



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

Appeal Number: IA/22620/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 July 2015**

**Decision & Reasons Promulgated  
On 13 October 2015**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS  
DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SHIVA MALLA**

Respondent

**Representation:**

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer

For the Respondent: Mr M Blundell, counsel, instructed by Malik & Malik,  
Solicitors

**DECISION AND REASONS**

1. This matter comes before us for consideration as to whether or not there is a material error of law in the determination of First-tier Tribunal Judge Metzger ("the FTTJ") promulgated on 15 January 2015, in which he allowed the Respondent's (hereinafter "the Claimant's") appeal against the refusal of his application for leave to remain as a Tier 1 (Entrepreneur) Migrant on 6 May 2014.

2. No anonymity direction was made in the First-tier Tribunal and there are no issues giving rise to a requirement for such a direction now.

### **Background**

3. In support of his application for leave to remain the Claimant submitted various documents, including a screen-print from the Companies House website showing he was a director. This screen-print was printed on 13 October 2013.
4. Paragraph 41-SD(e)(v) of Appendix A of the Immigration Rules provides as follows:

“(2) if claiming points for being a director of a UK company at the time of his application, a printout of a Current Appointment Report from Companies House, dated no earlier than three months before the date of the application, listing the applicant as a director of the company, and confirming the date of his appointment. The company must be actively trading and not struck-off, or dissolved or in liquidation. Directors who are on the list of disqualified Directors provided by Companies House will not be awarded points.”
5. The FTTJ noted in his decision that “the [Claimant] accepted that a current appointment report from Companies House was not provided with the application”. Furthermore, the FTTJ noted that the application was made in April 2014 and the report provided by the Claimant was printed on 13 October 2013; it was therefore dated more than three months before the date of application. He also observed that the Appellant (hereinafter “the Secretary of State”) had stated in her reasons for refusal that “the only reason the [Secretary of State] did not contact the [Claimant] to request the correct document under paragraph 245AA of the Immigration Rules was that she had refused the application in respect of the investment as a result of which the submission of further evidence would not have led to the application being granted”. The Judge had found that the refusal of the application in respect of the investment was in breach of the Immigration Rules and he therefore found that the decision of the Secretary of State not to request additional documentation or consider the application under the provisions of Paragraph 245AA was not in accordance with the law.
6. Mr Avery, for the Secretary of State, submits that decision is an error of law because the Claimant had not provided a Current Appointment Report from Companies House dated no earlier than three months before the application. The requirement in paragraph 41-SD(e)(v) was, he said, specific and the Claimant had not complied with it. He submitted that, whilst paragraph 245AA gave flexibility in certain circumstances, it did not cover the failure to provide a specified document at all. He submitted that the Secretary of State had been under no obligation to seek the missing document. Nor was this a case of a document being provided in the wrong format: it was out of date. The Claimant could not, he submitted, take advantage of paragraph 245AA.

7. Mr Blundell, for the Claimant, submitted that whilst it was accepted that the Claimant had not provided the right document, he had provided similar information to that which would have been in the Current Appointment Report; it was a starting point. He submitted that the Claimant's circumstances were covered by paragraph 245AA(b)(ii). Alternatively, the Claimant had provided a document which did not contain "all of the specified information" pursuant to paragraph 245AA(b)(iv). He noted that the term "specified information" was not defined in paragraph 245AA, 245DD or paragraph 6 of the Immigration Rules. Mr Blundell submitted it was for us to decide what is meant by "specified information" in this context and he referred us to the terms of paragraph 46-SD(g)(ii). He submitted there were two applicable discretions available to the Secretary of State under 245AA: to write to the Claimant or to make her own enquiries. He submitted that, the only other ground for refusal having been found to be unlawful, the appropriate course had been for the application to remain outstanding and for the Judge to send the matter back to the Secretary of State for her to consider exercising her discretion (as had been his submission in the FTT for the Claimant).

## **Discussion**

8. The Claimant accepts that he had not provided a Current Appointment Report from Companies House dated no earlier than three months before the date of application. We accept that the screenprint dated October 2013 which he did provide contains similar information to what might have been in a Current Appointment Report, had it been provided to the Secretary of State with the application. However, we consider that is not the issue before us. The purpose of paragraph 41-SD(e)(v)(2) is to ensure the applicant provides contemporaneous confirmation, by way of a Current Appointment Report dated no earlier than three months before the date of application, of the status of the Claimant as a director of the company and of the company itself.
9. We are satisfied that the document was one in the wrong format; however, it was also more than that: it was a document which did not contain the requisite information, namely details of the Claimant and the company as at a date no earlier than three months before the date of application. We do not consider therefore that the document provided by the Claimant falls into the category of a document in the wrong format pursuant to paragraph 245AA(b)(ii): there was more than a formatting error in the document which was provided because it was out of date, according to the criteria in paragraph 41-SD(e)(v)(2).
10. We have also considered whether the document provided by the Claimant is one which falls within the criteria in paragraph 245AA(d)(iv). The full provision is as follows:

“(b) If the applicant has submitted specified documents in which ...  
[(iv)] A document does not contain all of the specified information”

However, we consider that the fact the document was out of date means it cannot be considered a “specified document”; nor can it be described as one which does not contain all of the specified information because all the information it contained was out of date. Put another way, none of it was the specified information for the required date. The relevance of the date of the document is to demonstrate that the information contained in it is contemporaneous to the application. We are unable to find that the remedy at 245AA(d)(iii) was available to the Claimant in this case.

11. For these reasons we do not consider the Judge’s findings are sustainable. We are satisfied that the FTTJ erred materially in law in finding that the decision of the Secretary of State was not in accordance with the law under s85 of the Nationality, Immigration and Asylum Act 2002 for the Secretary of State’s failure to consider exercising her discretion under paragraph 245AA. We are satisfied that paragraph 245AA has no application in this case.
12. We set aside the decision of the FTTJ and remake it dismissing the Claimant’s appeal on the grounds that the Claimant, having failed to provide a Current Appointment Report issued within the required timeframe, had not demonstrated that he fulfilled the criteria in the paragraph 41-SD(e)(v)(2).

### **Decision**

13. The making of the decision of the First-tier Tribunal did involve an error on a point of law.
14. We set aside the decision.
15. We re-make the decision by dismissing the Claimant’s appeal against the Secretary of State’s decision.

Signed

Date 12 October 2015

Deputy Upper Tribunal Judge A M Black

### **Fee Award**

The FTTJ made a fee award. We set that award aside: the Respondent is not entitled to a fee award, the appeal having been dismissed.

Signed

Date 12 October 2015

Deputy Upper Tribunal Judge A M Black