



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

In the matter of an application for Judicial Review

The King on the application of
Muhammad Irfan Dogar

Applicant

v

Secretary of State for the Home Department

Respondent

ORDER

BEFORE Upper Tribunal Judge O'Callaghan

HAVING considered all documents lodged and having heard Nicholas O'Brien of counsel, instructed by Edmans & Co, for the applicant and Benjamin Seifert of counsel, instructed by the Government Legal Department, for the respondent at a hearing held at Field House on 15 August 2023

AND UPON there being no application for permission to appeal to the Court of Appeal

IT IS ORDERED THAT:

- (1) The application for judicial review is granted in relation to ground 2 for the reasons in the attached judgment, with no attendant consideration of grounds 1 and 3.
- (2) The respondent's decision dated 12 September 2022 is quashed.
- (3) The applicant be given 28 days from the sealing of this order to provide the respondent with any further material in respect of his entry clearance application, if so advised.
- (4) The respondent make a decision on the applicant's entry clearance application taking into account all evidence relied upon, including any further material supplied by the applicant, within the timeframe established by paragraph (3) above, within three months of the further material being provided or the deadline in paragraph (3) expiring whichever is sooner, absent special circumstances.
- (5) The respondent pay the applicant's reasonable costs of the claim, to be assessed if not agreed, save for the applicant's costs associated with re-

opening the Tribunal file after the claim was struck out on 28 March 2023, for which there be no order as to costs.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan
Dated: 6 September 2023

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): *7 September 2023*

Solicitors:
Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).



Case No: JR-2022-LON-001990

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

6 September 2023

Before:

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between:

THE KING
on the application of
MUHAMMAD IRFAN DOGAR

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Nicholas O'Brien

(instructed by Edmans & Co) for the applicant

Benjamin Seifert

(instructed by the Government Legal Department) for the respondent

Hearing date: 15 August 2023

J U D G M E N T

Judge O’Callaghan:

A. Introduction

1. The substantive issue raised in this claim for judicial review is the lawfulness of the consideration by an entry clearance officer (ECO) of documents provided by the applicant who seeks entry clearance as a visitor. At the core of this Tribunal’s consideration is the approach adopted by the ECO to the question whether the applicant is a sole proprietor, akin to a sole trader in the United Kingdom.
2. Though the decision-maker was an ECO, the claim form identifies the Secretary of State for the Home Department as the respondent to these proceedings. No issue has been taken by the respondent in respect of such identification.

B. The case in outline

3. The applicant contends that the applications for entry clearance as visitors made by his wife and himself, as well as by their two minor children, were supported by cogent and detailed evidence establishing his business activities and financial resources. Consequently, there was no reasonable basis for the respondent to conclude that paragraphs V.4.2(a) and (c) of Appendix V to the Immigration Rules were not met.

C. Relevant facts

4. The applicant is a national of Pakistan. By an application dated 22 June 2022, he applied for entry clearance as a visitor, identifying his intention to visit London for ten days during his children’s school summer holiday. His wife and minor children were dependant upon the application.
5. The application was accompanied by various financial documents including:

- A National Tax Number Certificate in the name of the applicant identifying his construction business, dated 14 February 2007.
 - A Taxpayer online verification in the applicant's name, referencing two businesses including his construction business, dated 13 April 2018. The category is identified as 'Business Individual'.
 - A '114(1)' form (return of income filed voluntarily for complete year 1 July 2019 to 30 June 2020), in the applicant's name and dated 29 December 2020.
 - An acknowledgment slip relating to a '114(1)' form, in the applicant's name and dated 29 December 2020.
 - Various certificates from the Pakistan Engineering Council confirming the applicant's business is licenced under the Construction and Operation of Engineering Works bye-laws 1987 in respect of identified fields of specialisation.
 - Bank statements, said by the applicant to be the account of his construction business, dated 1 October 2021 to 20 June 2022.
6. The applicant explained by a letter dated 12 July 2022 that he is the sole proprietor of a named construction company, and money is drawn from the company account to meet his personal expenses and those of his family. He further explained that he and his family were required to return to Pakistan after the proposed short holiday as his company was engaged in ongoing construction projects, and his children were required to return to their private schools.
7. The respondent refused the application by a decision dated 12 September 2022. The decision is short, and the following is relevant to the public law challenge:
- You have provided business documents, FBR documents and a business bank statement from Bank (account number ending 0015). However, I note that this bank statement represents funds used for the activities and running of the business and you have not demonstrated that these funds are available to support anything else. You have not demonstrated that you are a signatory to this account. Furthermore these funds do not necessarily reflect an individual's personal financial circumstances, even if that individual is the sole owner of the company. I am therefore not satisfied that this bank statement

demonstrates that your personal or financial circumstances are as stated.

