous educational and business experience (or lack thereof);

(v) the applicant's immigration history and previous activity in the UK; and

(vi) any other relevant information".

19. The Immigration Rules at 245DB(l) state:"

(l) If the Entry Clearance Officer is not satisfied with the genuineness of the application in relation to a points-scoring requirement in Appendix A, those points will not be awarded".

20. Mr Hawkin's first contention is that the respondent's approach to the Rules is irrational. The problem lies, he submitted, with the idea of the "genuineness of the application" which phrase appears in the Rules at 245DB(l) as indicated above. Mr Hawkins submitted that this is not a freestanding general requirement of "genuineness" but is related by the terms of the Rule very specifically to "the genuineness of the application in relation to a points-scoring requirement".

21. The points-scoring requirements are identified in other parts of 245DB. Paragraph 245DB(h) prescribes how the Entry Clearance Officer should go about making the assessment under 245DB(f) and permits a range of things to be considered including the viability and credibility of the business plan and research and educational and business experience and any other relevant information. However, these wide ranging permissible considerations are in the context of applying 245DB(f). Here the word "genuinely" appears again in the requirement that the applicant "genuinely intends" to become a director of the business, "genuinely intends" to invest money, that the money "is genuinely available" and, if relying on a previous investment that the applicant has "genuinely invested" the required funds.

22. Mr Hawkin submitted that this is not a case where previous investments of the kind set out in 245DB(f)(iv) or the intention to take employment under (v) have to be considered. He maintained that the most compelling indication of what the applicant genuinely intends is that he has become a director of a business, that he has invested £100,000 of his own money in the business and therefore, Mr Hawkin submitted, satisfies the requirements about what is genuine. There was, he argued, simply no point in looking at other sources to determine whether the application as a whole is genuine because that is not a consideration. Usually a person applying for leave as an entrepreneur has not started his business activity in the United Kingdom and so, for example, answers to questions at interviews, could be very illuminating of what he genuinely

intended but here events have moved faster than the respondent. There is no room to doubt that the requirements of 245DB(f) are satisfied because the criteria identified have been met.

23. I have reflected very hard on this argument which I summarise above from the papers and oral submissions. It is, at least initially, very attractive. Mr Seirfert had considerable difficulty in outlining what part of the Rule was not met. The respondent has not helped herself by not relating the Entry Clearance Officer's findings conspicuously to the requirements of the Rules. What the respondent has done is to ask if "on the balance of probabilities, you are a genuine entrepreneur, in line with Paragraph 245DB(f) of the Immigration Rules" (this phrase comes from the administrative review decision at page 51 in the bundle). The respondent has not defined a "genuine entrepreneur" in the decision. However the Rules that the respondent applied set out diverse ways in which the applicant has to be "genuine". It must follow that a "genuine entrepreneur" is somebody who genuinely intends (for example) to take over a business, who genuinely intends to invest money and that the money is genuinely available.

24. Mr Hawkin relies on the fact that the Rules provide for a predicted event whereas the applicant is taking advantage of past events to show that something has happened. I do not see how this helps the appellant. The Rules contemplate an entrepreneur in the context of an entry clearance application, as someone who is expected to do something rather than someone who already has done something and by relying on things that have already happened save to the extent allowed by the Rules the applicant has put himself outside the meaning of "entrepreneur" under the Rules. The point is the Rules are there to facilitate entrepreneurs entering the United Kingdom and there is no obvious public interest in facilitating the entry of somebody who is already running a business successfully.

25. However, a person is not a "genuine entrepreneur" if that person does not have a genuine intention to establish a business, invest money and have money available until such time as it is spent.

26. I am satisfied that the respondent was entitled to conclude that the applicant has not met the primary requirements of the Rules.

