



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/14481/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham
On 10th April 2015

Decision & Reasons Promulgated
On 20th April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMAD SAQIB
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr N Smart (Senior Presenting Officer)

DECISION AND REASONS

1. This appeal arises by way of relisting in accordance with directions given by DUTJ French on 3rd November 2014, when he heard the appeal of the Secretary of State (who will be referred to as the Respondent as she was before the First-tier Tribunal)

against the decision of FTJ Obhi, when she allowed the appeal of Muhammad Saqib (who will be referred to as the Appellant as he was before the First-tier Tribunal).

2. Muhammad Saqib had appealed against the decision of the Secretary of State to refuse to vary his leave in the capacity of Tier 1 (Entrepreneur) Migrant and to remove him under Section 47 of the IANA 2006. His appeal was determined by Judge Obhi on 23rd May 2014 and allowed. The Secretary of State appealed that decision, and permission was granted by Judge Molloy on 17th June 2014.

3. Judge Obhi made her findings at paragraphs 15 to 17 inclusive of her determination. At paragraph 16, as DUTJ French makes clear, Judge Obhi commented that

“The Appellant had in fact done little more than form the idea that running the business was what he wanted to do but he had not yet taken steps by way of advertising or setting up a website and had clearly not yet received any interest in the business”. (See paragraph 2 of Judge French’s determination).

4. At paragraph 17 Judge Obhi had stated that, “there has to be genuine concern about whether the Appellant intends to set up his business or not, ...”. The judge went on to say that, “he clearly has not undertaken sufficient research into the business that he intends to run nor has he tested the waters by putting out adverts or trying to see what interest there would be. He has based a lot of research on the internet ...”.

5. What appears to have swayed the judge at that time was that, “however, he comes from a background of a family that runs a courier business”. This led the judge to conclude that,

“The fact that he has taken the trouble to secure funding for the business is an indication that he will set it up. I also do not think that the financial institution would have agreed to lend him a substantial sum unless it had some faith in his proposal ...”. (See paragraph 2 of Judge French’s determination).

6. Judge French went on to conclude that the First-tier Tribunal Judge, Judge Obhi, “clearly had substantial misgivings concerning the Appellant’s ability to actually set up this business, stating at paragraph 15 that he had done little more than form the idea that that was what he wanted to do”. Judge French then went on to say that, “there had to be a genuine concern about whether the Appellant intended to set up his business or not”.

7. This is because, “the fact that the points had been awarded by the Secretary of State did not in itself answer the question of whether the Appellant intended and was able to establish the business within six months”. This was important because

“Under the Rules that is a specific requirement at paragraph 244DD(h)(i) that there must be an intention to set up the business within six months. The judge failed to make a finding on that issue. Indeed, the fact that she went on to say that his business plan required a lot more effort might be seen as an indication

that he would not be in a position to be able to set up the business within six months. The issue however is unclear and requires clarification” (paragraph 7).

8. It was in these circumstances that the judge went on to say that there would have to be a further hearing “at which the Appellant may give oral evidence” because Judge Obhi’s findings were unclear “and arguably contradictory in certain respects” (paragraph 8).
9. Judge French then gave directions that the matter was to be relisted before the Upper Tribunal before the decision could be remade and that both parties are to serve upon the Tribunal and upon each other at least ten days before the resumed hearing copies of any further documents.

Submissions

10. At the hearing before me on 10th April 2015 there was no attendance by the Appellant. Instead, the clerk, Mr Bowen, turned up to say at lunchtime that, before the hearing at 2 p.m., he had had the occasion to speak with a first cousin of the Appellant, who had turned up at the Tribunal to say that the Appellant had yesterday been taken into hospital with serious chest pains to the heart, and he would not be in a position to attend. I indicated to Mr Bowen, the court clerk, that he must immediately take back the message to the alleged first cousin, to explain to him that unless there was something in writing to this effect, I would not entertain an application for an adjournment, for a hearing of which due notice had been given in a timeous and clear fashion. Mr Bowen took the message back. However, the alleged first cousin was then nowhere to be seen in the vicinity of the courtroom. I delayed beginning my hearings for the afternoon. At 2.15, with no other matter in the list for the afternoon, I began this hearing, and at 2.30 p.m. Mr Bowen undertook to return to the waiting room to see if the alleged first cousin was still there. There was no trace to be found of him and so the hearing continued.
11. The Overriding Objective requires the Tribunal to deal with matters fairly and justly. The parties are requires to assist the Tribunal in achieving that objective. There was no application for an adjournment before me. Had it materialised I would have expected it to be backed up by proper medical evidence.
12. Mr Smart, in his submissions on behalf of the Secretary of State, referred to the 61 page bundle which was the new document before this Tribunal. It was not clear who had sent this. There was no solicitors’ covering letter attached to it. On the other hand, it was an identical bundle to the one that was before the First-tier Tribunal Judge. Mr Smart submitted that it was well-known to the Appellant that there were issues upon which evidence was required, and such evidence could have been properly submitted to deal with the issues in question. It had not been submitted.
13. What was clear was that there was no proper business plan submitted by the Appellant at all with respect to his application. There was no cost analysis. At page 60 of the latest 61 page bundle, there was a “business plan” and this referred to Cargo Services to “lease two Transit type vans”. At the end there was a reference to

