



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/50540/2013
IA/50545/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court
On 14th August 2014

Determination Promulgated
On 9th September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MR ABDULATEEF OLASEBUKAN AMUSA
(2) MRS FATIMA OLUWAYEMISI YUSAF
(ANONYMY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr T Muman (Counsel)
For the Respondent: Mr I Richards (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Pirotta promulgated on 10th April 2014, following a hearing at Birmingham Sheldon Court on 7th April

2014. In the determination, the judge dismissed the appeal of Mr Abdulateef Olasebukan Amusa and Mrs Fatima Oluwayemisi Yusaf. The Appellants applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are husband and wife. Both are citizens of Nigeria. The first Appellant, the husband, was born on 2nd August 1978, the second Appellant, the wife, was born on 6th December 1981. They appeal against the decision of the Respondent Secretary of State dated 18th November 2013, refusing their applications to remain in the UK as Tier 1 (Entrepreneurs), with the wife being dependent upon the application of her husband.

The Appellant's Claim

3. The Appellant's claim is that he was employed by three firms, Blue Arrow Employment, Krispy Kreme and Ideal Employment, and also operated his own business, MECREF Enterprises. He claimed to earn £5,329, £4,672, £1,099 and £45,076 respectively. He claimed that he was entitled to 35 points for these earnings. He submitted his payslips, bank statements, invoices, together with evidence from his accountants.

The Judge's Findings

4. The judge had regard to the fact that, given the Appellant's claimed income of £45,076 from his business, the Secretary of State attempted to contact the persons named in the 83 invoices, but only six had responded, and many of the written requests were returned by the post office as "addressee unknown". Furthermore, the tax return to the year ending April 2012, reported only an income of £4,420 gross, but the Appellant's business profits were now set to be £45,700 in the year ending 24th January 2013. He had not submitted any explanation for this substantial increase in his business turnover.
5. The judge's findings were that "There was no explanation for this discrepancy" (paragraph 15). The fact that letters were correctly sent to people whose identities and addresses were known meant that there ought to have been an adequate response. Only a few responded and the majority did not reply at all. Many letters were returned. It was true that the Appellant had submitted an account of support, but the Appellant's explanation that his outgoings in operating his own business were said to be £6,624 and this was listed in his trading accounts, and could be explained on the basis that he had bought computer equipment from cardboard sales and markets, which he worked upon and restored, and sold to clients who provided services to computer users, was not plausible because he had submitted no receipts on this respect (paragraph 16).
6. The judge concluded that it was not credible that a bona fide business which involved purchasing goods for re-sale would not obtain invoices or receipts for their

purchase (paragraph 18). It was not accepted that the Appellant had discharged the burden of proof upon him and that the invoices generally showed some charge for second and or reconditioned items (paragraph 19). Consideration was given to the Appellant's human rights claims but these were rejected (see paragraphs 24 to 25).

Grounds of Application

7. The grounds of application submit that the appellant had been ambushed by the fact that matters were raised for which the Appellant was given no proper opportunity to explain and the failure to give him a fair opportunity, to address the matters raised by the Tribunal, before adverse credibility findings were made, was a procedural error, such that there was an error of law.
8. On 16th May 2014, permission to appeal was granted.

Submissions

9. At the hearing before me, Mr Muman, appearing on behalf of the Appellant referred to the fact that there was today a short bundle before this Tribunal and that he would rely fundamentally upon the Appellant's grounds of application. He submitted that there had been a fundamental failure to observe the basic rules of national justice. There was a common law duty of fairness. The Appellant did not deserve to be ambushed. As a matter of procedural justice any allegation that was made ought to have been put to him so that he could deal with it. This had not happened. Secondly, the judge placed disproportionate weight on the fact that the Appellant's customers had not given him a receipt and he was wrong to have concluded that the business was not genuine for this reason.
10. For his part, Mr Richards relied upon his Rule 24 response. He submitted that it was not accepted that the business was a genuine business. If one could not accept the income from the business, one could not say that the business was a genuine one. The invoices were checked by the Home Office and a large number of them were returned when enquiries were made in relation to them.
11. In reply, Mr Muman submitted that the question before this Tribunal was simply whether there was a procedural error in the way that the determination had been made. The question before this Tribunal was not as to the merits of the application. Where there was a procedural error then it was well established that the proper course of action was to remit this matter back to the First-tier Tribunal to be heard again by a judge other than the judge who had sat on the first appeal: see **MM (unfairness; E & R) (Sudan) [2014] UKUT 00105**.