27. I accept that he has become a director. There is an extract of an Appointment of Director form in the bundle at B51 showing the applicant was appointed a director on 3 October 2016 which is some time before the application began. This perhaps illustrates the importance of the predictive requirement of the Rule. The minimal obligations on a company director are not onerous and are not, of themselves, indicative of any particular ability or enthusiasm for entrepreneurial activity. The requirement in the Rule is that the applicant had a genuine intention to establish, take over or become a director of a business. The respondent was not satisfied that there was a genuine intention on the part of the applicant to establish or take over a business. Similarly, although it seems beyond argument that a substantial sum of money (£100,000 or something very close to it) has been funded via the applicant's resources into the business it does not follow that it is intended as a genuine investment or that the funding will remain available until such time as it is spent. The respondent was unimpressed with the applicant and gave reasons. I remind myself of the terms of the decision dated 25 November 2019.

28. It is accepted that the applicant had scored the necessary points for attributes, maintenance and language skills but not that the applicant is "a genuine entrepreneur, with genuine intentions to invest and set up a business in the UK". It is made perfectly plain that the decision was based on the answers given in interview and credibility assessed in accordance with 245DB(h)of the Rules. The letter acknowledges

that the business partner's application was successful but continues "your intentions to open and run a business in the UK were not found to be credible".

29. The administrative review decision states (page 51 in the bundle):

> "I agree with the ECO that based on your answers in the interview and the documentation submitted in support of your application, it is apparent that you have insufficient previous experience in the hospitality industry. Upon review, I am also not satisfied that a genuine entrepreneur would relocate to another country to start a business in a field unrelated to their previous experience as their primary reason for relocation. Upon review it is considered reasonable for the ECO to conclude that you do not appear to be applying for leave to enter the UK for wholly entrepreneurial reasons, which undermines your credibility"

30. The decision maker found the responses at interview about setting up the business in the United Kingdom to be "vague and generic". Further opportunity was given in September 2019 but although the applicant was able to quote from a business plan that someone else had prepared he did not demonstrate a sufficiently thorough understanding of the business to the satisfaction of the Entry Clearance Officer. The decision maker was aware that the applicant was not familiar with the beauty business and concluded he had not conducted adequate research.

31. It is a matter of fact that the applicant failed to remember the name of the accountant who is said to have advised him and his partner about establishing their business. Whilst I can read a failure like that with a great deal of sympathy I cannot accept that the Entry Clearance Officer was not entitled to draw adverse conclusions from the omission. It was indeed, in the words of the refusal reconsideration, "a vital document".

32. Another main reason for refusing the application concerned the "structure of the ownership of the business". This is a reference to the Entry Clearance Officer noting that the applicant had said in interview that "we are both having shares" developed to have "we will have equal access" and then open access showing that the business partner had 75% or more ownership of shares. That position has now changed in the records but the Entry Clearance Officer was entitled to be unimpressed by a business where the records were so different from the aspiration of the applicant.

33. I note that the grounds for judicial review were drawn by Mr Barnabas Lams (not Mr Hawkin).

34. Assuming that it is right to look at the state of the business even though the Rules specifically provide for anticipating a future event the fact that the business has been established successfully is not a particularly compelling point. What matters is the applicant's role as an entrepreneur. Neither does it matter that sums have been invested. It is not at all the same as saying that they are "genuinely available" and will remain available until such time as they are spent. The Rules are looking at something different from the state of the business.

35. Returning to the grounds the next point taken is that the applicant's partner Miss Manchandra was given leave and it must:

> "Necessarily have been on the basis that not only was she a genuine entrepreneur but she was part of a genuine entrepreneurial team made up of her and the applicant, as that was the basis for her application".

36. That is right as far as it goes but there are two decisions here made by different people based on different material in the form of different answers at interview. There is nothing inherently irrational in different conclusions being reached after different procedures have, appropriately, been followed

and I see no reason at all why the applicant should be found "genuine" because his partner was found "genuine".

