



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

Appeal Number: IA/07026/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6 January 2015**

**Determination Promulgated
On 15 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**MOHAMMED HABEEBUDIN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Amgbah, Legal Representative, UK Law Associates
For the Respondent: Miss L Kenny, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Oakley promulgated on 1 October 2014 dismissing the appeal of the Appellant, Mr Mohammed Habeebudin, against a decision of the Secretary of State for the Home Department dated 22 January 2014 to refuse to vary leave to remain and to remove the Appellant from the United Kingdom.

Background

2. The Appellant is a citizen of India born on 4 June 1979. He first entered the United Kingdom as a student and was thereafter granted successive periods of further leave to remain as a Tier 4 Migrant, and most recently as a Tier 1 (Post-Study Work) Migrant from 30 December 2011 until 30 December 2013. Just prior to the expiry of his leave, on 30 December 2013 he submitted an application for further leave to remain as a Tier 1 (Entrepreneur). That application was, as is identified at paragraph 16 of the decision of the First-tier Tribunal, made without the benefit of any legal advice. The application was deficient in a number of material respects.
3. The Respondent refused the application for reasons set out in a combined Notice of Immigration Decision and Reasons for Refusal Letter dated 22 January 2014. This document is a matter of record and I do not propose to quote extensively from its contents. Suffice to say it identifies the various defects in the Appellant's application at some considerable length. The application was refused with reference to paragraph 245DD(b) of the Immigration Rules. In the circumstances, with reference to paragraphs 245DD(h) and (l), the Respondent did not carry out a detailed assessment of the Appellant's business proposal.
4. The Appellant appealed to the IAC. His appeal was dismissed for reasons set out in the determination of Judge Oakley.
5. The Appellant sought permission to appeal to the Upper Tribunal which was granted on 19 November 2014 by First-tier Tribunal Judge Colyer.

Consideration

6. Before the First-tier Tribunal the Appellant placed reliance upon the provisions of paragraph 245AA of the Immigration Rules and argued that the decision of the Secretary of State was not in accordance with the law because a request for further information and materials should have been made pursuant to paragraph 245AA in order to rectify the various defects that were identified in the combined Notice of Immigration Decision and Reasons for Refusal Letter.
7. In my judgement the reasoning of the First-tier Tribunal Judge in addressing the arguments made on behalf of the Appellant is unsatisfactory in two respects.
8. Under the heading "*My Findings of Fact*" the Judge does not set out any particular findings, but rather merely rehearses the facts asserted by the Appellant without stating in terms whether or not he accepts them.
9. In considering the provisions of paragraph 245AA the Judge says the following at paragraphs 19 and 20:

“There is provision contained in the Rules under paragraph 245AA for documents that are not submitted with the application to be requested but the wording of 245AA refers to certain documents that could be requested but Rule 245AA does not envisage that if a number of documents or details are omitted then a multi-faceted request should be made by the Respondent to the Appellant merely because the Appellant has failed to complete the application properly or provide all the relevant documents.

Paragraph 245AA is clearly there to enable the Respondent to request, for example, if one bank statement is missing from a series the missing document, or if a document is in the wrong format, for example if the letter is not on letterhead paper, then requesting it in the correct format. Rule 245AA specifically gives examples and uses the word “or” between each of the clauses. It does not envisage if a number of documents are missing or in the wrong format then a request for corrections and replacements should be made.”

