



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: IA/15930/2014**

Appeal

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd February 2015**

**Decision and Reasons
On 24th February 2015**

Before

Deputy Upper Tribunal Judge Rimington

Between

**Jinjian Yang
(No Anonymity Direction)**

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Lam instructed by Chan Neill Solicitors
For the Respondent: Mr Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of China born on 17th December 1987 and he appealed against the refusal of the Secretary of State dated 19th March 2014 to vary his leave as a Tier 1 (Entrepreneur) Migrant under the Points Based System further to Paragraph 245(h) and 245 DD(i) of HC 395. In addition the appellant appealed against a decision to remove him further to Section 47 of the Immigration and Asylum Act 2006.
2. In particular the reasons for refusal letter of the respondent stated that in making the assessment the evidence submitted had been considered (245DD(i)) but rejected in the light of
(ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A

(iii) the viability and credibility of the business plans and market research into chosen business sector

(iv) the previous educational and business experience (or lack thereof).

3. The First Tier Tribunal Judge allowed the appellant's appeal under the Immigration Rules but an error of law was found in the decision on the basis that the judge was not entitled to take into account material other than that which was before the decision-maker, **Ahmed and Another (PBS: admissible evidence** [2014] UKUT 00365 which confirms *'the appeal if it is successful is on the basis that the decision maker, with the material before him, should have made a different decision, not on the basis that a different way of presenting the application would have produced a different decision'*.
4. Albeit that the judge appeared to have taken into account *post decision evidence*, I directed that a bundle was produced to show exactly what information had been supplied to the Secretary of State in order for her to make a decision. Mr Lam helpfully complied.
5. From the clear paginated and indexed bundle before the Upper Tribunal it was clear that the Secretary of State had taken into account some documentation but ignored other pieces of evidence. Mr Lam clearly set out in the bundle before me that there had been requests by the Secretary of State for further information, following the submission of the application. The appellant in response sent in further information. The business plan sent in the last tranche of evidence immediately prior to the decision had been referred to by the respondent but information which was relevant and sent prior to and with the business plan being appeared to have been ignored. This was highly relevant.
6. This information clearly was relevant to the three areas of contention and challenge by the respondent in the decision of 19th March 2014. This included the viability and credibility of the source of the money referred to in Table 4 of Appendix A. The appellant had produced further bank statements showing the funds remained available for investment and confirmation from his mother that funding had been sent. It would appear that that funding still remained available and in the possession of the appellant.
7. The appellant had also forwarded evidence regarding the second point of challenge, that is the viability and credibility of business plans and market research. As Mr Lam pointed out agreements had been submitted and not considered. I would add that the refusal letter did not make clear what consultancy companies across the UK had been searched by the respondent. As Mr Lam pointed out the test is 'viability and credibility' on the balance of probabilities, not that the business is guaranteed to be successful.
8. In relation to the third challenge it is also quite clear that the Secretary of State did not have regard to the previous business experience as set out by the appellant in the documentation forwarded. There is no doubt that the appellant had undergone internships within business organisations. He also had a Master's degree of Science in International Business in business. That information, too had been ignored.

9. Mr Lam submitted that the respondent had simply failed to link all the documentation sent. A consideration of all the information that appeared to have been overlooked by the respondent would cumulatively affect the assessment of all three limbs under which the application was refused and indeed the overall credibility of the application.
10. As such both Mr Lam and Mr Melvin agreed that the decision was not in accordance with the law as documentation had not been considered. On the face of the evidence there was no indication that the appellant was not, on the balance of probabilities a genuine entrepreneur, but the refusal letter confirmed that verification checks had not been undertaken and as all the relevant documentation had not been assessed I find that it is for the Secretary of State to undertake an assessment in accordance with the Immigration Rules as the primary decision maker. Mr Lam pointed out that the appellant's business activity had been delayed and restricted by the refusal and appeal process and further delay would exacerbate this. In response Mr Melvin undertook to use his best endeavours to have a further decision made within 60 days of the decision.

Decision

The appeal is allowed to the extent that the decision of the Secretary of State was not in accordance with the law and it is remitted to the Secretary of State for such a decision bearing in mind the findings herein.

Signed:

Deputy Upper Tribunal Rimington

Date: 23rd February 2015