37. Varying the location of the business in the United Kingdom is not something that impresses me either way per se. The point is that there was a plan to establish the business in Islington and it has now been established in Chelsea. The grounds complain that the decision did not recognise that the change of location was a consequence in part of finding an ailing business in Chelsea that could be obtained at an attractive price. As is clear from the administrative review decision (page 52 in the bundle) the respondent's concern was not so much with the change of location for the business premises but the applicant's attitude to the change. There may be good business reasons for establishing the parlour in Chelsea rather than Islington but the Entry Clearance Officer's concern was "it is unclear as to why you would choose a location close to several other competitors". The applicant's answers suggested to the Entry Clearance Officer that the applicant was not familiar with the competition and added to the picture that the applicant was not a genuine entrepreneur. This finding that is not made perverse by other strands of evidence that could have supported a different conclusion. The administrative review stated:

> "I am satisfied the lack of detailed market research regarding competitors undermines your credibility as an entrepreneur".

38. The fourth point taken in Mr Hawkin's skeleton argument is entitled "The applicant's role in the business". This, with respect, is simply a reworking of earlier points and meets with the same response, namely that the Entry Clearance Officer took a different view and unless perversity is established, and it is not, it is not unlawful.

39. The fifth point is headed "Competition" and all of the above applies.

40. Point 6 is headed "Business in the United Kingdom not India". Clearly the respondent did doubt the plan because the applicant chose the United Kingdom rather than India. Again, there are reasons to say that a different conclusion could have been reached but that does not undermine the decision that was made and so does not achieve the result the applicant requires.

41. Paragraph 7 is entitled "Family in the United Kingdom". There it is asserted that the fact the applicant has family in the United Kingdom cannot of itself undermine the credibility of the application which is to be an entrepreneur and set up a business. That is almost certainly correct but the problem is that the applicant was, in the mind of the Entry Clearance Officer, unpersuasive about his knowledge of the business and his plans to develop it. That he might have had a reason for wanting to be in the United Kingdom other than being an entrepreneur was something the respondent was entitled to consider. I cannot say that the respondent has given unlawful weight to this lurking suspicion. The problem is not that he has family in the United Kingdom. The problem is he was unpersuasive when he was talking about the business.

42. Point 8 is entitled "Company set up". This, with respect, skirts round the problem. The Entry Clearance Officer's concern was that the applicant talked about an equal share in the business when the documentation suggested a 75% and 25% share in the business and the applicant could not explain the reason for that. I do not agree that the "undisputed fact" that the applicant has provided half of the capital for a genuine and existing business determines the point. The applicant appears to have provided half of the capital for a business but seemed ignorant of the details of the ownership of the business that he claimed he wanted to develop and was half his.

43. Point 9 is entitled "Knowledge of business plan and research". Again, it shows how the application might have been resolved

differently. It does point to answers that the applicant gave that the respondent did not mention or consider in detail in the refusal. It does not mean they were not read and does not mean that the respondent's conclusion based on the things that were said was not open to him in law.

44. The final heading "Overall" adds nothing.

45. Again, I remind myself that this is not an appeal. I have considered the Detailed Grounds of defence and the Response to the Summary Grounds in the skeleton argument. I do not find that they add anything to the observations I have already made.

46. I have read Mr Hawkin's further submissions on remedies but I do not find them relevant. I do not accept there has been any error here.

47. I am aware the Secretary of State has offered to look at the case again. That course is a matter for the Secretary of State and she can adopt it for a wide variety of reasons. It is certainly not an admission that there is any fault and I do not treat it as such.

48. I find that the case can really be reduced to a very short explanation. The applicant was interviewed and although he claimed considerable experience not much information was given. Further, he was not able to talk in the kind of detail the Entry Clearance Officer expected about the reasons for the proposal. He could not even remember the name of the accountant that had given advice and his explanation of how the business would be set up in terms of equal shares was not supported by the documentation. This was adjusted at a later stage but the damage had already been done. The essential decision is not perverse provided that the respondent was entitled to look at the genuineness of the application. I spent considerable time looking at the Rules at the start of this judgment and I find that the requirement for genuineness

is in the rules and that the respondent was entitled to find that the applicant did not satisfy it.

