



IAC-FH-AR-V1

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

Appeal Number: IA/15194/2014

THE IMMIGRATION ACTS

Heard at Field House
On 25 March 2015

Decision & Reasons Promulgated
On 9 April 2015

Before

**MR JUSTICE CRANSTON
DEPUTY UPPER TRIBUNAL JUDGE FRANCES**

Between

**NATALIA YUDINA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mackenzie, Counsel, instructed by Wilsons Solicitors
For the Respondent: Ms A Brocklesby, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from a determination promulgated on 15 September 2014 when First-tier Tribunal Judge Aziz dismissed the appeal of Ms Natalia Yudina against a decision of the Secretary of State for the Home Department. That decision refused her application to remain in the United Kingdom as a Tier 1 (Entrepreneur) migrant. She appeals to us against the determination.

2. Ms Yudina comes from the Russian Federation. She had entered the United Kingdom in 2010 as a Tier 4 Student and obtained various qualifications. Then in early 2014 she made an application for leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system. She claimed 75 points for having access to not less than £50,000 for the purposes of the application. There was a covering letter from her solicitors stating that she had been working as a self-employed project manager and marketing consultant since 2012. If her application were granted, the letter added, she would work as a project manager.
3. With that application was a declaration of third party support from a Miss Saiqa Javed. That declaration complied with what was paragraph 41-SD of Appendix A of the Immigration Rules. The Secretary of State on 21 March 2014 refused the application. In the decision letter the Secretary of State stated that there was no letter from a financial institution in compliance with paragraph 41-SD(c)(i) of Appendix A of the Immigration Rules. If a bank statement had been submitted – because the solicitor had stated that a bank statement was being forwarded even though it had not – that would not be sufficient. The decision letter also stated that the Secretary of State had decided not to request additional documentation under paragraph 245AA of the Immigration Rules.
4. The appellant appealed. In her evidence before the Tribunal she said that the documents she had submitted were because of her lawyer and she must have been confused, because they thought a bank statement was equivalent to a bank letter. They had contacted the bank and the bank said it would not provide a bank letter.
5. In his determination the judge canvassed the issues, the evidence and the law. He quoted paragraph 41-SD(c)(i) of Appendix A of the Immigration Rules as regards the bank letter, which the appellant should have submitted. The judge also quoted paragraph 245AA of the Immigration Rules. After recording that a third party letter containing all the mandatory information was submitted, the judge said that he accepted that there seemed to be a misunderstanding. While he had sympathy for the appellant who appeared to have acted diligently in seeking legal advice, he came to the conclusion this there was no discretion within the rules and that the requisite bank letter had not been provided. The judge added that the appellant's application could not succeed under paragraph 245AA because, under that rule, documents will not be requested where a specified document has not been submitted.
6. The appellant appealed. The First-tier Tribunal Judge considering permission granted it on the grounds that the judge had misquoted the rule, that he had used a rule which was not in force at the date of the application and decision, and that if the judge had used the proper rule it contained an ambiguity and that ambiguity was such that an applicant who was relying on third party funds need only submit a letter from the third party backed by the solicitor's letter.
7. We had considered this argument before the hearing and had decided, subject to argument, that it had no basis. It seemed to us that a fair reading of the substance of paragraph 41-SD(c)(d), even prior to the amendments inserted on 6 April 2014, made

plain that the bank letter needed to be provided where there were third party funds being relied on. It seemed to us not to be a sensible interpretation that all that an applicant needed to provide was a letter from the third party backed by a solicitor's letter verifying the signatures. In any event, we took the view that on the facts the solicitor handling the matter had not taken that narrow view of what was required because he had said that he was providing a bank statement.

8. This morning before us Mr Mackenzie has very fairly conceded that the argument advanced in the grounds on which permission was granted are not sustainable in the light of **Iqbal v Secretary of State for the Home Department [2015] EWCA Civ 169**. In that case Lord Justice Sullivan in giving the judgment of the Court of Appeal dealt with a very similar argument being advanced there in relation to the interpretation of paragraph 41-SD. In his judgment Lord Justice Sullivan not only addressed the wording of the rule but underlined the purpose, namely that the documents needed to demonstrate that the applicant had access to the necessary funds and that the interpretation being advanced before the Court of Appeal would not have addressed the purpose behind the rules.
9. That concession by Mr Mackenzie was realistic and commendable. The second issue in terms of Section 245AA does not arise once the issue about ambiguity fails. We dismiss the appeal.

Notice of decision

The appeal is dismissed under the Immigration Rules.

No anonymity direction is made.

Signed

Date 31st March 2015

Mr Justice Cranston

**TO THE RESPONDENT
FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 31st March 2015

Mr Justice Cranston