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside this decision. My reasons are as follows. First, the grounds place considerable reliance upon the suggestion that the judge had alleged fraud on the

part of the Appellant (see Ground 1, paragraph D(i), Ground 1 (E(i)); and Ground 2 (form (A))). However, as the judge granting permission on 16th May 2014 observed, this is going too far because the judge did not assert that the Appellant was guilty of fraudulent contact. What the judge stated was that the income as claimed was not a plausible one and this the judge was entitled to do, without making an allegation of fraud, which the judge did not make.

13. Second, it is said that the judge deprived the Appellant of an opportunity of addressing the very issues of one which the judge then found in her decision. For example, the judge states that the Appellant had not submitted any documentary evidence for the purchase of any computers, parts, hardware, software, or accessories (see paragraph 16) and concluded that it was not credible that a bona fide business would not obtain invoices or receipts for such purchases. The Grounds of Appeal assert that no question was asked in relation to this matter of the Appellant, who had submitted a schedule of purchase expenditure for accounting purposes to his accountant, and who could have given such an explanation to the judge if given such an opportunity.
14. This, however, does not mean that the judge fell into any procedural error of law. The fact is that the judge did not find it plausible that such a degree of expenditure in relation to these particular kinds of quotes could not be evidenced by the production of receipts. That conclusion was an entirely sustainable one because even if the question had been put to the Appellant there would still have been no production of receipts, only a reference to the fact that the Appellant had submitted a schedule of his purchase expenditure to his accountant. The judge would still have been entitled to find such an explanation to be an implausible one. What the judge stated was that there was a lack of documentary evidence. The judge was right in this.
15. Another example of this is the criticism made of paragraph 18 of the determination, where the judge states that the invoices for items sold are inflated, and it is said at paragraph 19 that the invoices do not generally show some charge for the second-hand or reconditioned items stipulated. It is said once again (Ground 1D(i)) that this is tantamount to an assertion of fraud. It is not. The judge has to make a finding of fact and this is how the judge, in the entirety of the evidence before her, made her findings. Such a finding was open to the judge.
16. Third, and no less importantly, it is a feature of the determination that the judge had regard to the fact that the Secretary of State had attempted to contact persons named in the 83 invoices but that only six had responded, and most of them did not respond, and a number also were returned on the basis of "addressee unknown". It is said that there is a procedural error in this because although a list was referred to the First-tier Tribunal Judge, by the Presenting Officer, the Appellant was not given any copies.
17. It is not clear why, if the Appellant felt able to deal with this as a matter that could be properly explained, no request was made of the judge to be handed a copy of these names. Instead, it is said that this is tantamount to an assertion of fraud (see Ground

2 (paragraph 4), (paragraph (aa))). It is no such thing. Whereas plainly some people may well have moved on in their addresses it does not explain why so few had responded and a large number had simply failed to respond. Again, the judge was entitled to come to the conclusion that she did. After all, it must not be forgotten, that the judge has to make findings of fact in relation to these matters. This the judge did.

18. In short, this appeal is an attempt to re-argue matters that have already been properly decided by the judge. Another judge may well have decided these questions differently. However, it cannot be said that the findings made by this judge are in any way perverse or irrational because they were open to the judge to make on the basis of the evidence that was presented to the judge.

Decision

19. There is no material error of law in the original judge's decision. The determination shall stand.
20. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

8th September 2014