49. In short, after reminding myself yet again that I am dealing with public law issues, not an appeal, I find no public law error has been established and I dismiss the application for judicial review.~*0*~~~~

IAC-AH-SAR-V1

IN THE UPPER TRIBUNAL

RESERVED JUDGMENT

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JUDGE PERKINS: The applicant seeks judicial review of the respondent's decision on 25 November 2019, served on 2 December 2019, upholding on administration review a decision of the respondent on 18 September 2019 refusing him entry clearance as an entrepreneur.

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5. I ruled in favour of the respondent and gave orally my reasons that I substantially repeat below.

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have been discussions between the parties to agree an outcome in these proceedings and I understand the respondent not rushing to spend money on something that may not be needed.

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of accepted evidence that the business had been established and was succeeding.

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with the idea of the "genuineness of the application" which phrase appears in the Rules at 245DB(l) as indicated above. Mr Hawkins submitted that this is not a freestanding general requirement of "genuineness" but is related by the terms of the Rule very specifically to "the genuineness of the application in relation to a points-scoring requirement".

21. The points-scoring requirements are identified in other parts of 245DB. Paragraph 245DB(h) prescribes how the Entry Clearance Officer should go about making the assessment under 245DB(f) and permits a range of things to be considered including the viability and credibility of the business plan and research and educational and business experience and any other relevant information. However, these wide ranging permissible considerations are in the context of applying 245DB(f). Here the word "genuinely" appears again in the requirement that the applicant "genuinely intends" to become a director of the business, "genuinely intends" to invest money, that the money "is genuinely available" and, if relying on a previous investment that the applicant has "genuinely invested" the required funds.

22. Mr Hawkin submitted that this is not a case where previous investments of the kind set out in 245DB(f)(iv) or the intention to take employment under (v) have to be considered. He maintained that the most compelling indication of what the applicant genuinely intends is that he has become a director of a business, that he has invested £100,000 of his own money in the business and therefore, Mr Hawkin submitted, satisfies the requirements about what is genuine. There was, he argued, simply no point in looking at other sources to determine whether the application as a whole is genuine because that is not a consideration. Usually a person applying for leave as an entrepreneur has not started his business activity in the United Kingdom and so, for example, answers to questions at interviews, could be very illuminating of what he genuinely intended but here events have moved faster than the respondent. There is no room to doubt that the requirements

of 245DB(f) are satisfied because the criteria identified have been met.

23. I have reflected very hard on this argument which I summarise above from the papers and oral submissions. It is, at least initially, very attractive. Mr Seifert had considerable difficulty in outlining what part of the Rule was not met. The respondent has not helped herself by not relating the Entry Clearance Officer's findings conspicuously to the requirements of the Rules. What the respondent has done is to ask if "on the balance of probabilities, you are a genuine entrepreneur, in line with Paragraph 245DB(f) of the Immigration Rules" (this phrase comes from the administrative review decision at page 51 in the bundle). The respondent has not defined a "genuine entrepreneur" in the decision. However the Rules that the respondent applied set out diverse ways in which the applicant has to be "genuine". It must follow that a "genuine entrepreneur" is somebody who genuinely intends (for example) to take over a business, who genuinely intends to invest money and that the money is genuinely available.

24. Mr Hawkin relies on the fact that the Rules provide for a predicted event whereas the applicant is taking advantage of past events to show that something has happened. I do not see how this helps the appellant. The Rules contemplate an entrepreneur in the context of an entry clearance application, as someone who is expected to do something rather than someone who already has done something and by relying on things that have already happened save to the extent allowed by the Rules the applicant has put himself outside the meaning of "entrepreneur" under the Rules. The point is the Rules are there to facilitate entrepreneurs entering the United Kingdom and there is no obvious public interest in facilitating the entry of somebody who is already running a business successfully.

25. However, a person is not a "genuine entrepreneur" if that person does not have a genuine intention to establish a

business, invest money and have money available until such time as it is spent.

26. I am satisfied that the respondent was entitled to conclude that the applicant has not met the primary requirements of the Rules.