a multi-year profit and loss account. At page 60 there was a list of depreciation on the vans of £500. It was not clear why there was this reference because on page 54 the business plan refers to the first objective of the Appellant being to “lease two medium size Transit type vans”, which meant that if he was leasing out vans, there would not be a depreciation on the vans included in the analysis.

14. The whole plan was “fanciful”, in the words of Mr Smart. It was clear that there was no possibility of the Appellant being able to succeed in the business plan within six months of its submission. The First-tier Tribunal Judge, Mr Obhi, clearly had very substantial doubts already (set out at paragraphs 15 to 17 of her determination), where she had made it clear that the plan would “require a lot more effort”, and it was clear that it was simply not a credible and feasible plan. Given that the Appellant had not furnished any evidence today, and nothing from his solicitors had been forthcoming, this appeal could not succeed.
15. After the hearing ended, and at 3.10 p.m., Mr Bowen returned to my chambers room with a couple of documents, which he maintained had been handed to him by the first cousin who had apparently returned back to the building with these documents later on in the afternoon. First, there was a letter from Osmands (Solicitors), dated 9th April 2015, and this stated that “we are instructed by our client that he was admitted to hospital following severe chest pains. Mr Saqib is required to undergo an Echo test as the chronic pain had lasted for over four hours. His troponins were raised to 22”.
16. Given what is said, however, and given the manner in which it is said, it is surprising then to read the next paragraph which states,

“Mr Saqib was discharged from hospital and a letter confirming this is attached. However, since his discharge, Mr Saqib experienced localised pain in his chest, which last night became fairly severe following a bout of dizziness. Mr Saqib has been advised to take complete bed rest until 15th April 2015”.

It is not at all clear what the medical basis for this advice is that he should have complete bed rest until 15th April 2015. There is certainly a “statement of fitness for work for social security or statutory sick pay” purposes, which refers to “chest pain, dizziness, advised rest”, but the “comments” section is left incomplete by the relevant medical practitioner. Very little is given by way of detail as to why the Appellant cannot attend this hearing. The document, as it stands, is for a “statement of fitness for work”. The Appellant is not coming to work in coming to this hearing to give evidence. Nevertheless, Osmands Solicitors then continued to say that, “it is clear to those instructed that Mr Saqib is not physically fit to attend the hearing scheduled for tomorrow at 2 p.m. where his evidence would be crucial to the outcome of his case”. Osmands Solicitors then go on to say that, “in the light of the above we request that the matter listed for hearing tomorrow be adjourned in the interests of justice for at least three weeks”.

17. What is much more plausible and credible, however, is the letter from University Hospitals Birmingham, dated 5th April 2015, which is addressed to Dr B. Ahmed, which refers to the diagnosis as “chest pain ? related to supplement”. It is unclear why a hospital, such as the University Hospitals Birmingham NHS Trust, should insert a question mark in relation to an alleged claim of “chest pain?”.
18. In any event, nothing excuses or explains away the fact that written evidence was required of a plausible nature confirming that the Appellant would be able to set up business within six months. This evidence is not before this Tribunal. The Appellant himself is not before this Tribunal. There is nothing in the latest medical evidence, which comes from the Newport Medical Group, in Birmingham, and is significantly ‘unsigned’ in the box made available for the doctor in charge, that states that this Appellant is unable to attend this hearing to give evidence.
19. The entire matter is deeply suspicious and, I conclude, entirely contrived, to prevent the Tribunal considering the essential issue at hand, namely, that this was a business plan which was viable to the extent that it would have led to this Appellant being in a position to set up his business within six months. I have no hesitation, accordingly, in dismissing this appeal. I consider it to be entirely devoid of all merit.

Notice of Decision

20. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision. I remake the decision as follows. This appeal is dismissed.
21. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

16th April 2015