



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

**Appeal Number: IA/46793/2013
IA/48107/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 7th August 2014**

**Determination Promulgated
On 08th Aug 2014**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**IMRAN AHMED
MUHAMMAD SHAHID ALI KHAN**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mannan, counsel, instructed by Abbott solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Mr Ahmed and Mr Ali Khan applied to vary their leave to remain as Entrepreneurs in a joint application to run a firm Heaven Business Ltd identifying themselves as management consultants. Their application was refused in a decision dated 29th October 2013 and a decision to remove them in accordance with s47 Immigration Asylum and Nationality Act 2006 was made concurrently. Their appeal against those decisions was heard by the First-tier Tribunal on 16th May 2014 and dismissed.
2. Permission to appeal that determination was granted on 18th June 2014 on the grounds that there had been no decision on the pleaded Article 8 ground. Although permission to appeal on the grounds that First-tier Tribunal judge had

failed to give adequate reasons for finding the appellants had not established a genuine business was not refused the judge commented that it appeared this was merely an attempt to re-argue the appeal under the Immigration Rules.

3. The respondent opposed the appeal firstly on the basis that the judge had considered the evidence and given adequate reasons for the conclusions reached and secondly that even if the judge had gone on to consider Article 8 the outcome would have been the same.

Error of law – Article 8

4. In so far as Article 8 is concerned, the only reference in the grounds of appeal to the First-tier Tribunal in the grounds relating to Mr Ali Khan is:

“[10] The decision is unlawful because it is incompatible with the Appellant’s rights under the European Convention on Human Rights. The Appellant has developed a private life in the UK. The Respondent’s decision infringes the Appellant’s Rights under the European Convention on Human Rights.” in seeking permission do not identify an error of law in the First-tier Tribunal but rather assert that the respondent Secretary of State erred in refusing to grant the appellant’s leave to remain in the UK as Tier 1 (Entrepreneur) Migrants. There is one reference to private life in paragraph 23 of the grounds in which it is asserted that the appellant has “developed private life in the UK and the respondent has not considered it while deciding the application.

[23] In addition to whatever stated above the Appellant has developed Private life in the United Kingdom and the respondent has not considered it while deciding the application, hence committed error of law

[25]and this appeal may kindly be allowed under the Immigration Rules as well as under Article 8.”

5. In so far as Mr Ahmed is concerned there is no reference in the grounds of appeal to the First-tier Tribunal to Article 8.
6. The grounds seeking permission to appeal to the Upper Tribunal assert that the First-tier Tribunal judge failed to make any findings with regard to Article 8 private life. Reference is made to the appellants’ legitimate expectation that having been granted leave to remain as Tier 1 (Post Study) Migrants, they had built up economic and social ties with the UK and acquired a legitimate expectation to remain in the UK. Reliance is placed upon CDS (Brazil) [2010] UKUT 305 (IAC). Neither appellant relied upon Article 8 in their applications for variation of leave to remain; Mr Ahmed did not rely upon Article 8 in his grounds of appeal to the First-tier Tribunal and the reliance placed by Mr Ali Khan was minimal to the extreme in that he was relying upon his length of residence. Whilst clearly the two have established a private life in the UK there was no documentary or other evidence before the First-tier Tribunal that could or would have resulted in a decision in favour of the appellants under Article 8 where their appeal in relation to the purpose of their application for leave to remain had been dismissed. In so far as the submission that the appellants had developed a legitimate expectation that they would be able to remain and the reliance on CDS (Brazil) is concerned, there is no legitimate expectation that they would be granted leave to remain in a category where they do not meet the requirements of the Immigration Rules. Nor is there any legitimate expectation that they would

in any event be granted leave to remain on an unspecified basis merely because they have previously been granted leave to remain.

7. Although the First-tier Tribunal determination does not engage with the very limited ground put forward to it by Mr Ali Khan it is inconceivable on the basis of the documentary and oral evidence before the Judge that he would have reached a decision other than to dismiss the appeals on human rights grounds as well.

Error of law – Immigration Rules

8. The grounds seeking permission to appeal assert that the First-tier Tribunal judge erred in failing to give any or any proper reasoning for the conclusions reached; that the appellants had produced sufficient evidence to demonstrate that their business intentions were genuine; that the judge's findings were speculative, inconsistent and unfounded.
9. The judge sets out the evidence before him and gives the appellants credit for matters that would otherwise have reflected adversely upon their assertions. The judge focussed on the issue at the heart of the appeal namely the genuineness of the business. His findings were based upon the evidence before him, taking account of the documentary and oral evidence. Mr Mannan very creditably drew attention to documents that were in the appellants' bundle that had not been specifically referred to by the First-tier Tribunal judge. He submitted that there was no requirement under the Rules for the appellants to provide evidence of the nature suggested by the judge for example transfer of some limited funds from the third party prior to their being granted leave to remain. Although correct in as much as there is no such requirement under the Immigration Rules, the judge was not setting additional requirements but was identifying elements of evidence that would or could have made a difference to his assessment of the evidence overall. The judge clearly had in mind the documents before him; he comments specifically upon the nature of the documents.
10. In reaching his decision the judge draws attention to the burden of proof being upon the appellants; he gives adequate reasons for finding they had not discharged the burden of proof and for dismissing the appeal. His reasons are neither perverse nor irrational. The challenge to the findings, although eloquently argued by Mr Mannan, is little more than an attempt to re-argue matters that have been adequately heard and determined by the First-tier Tribunal.

Conclusions:

There is no error of law in the determination of the First-tier Tribunal such that it is set aside to be remade.

The appeal is dismissed.

Date 7th August 2014

Judge of the Upper Tribunal Coker