27. I accept that he has become a director. There is an extract of an Appointment of Director form in the bundle at B51 showing the applicant was appointed a director on 3 October 2016 which is some time before the application began. This perhaps illustrates the importance of the predictive requirement of the Rule. The minimal obligations on a company director are not onerous and are not, of themselves, indicative of any particular ability or enthusiasm for entrepreneurial activity. The requirement in the Rule is that the applicant had a genuine intention to establish, take over or become a director of a business. The respondent was not satisfied that there was a genuine intention on the part of the applicant to establish or take over a business. Similarly, although it seems beyond argument that a substantial sum of money (£100,000 or something very close to it) has been funded via the applicant's resources into the business it does not follow that it is intended as a genuine investment or that the funding will remain available until such time as it is spent. The respondent was unimpressed with the applicant and gave reasons. I remind myself of the terms of the decision dated 25 November 2019.

28. It is accepted that the applicant had scored the necessary points for attributes, maintenance and language skills but not that the applicant is "a genuine entrepreneur, with genuine intentions to invest and set up a business in the UK". It is made perfectly plain that the decision was based on the answers given in interview and credibility assessed in accordance with 245DB(h)of the Rules. The letter acknowledges that the business partner's application was successful but

continues "your intentions to open and run a business in the UK were not found to be credible".

29. The administrative review decision states (page 51 in the bundle):

> "I agree with the ECO that based on your answers in the interview and the documentation submitted in support of your application, it is apparent that you have insufficient previous experience in the hospitality industry. Upon review, I am also not satisfied that a genuine entrepreneur would relocate to another country to start a business in a field unrelated to their previous experience as their primary reason for relocation. Upon review it is considered reasonable for the ECO to conclude that you do not appear to be applying for leave to enter the UK for wholly entrepreneurial reasons, which undermines your credibility"

30. The decision maker found the responses at interview about setting up the business in the United Kingdom to be "vague and generic". Further opportunity was given in September 2019 but although the applicant was able to quote from a business plan that someone else had prepared he did not demonstrate a sufficiently thorough understanding of the business to the satisfaction of the Entry Clearance Officer. The decision maker was aware that the applicant was not familiar with the beauty business and concluded he had not conducted adequate research.

31. It is a matter of fact that the applicant failed to remember the name of the accountant who is said to have advised him and his partner about establishing their business. Whilst I can read a failure like that with a great deal of sympathy I cannot accept that the Entry Clearance Officer was not entitled to draw adverse conclusions from the omission. It was indeed, in the words of the refusal reconsideration, "a vital document".

32. Another main reason for refusing the application concerned the "structure of the ownership of the business". This is a reference to the Entry Clearance Officer noting that the applicant had said in interview that "we are both having shares" developed to have "we will have equal access" and then open access showing that the business partner had 75% or more ownership of shares. That position has now changed in the records but the Entry Clearance Officer was entitled to be unimpressed by a business where the records were so different from the aspiration of the applicant.

33. I note that the grounds for judicial review were drawn by Mr Barnabas Lams (not Mr Hawkin).

34. Assuming that it is right to look at the state of the business even though the Rules specifically provide for anticipating a future event the fact that the business has been established successfully is not a particularly compelling point. What matters is the applicant's role as an entrepreneur. Neither does it matter that sums have been invested. It is not at all the same as saying that they are "genuinely available" and will remain available until such time as they are spent. The Rules are looking at something different from the state of the business.

35. Returning to the grounds the next point taken is that the applicant's partner Miss Manchandra was given leave and it must:

> "Necessarily have been on the basis that not only was she a genuine entrepreneur but she was part of a genuine entrepreneurial team made up of her and the applicant, as that was the basis for her application".

36. That is right as far as it goes but there are two decisions here made by different people based on different material in the form of different answers at interview. There is nothing inherently irrational in different conclusions being reached after different procedures have, appropriately, been followed

and I see no reason at all why the applicant should be found "genuine" because his partner was found "genuine".

