



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

Appeal No's: IA/48810/2013
IA/50977/2013
IA/50978/2013
IA/50979/2013
IA/50980/2013

THE IMMIGRATION ACTS

**Heard at Glasgow
on 5 November 2014**

**Determination
promulgated
On 13 November 2014**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

M B SALAKO + 4

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Hussain, of Legal & Legal, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

- 1) The appellants appeal against a determination by First-tier Tribunal Judge Balloch, promulgated on 17 June 2014, refusing their appeals related to Tier 1 of the Points Based System. The other appeals depend upon the first.
- 2) The SSHD refused the applications because the first appellant ("the appellant") did not provide any of the acceptable forms of evidence to show that he had been paying Class 2 National Insurance contributions on his self-employed earnings, as required by paragraph 245 CA(b), Appendix A and paragraph 19-SD(b) of the Rules. It is common ground that the specific requirements are accurately set out at (i) to (iv) of the respondent's decision of 6 November 2013.
- 3) The essential contention of the grounds of appeal to the Upper Tribunal appears to be that the judge's finding that the appellant had not produced HMRC documentation relating to his self-employment was wrong. Granting permission to appeal to the Upper Tribunal on 8 July 2014, Designated Judge Campbell observed:

It appears that the documentary evidence before the judge did include an item from HMRC regarding payment of class 2 contributions but it is not at all clear that this was, as claimed by the author of the grounds, contained in the respondent's bundle. If it was not, and was only made available subsequently, then the grounds have very little merit indeed. I grant permission ... on the basis that it is arguable that the judge may have overlooked evidence ... which accompanied the application.

- 4) Mr Hussain acknowledged that the evidence of payment of self-employed National Insurance contributions contained at paragraphs 38 and 39 of the bundle of evidence for the appellants in the First-tier Tribunal was not included with the applications, but was available only at the stage of the hearing.
- 5) The documents provided with the original application include a self-assessment statement from HMRC dated 26 June 2012, documenting a tax repayment issued to the first appellant on 25 April 2012.
- 6) Mr Hussain argued on the basis of paragraph 245AA of the Rules. He conceded that the HMRC statement could not be categorised as a document "in the wrong format" or as one which did "not contain all the specified information". He relied on sub-paragraph 245AA(d)(iii) for the proposition that the appellant had submitted a "specified document" which did not contain all the specified information, and that the missing information was verifiable from the website of the organisation which issued the document. He further relied upon the respondent's guidance on "evidential flexibility", version 6.0 EXT, valid from 28 March 2014. This provides that if there are "minor errors or omissions on specified documents submitted with a valid application that there is enough evidence to show the application would otherwise be granted, you [the decision maker] may contact the migrant sponsor or representative as appropriate for clarification or to request missing documents and/or information".

- 7) Mr Hussain submitted that HMRC has a website which the respondent could have consulted, and that the document produced was sufficient to prompt such action. The HMRC repayment statement showed that tax had been paid, which implied that National Insurance must also have been paid. The appellant was therefore entitled to have further evidence taken into account, being the item produced to the First-tier Tribunal. That was sufficient to satisfy the Rules, and the determination of the First-tier Tribunal should be reversed.
- 8) Mr Matthews submitted that the HMRC statement did not show that it related to self-employed earnings, and that payment of tax does not necessarily mean that National Insurance was also paid. The other documentation which the appellant produced with his application indicated that he was employed rather than self-employed. An obligation under paragraph 245AA(b)(4) arose in relation to a document which did not carry *all* the specified information. In order to trigger further enquiry, a document must contain *some* of the required information, which was not the case here. Even if enquiry had been triggered, the missing information was not verifiable from any of the other sources suggested. The other documents submitted with the application did not support it. HMRC has a website but it is not generally accessible for individual details of those who pay income tax or National Insurance contributions. The judge had made no error of law and the determination should stand.
- 9) Mr Hussain in reply maintained that there was sufficient information in the self-assessment statement to trigger the obligation on the Secretary of State to ask the appellants for further information.
- 10) I reserved my determination.
- 11) The qualification in the grant of permission was careful and appropriate. It was not apparent at that stage, but is apparent now, that the evidence which might have helped the appellants was not with the original applications. Consideration has to begin with the self-assessment statement. It is not a document which shows any payment of National Insurance contributions. It does not approximate to any of the documents required under paragraph 19-SD(b). It was not a trigger for any obligation on the Secretary of State under paragraph 245AA or in terms of policy. (Mr Matthews submitted that the policy is intended to be explanatory of paragraph 245AA, not an expansion upon it; but in either event there is nothing in it to help the appellants.) There was no specified document to trigger any enquiry.
- 12) Even if the statement were to be treated as a specified document, this is not a question of missing information verifiable either from other documents submitted with the application or from the website of the organisation which issued the document. HMRC website contains public general information,

not details of individual payers. The Home Office and HMRC are both public bodies, but there is no obligation on the Secretary of State to seek individual payment information from HMRC directly; if that were the intended scheme of the Rules, applicants would be excused from producing any more than their HMRC reference number, and the Rules would be framed in a quite different way.

- 13) The appellants have not shown that the determination of the First-tier Tribunal errs in law, and that determination shall stand.

A handwritten signature in black ink, appearing to read 'Hugh Maclean'. The signature is written in a cursive style with a large, stylized initial 'H'.

12 November 2014
Judge of the Upper Tribunal