- You have stated that you are planning to travel with your spouse and children. However, the information provided in support of your application does not show what other family you have in your country of residence. On the balance of probabilities I am not satisfied that you have demonstrated that you have ties to your home country which would encourage you to leave should you be granted entry to the UK.
 - I have considered the documents and information submitted in your application; and on the balance of probabilities I am not satisfied that you have accurately presented your circumstances or intentions in wishing to enter the United Kingdom. This undermines the credibility of your application to the extent that I am not satisfied that you are genuinely seeking entry as a visitor or that you intend to leave the UK at the end of your visit. Your application is therefore refused under paragraph(s) V.4.2 (a) (c) of the UK Immigration Rules.'
8. The applicant served a pre-action protocol letter dated 28 November 2022, said by the respondent to have been received on 2 December 2022, and filed his claim notice on 12 December 2022.
9. The respondent reconfirmed her decision by the response of an entry clearance manager (ECM), issued by the British Embassy, Abu Dhabi, dated 22 December 2022. The response detailed, *inter alia*:

'As stated by the ECO, it is generally assumed that a business bank account is for the purpose of running and maintaining a business, rather than for personal expenditure. At the same time, it was not be [sic] clear within this specific account what funds the applicant would personally have access to - either for this visit or the amount he takes as a salary on a regular basis. Even if I consider the points around sole ownership made, I can find no evidence that indicated the applicant was the sole proprietor of the business as claimed. Indeed, the name of the business suggests that other partners were involved in the running of the business, calling into question whether the applicant had sole access to those funds as claimed. Given this, I am satisfied it was reasonable for the ECO to raise concerns around the applicant's sole access to the funds within the bank statement.'

D. Procedural history

10. The claim form and attendant grounds of claim identify three separate public law challenges:
 - i) The respondent failed to have regard to published policy and/or address the policy sufficiently in her reasoning.
 - ii) The respondent's assessment of the financial information provided was 'fundamentally flawed'.
 - iii) The respondent 'appears' to have asked herself the wrong question and/or had regard to irrelevant considerations.
11. Permission to apply for judicial review was granted by Upper Tribunal Judge Norton-Taylor by an Order sealed on 6 March 2023, consequent to a paper consideration. Whilst observing that the grounds enjoyed arguable merit, Judge Norton-Taylor identified the strongest challenge as being ground 2.
12. Due to an accepted oversight by the applicant's legal representatives, the required fee to continue proceedings was not paid in time, and the application was struck out. Consequent to the filing of an application notice, accompanied by an explanation for the oversight and the required fee, an Upper Tribunal Lawyer reinstated proceedings by a Decision sealed on 17 May 2023.

E. Relevant Immigration Rules

13. Paragraphs V.4.2 (a) and (c) to Appendix V of the Immigration Rules are concerned with the 'genuine visitor requirement':

V 4.2. The applicant must satisfy the decision maker that they are a genuine visitor, which means the applicant:

(a) will leave the UK at the end of their visit; and

...

(c) is genuinely seeking entry or stay for a purpose that is permitted under the Visitor route as set out in Appendix Visitor: Permitted Activities and at V 13.3; ...'

F. The Case for the Applicant

14. The applicant contends that the respondent disregarded policy detailed in her 'Visit Guidance' (Version 11.0) (6 October 2021), particularly by failing to consider or address relevant personal circumstances, including his ties to Pakistan through his business and his children attending school.
15. The respondent erred on public law grounds in assessing the considerable evidence the applicant provided as to his being a sole proprietor and the access he enjoys to his business funds.
16. The respondent asked herself the wrong questions. Rather than addressing the relevant questions as to whether the applicant could satisfy the financial requirements associated with the visit and whether his intention in visiting this country was likely to be genuine, the respondent asked whether the applicant had provided a comprehensive account of his personal circumstances.
17. The applicant's grounds of claim note, at para. 5(ix), that the respondent had called the applicant's intentions into question without being prepared to allege that false representations were made.
18. The skeleton argument filed on behalf of the applicant observes at para. 16 that the respondent did not allege that the applicant had made false representations. However, the skeleton argument proceeds, at para. 23, to address precedent authority as to imputations of dishonesty, and at para. 25 addresses the respondent's guidance on false representation, noting the importance of permitting an applicant the opportunity to address an allegation of deception before a decision is made.
19. Para. 30(iii) details:

'... The ECO did not suggest that the evidence produced to him was fabricated in any way, and no one has identified any clear reason why the information provided by [the applicant] in relation to his financial position should have been so regarded. If despite the narrow terms of the ECO's decision, he intended

to make an allegation of dishonesty or fraud, it was clearly incumbent upon him to observe all the safeguards required by law and policy, to make a clear and fully reasoned statement to that effect, and above all to show why an inference of fraud was more likely than an inference of innocence. Given the ECO's total failure to observe any safeguards in that respect, it is difficult to see how he could possibly have reached that conclusion.'

20. The approach adopted is confused. There is an acceptance that dishonesty was not relied upon by the respondent, but it is contended as a public law error that if there was an intention to make an allegation of dishonesty, the respondent should have been clear. I address this confusion below.