37. Varying the location of the business in the United Kingdom is not something that impresses me either way per se. The point is that there was a plan to establish the business in Islington and it has now been established in Chelsea. The grounds complain that the decision did not recognise that the change of location was a consequence in part of finding an ailing business in Chelsea that could be obtained at an attractive price. As is clear from the administrative review decision (page 52 in the bundle) the respondent's concern was not so much with the change of location for the business premises but the applicant's attitude to the change. There may be good business reasons for establishing the parlour in Chelsea rather than Islington but the Entry Clearance Officer's concern was "it is unclear as to why you would choose a location close to several other competitors". The applicant's answers suggested to the Entry Clearance Officer that the applicant was not familiar with the competition and added to the picture that the applicant was not a genuine entrepreneur. This finding that is not made perverse by other strands of evidence that could have supported a different conclusion. The administrative review stated:

> "I am satisfied the lack of detailed market research regarding competitors undermines your credibility as an entrepreneur".

38. The fourth point taken in Mr Hawkin's skeleton argument is entitled "The applicant's role in the business". This, with respect, is simply a reworking of earlier points and meets with the same response, namely that the Entry Clearance Officer took a different view and unless perversity is established, and it is not, it is not unlawful.

39. The fifth point is headed "Competition" and all of the above applies.

40. Point 6 is headed "Business in the United Kingdom not India". Clearly the respondent did doubt the plan because the applicant chose the United Kingdom rather than India. Again, there are reasons to say that a different conclusion could have been reached but that does not undermine the decision that was made and so does not achieve the result the applicant requires.

41. Paragraph 7 is entitled "Family in the United Kingdom". There it is asserted that the fact the applicant has family in the United Kingdom cannot of itself undermine the credibility of the application which is to be an entrepreneur and set up a business. That is almost certainly correct but the problem is that the applicant was, in the mind of the Entry Clearance Officer, unpersuasive about his knowledge of the business and his plans to develop it. That he might have had a reason for wanting to be in the United Kingdom other than being an entrepreneur was something the respondent was entitled to consider. I cannot say that the respondent has given unlawful weight to this lurking suspicion. The problem is not that he has family in the United Kingdom. The problem is he was unpersuasive when he was talking about the business.

42. Point 8 is entitled "Company set up". This, with respect, skirts round the problem. The Entry Clearance Officer's concern was that the applicant talked about an equal share in the business when the documentation suggested a 75% and 25% share in the business and the applicant could not explain the reason for that. I do not agree that the "undisputed fact" that the applicant has provided half of the capital for a genuine and existing business determines the point. The applicant appears to have provided half of the capital for a business but seemed ignorant of the details of the ownership of the business that he claimed he wanted to develop and was half his.

43. Point 9 is entitled "Knowledge of business plan and research". Again, it shows how the application might have been resolved

differently. It does point to answers that the applicant gave that the respondent did not mention or consider in detail in the refusal. It does not mean they were not read and does not mean that the respondent's conclusion based on the things that were said was not open to him in law.

44. The final heading "Overall" adds nothing.

45. Again, I remind myself that this is not an appeal. I have considered the Detailed Grounds of defence and the Response to the Summary Grounds in the skeleton argument. I do not find that they add anything to the observations I have already made.

46. I have read Mr Hawkin's further submissions on remedies but I do not find them relevant. I do not accept there has been any error here.

47. I am aware the Secretary of State has offered to look at the case again. That course is a matter for the Secretary of State and she can adopt it for a wide variety of reasons. It is certainly not an admission that there is any fault and I do not treat it as such.

48. I find that the case can really be reduced to a very short explanation. The applicant was interviewed and although he claimed considerable experience not much information was given. Further, he was not able to talk in the kind of detail the Entry Clearance Officer expected about the reasons for the proposal. He could not even remember the name of the accountant that had given advice and his explanation of how the business would be set up in terms of equal shares was not supported by the documentation. This was adjusted at a later stage but the damage had already been done. The essential decision is not perverse provided that the respondent was entitled to look at the genuineness of the application. I spent considerable time looking at the Rules at the start of this judgment and I find that the requirement for genuineness

is in the rules and that the respondent was entitled to find that the applicant did not satisfy it.

49. In short, after reminding myself yet again that I am dealing with public law issues, not an appeal, I find no public law error has been established and I dismiss the application for judicial review.~*0*~~~~