10. Paragraph 245AA does indeed draw a distinction between documents that have been submitted in support of an application but are considered defective for the purposes of the Rules by reason of being in the wrong format, or are copies rather than originals, and documents that are omitted from the application altogether. There is a further distinction recognised under paragraph 245AA between the omission of a document, and the omissions of information from a document that has been submitted. Where a document has been omitted – rather than being defective in one of the ways specified in 245AA – it is only in the limited circumstances identified at 245AA(b)(i), *“Some of the documents in a sequence have been omitted”*, that paragraph 245AA will be engaged.
11. However, in my judgement the First-tier Tribunal’s reference to a *“multi-faceted request”* as being something not envisaged under paragraph 245AA, lacks coherence and reasoning. On the face of it, there is nothing in the wording of paragraph 245AA that in and of itself excludes the Respondent from making a ‘multi-faceted’ request if each of a number of deficiencies engages the terms of paragraph 245AA. However, it appears that the Judge did indeed consider that where there are a number of deficiencies the Respondent should not contact an applicant to request the correct documents by reason of the number of such deficiencies alone – irrespective of the possibility that each such deficiency individually would have justified a request under paragraph 245AA. If, as appears to be the case, that was the reasoning underlying the Judge’s observations at paragraphs 19 and 20, then in my judgement such reasoning was in error of law.
12. Be that as it may, however, the Judge identifies at paragraph 5 of the determination that the decision of the Respondent was based in part on the omission to submit documents, and in particular specified evidence pursuant to paragraph 46-SD of Appendix A of the Rules.
13. In setting out his conclusions the Judge also emphasises the omission of documents. See for example at paragraph 22: *“It is clear that some of the documents submitted were either in the wrong format, or some were omitted...”*.

14. In this context I note in particular the following feature of the Appellant's application and appeal. In order to demonstrate that £50,000 was available to be invested in his business in the UK the Appellant relied upon a combination of money held by himself, money held by a third party, and money already invested in his business. Paragraph 14 of the determination identifies this circumstance in the following terms:

"[T]he Appellant states that when the application was made he relied on £18,438 available from a third party and £27,593.23 in his own account and £4,541.80 already invested in his business, which totalled £50,629.53 and was the figure contained in his business plan."

15. I pause to observe that these figures are not readily reconcilable with the information provided in the Tier 1 (Entrepreneur) application form at Sections G10 and G11, in particular at Section G11 where the Appellant asserted that he had already invested £15,105.80.
16. Be that as it may, in the Respondent's Reasons for Refusal Letter it was identified that the Appellant had not submitted with his application the documents specified under paragraph 46-SD of Appendix A to demonstrate the sum of money said to have been invested already in the business.
17. Before me today it is acknowledged on behalf of the appellant by Mr Amgbah that it was indeed the case that the specified evidence had not been submitted with the application. In my judgement this is an omission of documents that is not in any way capable of 'rescue' by the provisions of paragraph 245AA, the omitted documents not being of a nature identified under any of subparagraphs 245AA(b)(i)-(iv).
18. In the circumstances, even if there were something of substance to the Appellant's arguments in respect of the evidence relating to thirty party support and the bank letters that he had been able to provide, the circumstances were such that paragraph 245AA did not cover the omission of material documents to an extent that on the face of it the Respondent's decision-maker was justified in declining to request any further documents pursuant to paragraph 245AA.
19. In this context Ms Kenny also emphasised a further relevant omission - as opposed to defect of format - by reference to the requirements of paragraph 41-SD(e)(v). Whilst a suitable document from Companies House was submitted in the context of the appeal - see Appellant's bundle at page 59 - such a document was not in fact created until 19 March 2014. Accordingly this was a further example of an omission that could not have been remedied pursuant to paragraph 245AA at the date of application or decision.
20. The First-tier Tribunal Judge in concluding his determination states this at paragraph 23:

"I am satisfied that in those circumstances of the application and the omitted documents that the Rules have not been complied with."

21. It seems to me that that is a proper reflection of the situation in this case. The Appellant's application did not meet the requirements of the Rules; in so far as it was defective some such defects did not fall within the ambit of paragraph 245AA; this was sufficient to justify the decision-maker declining to request correct documents in respect of any deficiencies that might have fallen within the ambit of 245AA.
22. I have reminded myself of the provisions of section 12 of the Tribunals, Courts and Enforcement Act 2007. Whilst it seems to me that there is an error of law in the Judge's observations and comments in respect of paragraph 245AA, by reference to the discretion conferred under section 12(2)(a), in all the circumstances of this particular appeal I do not set aside the decision of the First-tier Tribunal.
23. The decision of the First-tier Tribunal accordingly stands.

Notice of Decision

24. The decision of the First-tier Tribunal contained no material error of law and stands.
25. The appeal is dismissed.

The above represents a corrected transcript of an ex tempore decision given at the hearing on 6 January 2015.

Signed

Date: 14 January 2015

Deputy Upper Tribunal Judge Lewis