



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

Appeal Numbers: IA/14003/2014  
IA/14015/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 7<sup>th</sup> January 2015**

**Decision & Reasons Promulgated  
On 20<sup>th</sup> January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**MR KEHINDE OLAONIPEKUN AWONIYI (FIRST APPELLANT)  
MRS REMILEKUN COMFORT VAUGHAN (SECOND APPELLANT)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Afsal  
For the Respondent: Mr McVeety

**DECISION AND REASONS**

**Introduction**

1. The Appellants born on 5<sup>th</sup> September 1978 and 4<sup>th</sup> January 1983 are both citizens of Nigeria. The Appellants were represented by Mr Afsal. The Respondent was represented by Mr McVeety, a Presenting Officer.

### **Substantive Issues under Appeal**

2. The Appellants who are husband and wife had made application for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant and his dependent. The applications had been refused by the Respondent under paragraph 245DD(h) of the Immigration Rules and under paragraph 319C(b) of the Immigration Rules in respect of the Second Appellant. The Appellants had appealed that decision and their appeal had been heard by First-tier Tribunal Judge Devlin sitting at Manchester on 5<sup>th</sup> June 2014. He had dismissed their appeals both under the Immigration Rules and on human rights grounds.
3. Application for permission to appeal had been made and permission to appeal had been granted by Designated First-tier Tribunal Judge Zucker on 5<sup>th</sup> September 2014. He noted the grounds included the submission that the judge had failed to state the standard of proof being applied and further noted that although the Appellants would have a very steep hill to climb in the appeal and ordinarily would not have found errors identified because of the manner in which the judge had expressed his concerns at paragraph 54, it was said that it was arguable the judge had applied the wrong standard of proof. Directions were issued for the matter to be heard by the Upper Tribunal firstly to decide whether or not an error of law had been made and the matter comes before me in accordance with those directions.

### **Submissions on behalf of the Appellant**

4. Mr Afsal referred me to paragraph 54 and further stated that at no stage had the judge outlined the burden and standard of proof in such cases. Central to his submissions were that the judge had made a basic mistake in that he had made findings going behind the fact that there were funds within the bank account and such findings were unnecessary. Essentially he submitted that it was not necessary to look at the sources of funds and that was the main problem in the decision.

### **Submissions on behalf of the Respondent**

5. Mr McVeety referred me to the decision and noted it was necessary for the judge to be satisfied that funds were genuinely available. There were two separate funds in this case and it was submitted the judge had for proper reasons given found that he was not satisfied those funds were genuinely available. Further for reasons provided he had found that the business plan had clearly been plagiarised but for reasons given at paragraph 87 onwards the Appellants had not outlined a credible business plan or had carried out any meaningful research. He submitted the judge was entitled to reach those conclusions.
6. At the conclusion of the submissions I reserved my decision to consider the matter and now provide that decision with my reasons.

## Decision and Reasons

7. The judge in this case had provided a very detailed determination running to 119 paragraphs. He had identified the relevant Immigration Rule as being paragraph 245DD and that paragraph 6 of the decision set out the requirements of that paragraph. In particular, and germane to this case he had set out paragraph 245DD sub-paragraph (h) and sub-paragraph (i) which in themselves make reference to the appropriate standard of proof applicable in such cases namely a balance of probability. The judge for the sake of completeness at paragraph 7 had also set out in its entirety the Respondent's reasons for refusing the First Appellant's application which concerned factors within paragraph 245DD(i) namely in making the assessment in (h) the Secretary of State will assess the balance of probabilities and may take into account the following factors namely:
- (i) the evidence the applicant has submitted;
  - (ii) the viability and credibility of the source of the monies referred to; and
  - (iii) the viability and credibility of the applicant's business plans and market research into their chosen sector.

It is quite clear therefore that the judge had at the forefront of his mind the essential basis upon which the Respondent had not been satisfied with the First Appellant's application and the standard of proof in assessing the evidence presented.

8. There were two sources of income within accounts that required consideration in light of the Respondent's refusal. There was a small amount of £1,540 and the larger amount of £44,500.
9. Mr Afsal's submissions were principally based on the fact that once evidence of those monies being available or within an account had been established it was neither necessary or incumbent upon the judge to have enquired further. There may well have been a time at the advent of the introduction of the Tier 1 (Entrepreneur) Rules where the mere presence of the requisite sum of money in an account was all that needed to be proved. However the Immigration Rules were changed or enlarged after a period of time to require rather more or closer examination than simply the fact of monies being within an account. That no doubt followed from knowledge and experience that the earlier and simpler requirements were or had been open to abuse. The Immigration Rules are clear and the reasons for refusal specifically set out by the Respondent. The judge correctly had therefore looked at those two separate sources of money in light of the two elements of dissatisfaction expressed by the Respondent in line with paragraphs 245DD(i)(i) and (ii). The judge had set out in detail and with clarity his findings and reasons in respect of those two sums of money. He had found at paragraph 29 that he accepted letters demonstrating the presence of monies in the accounts as being genuine and accurate and at paragraph 30 therefore concluded that the Respondent's first reason namely the refusal under paragraph 245DD(i)(i) was not sustainable. Thereafter from paragraph 31 onwards he had looked at the Respondent's second basis of dissatisfaction under (ii) namely

the viability and credibility of the sources of the monies referred to. He was not only entitled to conduct that exercise but it was incumbent upon him so to do to deal fully with the reasons for refusal and in accordance with the Immigration Rules.

