



IAC-BH-PMP-V1

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

Appeal Number: IA/50889/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 10th November 2014**

**Decision & Reasons Promulgated
On 26th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

**MR SANDEEP ANAND
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N M K Lawrence instructed by Louis Kennedy Solicitors

For the Respondent: Miss C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is an Indian national born on 8th March 1980.
2. On 28th November 2013 a decision was made by the Respondent to refuse to vary leave to remain in the United Kingdom and to remove the Appellant by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The Appellant has exercised his right of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
3. The Appellant's immigration history shows that he first entered the United Kingdom on 10th September 2007 with valid entry clearance as a student. Two years later he

was granted leave to remain as a Tier 1 (Post-Study Work) Migrant and on 21st September 2011 he was granted leave to remain for a further two years as a Tier 1 (General) Migrant. He was interviewed in connection with his present application on 5th November 2013.

4. The appeal was heard by Judge of the First-tier Tribunal Beg at Richmond on 30th May 2014 and dismissed in a determination promulgated on 13th June 2014. Permission was granted by First-tier Tribunal Judge Heynes on 4th July 2014. The Grounds of Appeal are described by Judge Heynes as being poorly drafted but the judge considered that they may be construed as a complaint that the First-tier Judge failed to give adequate reasons. Judge Heynes noted that the determination does not include any finding as to whether the Appellant did or did not meet the requirements of the Immigration Rules; only that it (i.e. the Respondent's decision) was in accordance with the law.
5. Thus the matter came before me in the Upper Tribunal on 10th November 2014. Representation was as mentioned above. I had before me all the documents which were before the First-tier Tribunal. In addition I had the benefit of a skeleton argument drafted by Mr Lawrence, a copy of the Upper Tribunal's determination in Ahmed and Another (PBS: admissible evidence) [2014] UKUT 365 and a copy of Appendix A of the Immigration Rules.
6. At the end of the hearing I reserved my decision on the error of law issue which I now give with my reasons.
7. The Respondent's reasons for refusing the Appellant's application for further leave to remain as a Tier 1 (General) Migrant under the points-based system (PBS) are set out in a seven page letter dated 28th November 2013. With due respect to the Respondent's representative who drafted that letter, it is not an easy document with which to grapple. In fact I had to read it several times before fully understanding the reasons which were being put forward in support of the refusal. That is possibly due, at least in part, to the fact that the letter records verbatim extracts from the Appellant's interview. The standard of English is regrettably poor which makes the whole thing very difficult to understand. However, in summary, the Respondent appears to have concluded that the Appellant's claimed method of doing business and providing services was neither plausible nor credible. The Respondent concluded that the Appellant was not the owner of Antech Solutions Ltd, a company which he claimed to own, because records at Companies House showed that the company name belonged to someone else. It was also considered that the fees charged by the Appellant were excessive and unrealistic. The Respondent found it not plausible that the Appellant would design a website for a client without knowing the nature of the business in which the client's company was involved. Secondly, the client was himself a designer but the Appellant nevertheless claimed to have charged him £3,000 for something which he could have done for himself. Finally, the Respondent appears to have drawn an adverse inference from the fact that the Appellant did not provide his customers with a certificate at the end of the training course which he claims to have provided.
8. I find that the First-tier Judge's determination is far from clear. In addressing the Respondent's reasons for refusal, the First-tier Judge has simply quoted verbatim a substantial part of the Respondent's refusal letter. This takes up no less than four

pages of the determination which is only eight pages in length in its entirety. The judge has made a number of findings at paragraphs 8 to 14 inclusive which are interspersed between references to the evidence and submissions. The judge concludes by stating “In considering the evidence as a whole and on a balance of probabilities, I find that the Respondent’s decision is in accordance with the law”. The reasoning behind this conclusion is, I regret to say, difficult to follow and I agree with Judge Heynes (who granted permission to appeal), that the determination does not include any findings as to whether the Appellant did or did not meet the requirements of the Immigration Rules.