G. The Case for the Respondent

21. The respondent's case is that she was entitled to come to the conclusion reached because the evidence presented to her did not adequately detail the applicant's financial position as he produced evidence of a business account which was not specifically in his own name. It was contended that the business enjoyed a different legal personality to the applicant.
22. As to the bank statements, the name of the business suggests that the applicant is not a sole proprietor, and other individuals may use the account. It was for the applicant to explain the true position in respect of the ownership of the business, and the respondent had legitimate concerns in respect of the lack of corroboration as to who had access to the business bank account and whether it was the applicant's sole account.
23. It was confirmed in the respondent's skeleton argument filed and served on 3 August 2023, almost two weeks before the hearing, that at no time did she make any findings of dishonesty in respect of the applicant, and it was wrong of him to suggest that either the ECO or the ECM alleged that any of the documents were not genuine or were not reliable.

H. Decision

24. At the outset of the hearing, Mr O'Brien sought to advance a submission that it was implicit within the decision challenged that the respondent had concluded the applicant to have used deception and/or false documents. This challenge was beyond the scope of the grounds of claim upon which permission was granted, and no application notice seeking permission to amend the grounds of claim had been filed at all, let alone no later than 7 working days before the hearing as required by para. 7. of Practice Directions: Immigration Judicial Review in the Immigration and Asylum Chamber of the Upper Tribunal (17 October 2011, amended 1 November 2013). I observe the judgment of Mrs Justice Lang in *R (Wingfield) v. Canterbury City Council* [2019] EWHC 1975 (Admin), at para 83, that a separate application notice to amend grounds of claim is required to be served so that it can be readily identified, not a paragraph buried in a lengthy skeleton argument.
25. That the amended challenge was advanced on the morning of the hearing can be considered surprising, in circumstances where the applicant had received some time previously assurances that it was not the respondent's case that he was dishonest, or that any of the documents he relied upon were not genuine or were not reliable. After a few minutes of discussion, Mr O'Brien reflected and adopted the appropriate position of withdrawing reliance upon this challenge which had not been pleaded in appropriate written form.
26. Ultimately, the core issue in this matter concerns the respondent's conclusion as to whether the applicant is a sole proprietor running his own business. It is from such conclusion that the documentary evidence is to be properly considered, and the genuineness of the applicant's intentions as to entering and leaving this country are to be gauged.
27. The respondent reached no express conclusion on this important preliminary question in the challenged decision.

28. Rather, the respondent proceeded to make observations, but no more, as to the applicant's business being akin to a partnership, but these observations were founded upon a general and unfocused assumption as to the financial and business documents provided. However, if the applicant is a sole proprietor as he explains in his letter of 12 July 2022 that may on its face be sufficient to establish that the funds in the business bank account are ultimately his as he is the exclusive owner of the business, entitled to keep all profits after tax has been paid but liable for all losses.
29. Consequently, I conclude that the respondent acted unreasonably in proceeding to assess the financial and business documents relied upon by the applicant without first expressly deciding as to whether the applicant is a sole proprietor, as asserted.
30. This initial failure adversely flows through the rest of the decision. If the applicant is a sole proprietor and working for himself as the owner of the construction business the respondent's requirement for clarity as to who else has access to the funds in the bank account by being a signatory to the account, and whether the funds are accessed by the applicant for personal use may be expected to fall away.
31. The failure to engage with what is clearly a preliminary question arising in the entry clearance application is amplified by the contention of the ECM that there was no evidence that indicated the applicant to be the sole proprietor of the business as claimed. I find that the assertion as to there being 'no evidence' is not justified on even a brief consideration of the evidence provided. The income tax online verification record, dated 13 April 2018, placed at page 124 of the hearing bundle, identifies the applicant as being registered for income tax in respect of two businesses, including the construction business, in the category of 'Business Individual'. On its face, this is supportive of the applicant's contention that he is a sole proprietor. Coupled with this are various documents filed with the Federal Board of Revenue establishing that the applicant is filing, in his own name, receipt of a sizeable income earned through the

gross profits of a commercial business, with earnings being identified from contracts as well as personal assets/liabilities being recorded in respect of several commercial, industrial or residential properties.

32. The applicant succeeds on ground 2 as the respondent has failed to reasonably consider the financial information provided. As such failure adversely flows through the respondent's decision, the only proper course is to quash the decision in its entirety and by a mandatory order require the respondent to lawfully consider the applications of the applicant and his dependants for entry clearance as visitors submitted on 22 June 2022.
33. In the circumstances, there is no requirement for grounds 1 and 3 to be considered.

I. Conclusion and disposal

34. For the reasons I have explained, I conclude that the respondent's decision of 12 September 2022 must be quashed for material public law error, and by reason of such conclusion the respondent's decision of 22 December 2022 affirming her earlier decision as accurate and proportionate must also be quashed. The respondent is required to consider within a reasonable timescale the outstanding applications of the applicant and his dependants submitted on 22 June 2022.
35. The parties can properly arrange by means of an agreed order that the applicant be given time to provide up-to-date financial information, including any relevant documentary evidence as to his status as sole proprietor, if so advised.
36. I invite the parties to submit a draft order that gives effect to the above.

D O'Callaghan
Upper Tribunal Judge
Immigration and Asylum Chamber

6 September 2023

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