10. He had between paragraphs 31 and 83 examined the Respondent's concern raised under paragraph 245DD(h)(iii) examined whether that money was genuinely available to the applicant and will remain available to him until such time as it is spent for the purposes of his business or businesses. He had for reasons provided and well-explained concluded that the monies were not genuinely available to the applicant or that it would remain available to him until such time as it is spent for the purposes of his business or businesses. Indeed it is worthy of note that at paragraph 76 he had specifically noted Mr Afsal's submission before him that it was not necessary for the Appellant to show the provenance of the money but at paragraph 78 had properly indicated that the requirements of paragraph 245DD(h)(iii) provided that the Respondent must be satisfied that the money was genuinely available etc. The central plank of Mr Afsal's submissions before me and contained within his Grounds of Appeal had therefore already been dealt with and properly explained by the judge in the First-tier Tribunal.
11. The judge finally had dealt with the last concern raised by the Respondent namely the viability and credibility of the applicant's business plans under paragraph 245DD(i)(iii). He had at paragraph 84 outlined the three reasons given by the Respondent for not being satisfied with that business plan and market research. The judge between paragraphs 84 and 109 had then looked at those concerns raised. The judge had noted that one of the reasons given was that the Appellant's business plan had clearly been plagiarised from a business plan available from an internet website. The judge noted that the Respondent had produced a copy of the relevant web page. The judge dealing fairly with this point had commented at paragraph 87 that of itself the use of a business plan template is not something from which he would ordinarily have drawn an adverse inference. Indeed he had referred to the case of **Baylan [2012] UKUT 83** where the Upper Tribunal had dealt with this point. However he had also noted that in this case the Appellant had specifically stated within his witness statement that he had not copied the business plan from any website and had prepared it himself as he was fully qualified to do. The judge thereafter had given reasons why he did not accept that explanation and found the Respondent's reason for refusal in that respect to have had substance. He had then considered the Respondent's further reasons that the business plan was extremely vague and provided no details as to how the Appellant claimed he would realistically achieve a growth rate of 900% over two years. The judge assessed both the documentary evidence and the Appellant's oral evidence in that respect and again for reasons properly given found the Respondent's second reason to be well-founded. He also found the Respondent's third reason as to how the Appellant would target existing customers or attract new customers to be an unsatisfactory response. Again the judge had found for reasons given that this concern raised by the Respondent was well-founded. There was a typing error at paragraph 109 of the decision where the judge had put the word Appellant rather than Respondent but that typing error is manifestly clear from the context of that and preceding paragraphs. In summary the

judge had found that the Appellant failed to meet the requirements of paragraph 245DD(h)(i) and (iii) and had not on a balance of probability satisfied under paragraph 245DD(i)(ii) and (iii). He had given clear and detailed reasons for reaching those conclusions based both on the documentary and oral evidence before him. They were conclusions he was entitled to reach and no error of law was disclosed in the manner in which those conclusions were reached.

12. In respect of paragraph 54 specifically noted in the permission to appeal the judge had said in that paragraph “for all of these reasons I find that I have genuine doubts as to the source of the £1,540 deposited in the Appellant’s current account on 10<sup>th</sup> January 2014”. That phraseology does not in itself necessarily demonstrate the judge was unaware of the burden and standard of proof in this case. It is also necessary when such assertions are made to have regard to a decision read as a whole. It is clear the judge had in his mind the correct burden and standard of proof. Whilst he may not have set out a specific paragraph outlining the burden and standard of proof in immigration cases it is not necessarily incumbent upon him so to do. It seems a unique feature of this jurisdiction that judges are criticised on occasions for not repeating verbatim such matters particularly when it is clear on a reading of a decision as a whole that a judge has applied the correct test.
13. Finally in terms of Article 8 the judge dealt with that matter briefly as he was entitled to do given the failure of the Appellants to meet the Immigration Rules, the fact there would be no interference with family life and the fact, as noted by the judge at paragraph 118, no evidence of private life in terms of its nature or extent had been provided by the Appellants.

### **Notice of Decision**

14. There was no error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

Signed

Date **19<sup>th</sup> January 2015**

Deputy Upper Tribunal Judge Lever