



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

IA/37916/2013

Appeal Number

IA37919/2013

THE IMMIGRATION ACTS

Heard at Sheldon
On 13th August 2014
Prepared 13th August 2014

Determination Promulgated
On 20th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

LUTUF UR REHMAN QURESHI

First Appellant

And

NAZIA KHATOON

Second Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity directions not made

For the Appellant: Mr M Hassan (Solicitor, M Q Hassan Solicitors)

For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The First Appellant applied to remain in the UK under Tier 1 of the PBS as an entrepreneur, the application was made on the 6th of September 2012, the Second Appellant applied as his dependent. The applications were refused for the reasons given in the Refusal Letters of the 3rd of September 2013. The Appellants appealed by Notice and Grounds of Appeal of the 13th of September 2013.
2. The appeals were heard by First-tier Tribunal Judge Chohan at Sheldon on the 10th of March 2014. In a determination promulgated on the 21st of March 2014 the appeals were remitted to the Secretary of State on the basis that there had been procedural unfairness, the Appellant not having been given the opportunity to supply evidence that would support information he had given in an interview.

3. By grounds of the 25th of March 2014 the Secretary of State sought permission to appeal to the Upper Tribunal. It was argued that the Judge had not engaged with the terms of the Refusal Letters and could only have remitted the decision if it had been found that it was not in accordance with the law. It was submitted that the Appellant had not allayed the concerns raised over the origin of the funds relied on. Permission was granted by First-tier Tribunal Judge Brunnen on the 24th of April 2014.
4. At the hearing there was agreement between the parties that the Judge had erred in the approach that he had taken to the issues. There is recent authority that unless the approach taken by the Secretary of State is such that no reasonable decision maker could have made the decision then the appeal must be decided on its merits and it was accepted that the Refusal Letter was not unreasonable in the Wednesbury sense.
5. Accordingly it was agreed that the correct approach to be taken is to find that the determination of Judge Chohan did contain an error of law, to set aside the determination and to remit to the First-tier Tribunal for a fresh hearing with no findings preserved.

CONCLUSIONS

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

The appeal is remitted to the First-tier Tribunal for re-hearing. .

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In remitting the matter to the First-tier Tribunal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 19th August 2014