



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

Appeal Numbers: IA/29015/2013
IA/29020/2013

THE IMMIGRATION ACTS

Heard at Field House

On 24th July 2014

Determination

Promulgated

On 4th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**MOHAMMAD AKBAR HOSSAIN
MARYNA AKTHER**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr F Junior, Legal Representative, UK Immigration
Consultants

For the Respondent: Mr E Tufan. Home Office Presenting Officer

DETERMINATION AND REASONS

EX TEMPORE JUDGMENT

1. The Appellants appeal a decision of First-tier Tribunal Judge, Mr R G Walters, in which he dismissed the Appellants' appeal against the refusal

of their application for a Tier 1 visa. The decision was promulgated on 6th March 2014. The Appellant was granted permission on renewal to the Upper Tier on 19th May 2014 and the Grounds of Appeal make two contentions. I deal with the second contention first as I find it logical to do so.

2. The grounds contend that the bank letter dated 27th August, a letter which the judge found did not include a reference to a landline telephone number, should have been read in conjunction with a second document submitted with the application which is a transaction docket which carries the telephone number of the account holder. The first point I make on that matter is that the specified document requirement has, as has been recently discussed in the case of **Akhter & Another (paragraph 245AA: wrong format) [2014] UKUT 00297**, set out a requirement that needs to be interpreted as it is written. The requirement set out at SD-41(a)(i) (10) is a requirement that the specified document i.e. each letter as described in the Rule must carry that number. On the face of it the judge's finding: that the letter itself does not carry that landline telephone number, is correct. The Appellant's argument that the document should be read in conjunction with the transaction docket falls away in light of the finding in **Akhter** that the requirement must be met by the document specified, and that the failure to meet a requirement in the context of that document does not mean that it is in the wrong format, giving the Appellant the possibility of benefiting from the application of 245AA. It follows that the judge in directing himself that despite that failure he would be entitled to find that the Rule was met is plainly in error. It is not however an error which I find requires me to set the decision aside because if properly directed it would have resulted in a refusal and the judge has in any event dismissed the appeal on other grounds.
3. The second contention is that the specified documents requirement in respect of availability of funds has been too narrowly construed by the judge.
4. The Judge found that the evidence of availability of funds was inadequate on two counts the specified document from the Sponsor qualified the availability of funds describing them as being available following the grant of a visa. The qualification is reflected in the confirmatory letter from the bank. The requirements of the Rules are directed most particularly at the question of the Sponsor making available the funds as evidenced by declaration, and consistent with that a confirmatory letter from the bank. The two are consistent with each other. The difficulty with the qualification in the evidence provided in this case is that the requirements at in SD-41 (a) (i) (9) and at (b) (i)) requires that the funds are available and at (b) (9) remain the present tense position is fortified by the Sponsor having to confirm that the funds will remain available to the point of transfer. Remain in this context necessarily infers availability prior. A plain reading of the rules undermines the contention before me today that the qualification in terms of when the fund becomes available is not relevant in the context of the requirements of the Rules is not sustainable.

5. Accordingly, both the letter from the bank and also the third party declaration failed to meet the specified documentary evidence requirements. Neither are matters which the Appellant can look to paragraph 245AA or any evidential flexibility policy to provide assistance in the context of the guidance set out in the case of **Akhter** to which I have already referred. It follows accordingly that the judge's decision dismissing the appeal contains no material error of law and it stands.
6. Counsel also sought to rely on a matter not raised in the grounds namely an assertion that another Appellant, a business associate of the Appellant, has benefitted from a less restrictive reading of the rule by a different judge. That is an argument which is not open on the grounds upon which permission has been granted but in any event cannot reveal a material error of law in the judge's determination in respect of this Appellant. The judge in the earlier case would not have had the benefit of the guidance of the case of Akhtar but in any event it is a well established point that even when another Appellant has benefitted from an erroneous legal decision it does not operate to mean that an appeal lawfully dismissed is flawed by legal error requiring it to be set aside and remade in the Appellant's favour.

Signed

Date

Deputy Upper Tribunal Judge Davidge