9. I have to say that I have some sympathy for the First-tier Judge because many of the documents placed before her were not readily understandable. I would refer in particular to the Appellant’s own witness statement dated 26th May 2014. For someone who claims to have a MSc degree in mobile computer systems from Staffordshire University, the standard of English is remarkably poor and the statement is, in my view, difficult to follow.
10. I have been assisted by the skeleton argument submitted by Mr Lawrence for the error of law hearing. He makes a number of points which are, thankfully, readily understandable. Mr Lawrence’s arguments refer specifically to paragraphs 8 and 9 of Judge Beg’s determination. A section of paragraph 8 has been quoted verbatim. This is the part of the determination where the judge records that Antech Solutions Ltd is not the Appellant’s company as the company belongs to someone else as recorded by Companies House. Mr Lawrence argues that this is a bare assertion by the Respondent which has been repeated and adopted by the First-tier Judge. It is argued that the Respondent ought to have disclosed the “someone else” who is said to own the company in question. In the absence of disclosure the Appellant is prevented from properly meeting the issue raised and prosecuting his appeal.
11. The next point refers to the Respondent’s assertion in the reasons for refusal that “the only thing on that website to show that it possibly belongs to you is the contact page which appears to show your home address”. It is submitted that the First-tier Judge did not deal with this point in her determination. It is further submitted that the words “possibly” and “appears” are value judgments and not the anxious scrutiny of the evidence which is required.
12. With reference to paragraph 9, Mr Lawrence submits that the First-tier Judge erred in finding that an invoice addressed to one of the Appellant’s claimed customers required corroboration. Mr Lawrence correctly argues that corroboration is not required as a matter of law or practice. The perceived lack of it should not have led to a negative finding. Instead, the First-tier Judge should have looked at the evidence in the round and applied the civil standard to ascertain whether or not the Appellant had discharged the burden of proof.
13. At paragraph 13 there is a reference to “conclusive evidence”. The grounds submit that this suggests that the First-tier Judge applied the wrong standard of proof. The civil standard, which applies in these proceedings, does not require conclusive evidence. The test is a balance of probabilities.
14. Finally, it is argued that the First-tier Judge has raised a fresh issue at paragraph 14 of the determination. The judge found that there was no documentary evidence from

HM Revenue and Customs. In the Rule 24 response, the Respondent asserts that documents from HMRC were before the First-tier Judge. It is submitted that they were not. It is submitted that the Respondent did not carefully consider the bundle submitted with the application, or to the First-tier Judge at the appeal hearing.

15. In conclusion, the grounds submit that the First-tier Judge failed to consider the evidence in the round and that negative findings were not evidence based.
16. In oral submissions, Miss Johnstone relied on the guidance given by the Upper Tribunal in Ahmed which is referred to above. Miss Johnstone also argued that at no point in the Appellant's witness statement did he claim that his company is not a certificate awarding body, therefore it is not open to him to rely on that argument now. Miss Johnstone submitted that it is not for the Upper Tribunal to re-make the decision on evidence which was not before the First-tier Tribunal. She submitted that the First-tier Judge has made clear findings for not accepting that the Appellant's case was credible.
17. This is by no means an easy matter to resolve, but I have concluded that the First-tier Judge's determination does not demonstrate adequate reasoning in support of the overall conclusion. I am satisfied that she has not made any clear finding as to whether the Appellant did or did not meet the requirements of the Immigration Rules. I am satisfied that the arguments advanced by Mr Lawrence are well made.
18. It is my view that this is a situation which requires a de novo hearing in the First-tier Tribunal. I have reminded myself of the Practice Statement and in particular paragraph 7.2 which deals with remittal. I am satisfied that the First-tier Tribunal's determination should be set aside on account of an error of law, namely inadequacy of reasoning, and that the matter should be heard afresh in the First-tier Tribunal by a different First-tier Judge.

No anonymity direction is made.

Signed

Date 25th November 2014

Deputy Upper Tribunal Judge Coates