



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

Appeal Number: IA/41907/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 20 November 2015**

**Decision and Reasons
Promulgated
on 24 November 2015**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN**

Between

P O EBEA

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria, born on 17 July 1986. On 4 August 2014 she sought leave to remain as a Tier 1 (Entrepreneur) Migrant under the Points Based System (PBS). The respondent refused that application on 10 October 2014, referring to one specific point under paragraphs 41-SD and 46-SD of Appendix A of the Immigration Rules. The advertising material which the appellant provided did not cover a continuous period commencing before 11 July 2014. An advertisement she provided was undated. Evidence relating to a website was not acceptable because it had been registered only on 18 July 2014.

2. The appellant appealed to the First-tier Tribunal, stating 2 grounds. The first referred to sub-paragraph (1)(iii) of (e) of paragraph 41-SD of Appendix A, and maintained that advertising material had been provided which was published locally before 11 July 2014 and so met all the requirements of the Rules.
3. The second ground was that discretion should have been “exercised differently”.
4. The appellant did not seek an oral hearing. Her case came before First-tier Tribunal Judge Holt on 30 January 2015 for decision “on the papers” and was dismissed by determination promulgated on 17 February 2015.
5. The appellant sought permission to appeal to the Upper Tribunal on the following grounds:
 - 1 The appellant’s company was not trading online, so she was not required to register a domain.
 - 2 The evidence of online advertising did not contain all the specified information, but the minor omission should have been corrected in favour of the appellant.
 - 3 The judge should have exercised discretion, fairness or evidential flexibility in favour of the appellant.
 - 4 The judge erred in finding that the appellant did not provide evidence of continuous registration with HMRC, because the appellant is a director of a limited liability company and not a self-employed person.
 - 5 The judge did not have jurisdiction to make credibility findings, because the respondent had explicitly chosen to reserve the right to assess whether the application was genuine.
 - 6 The judge erred in her assessment of Article 8.
 - 7 Inadequate reasons were given by the judge.
6. On 22 April 2015 First-tier Tribunal Judge Osborne granted permission to appeal on the basis of ground 6, on the view that it was arguable that the judge had not conducted an adequate Article 8 exercise.
7. Notice of the hearing before us was issued on 30 October 2015, both to the appellant and to her representative. The address last on file for the appellant with the Tribunal corresponds to that on record with the Home Office. There was no appearance by or representation of the appellant by 11.30 am, and no communication had been received. In those circumstances, we considered it in the interests of justice to proceed with the hearing under rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
8. Mr Matthew submitted that although the shortcoming in the appellant’s original application was a relatively small one, a gap of about a week, there had been no requirement on the respondent to give her the opportunity to produce further evidence. There had been nothing to suggest to the respondent that to give her a further opportunity might

result in her making good the deficiency. In any event, the appellant has not been able to produce evidence which would have made her application a good one.

9. As to Article 8, the point on which permission was granted, Mr Matthews observed that the matter is dealt with in the determination; and in any event, it was not raised in the grounds of appeal to the First-tier Tribunal.
10. We reserved our determination.
11. The appellant's application to the respondent was correctly refused for the reasons given in the decision dated 10 October 2014. The appellant has not since identified any deficiency in that decision, nor has she been able to show that if given the opportunity she would have been able to provide the evidence which was lacking.
12. Permission to appeal to the Upper Tribunal was granted only on the Article 8 point. The other grounds, in any event, are misconceived. They seek a breadth of discretion in favour of the appellant which is not available under the highly prescriptive requirements of the PBS, or under provisions relating to evidential flexibility. The respondent's procedural obligation to act fairly has not been breached. There is no overarching doctrine of fairness or discretion which enables the appellant to be excused from shortcomings in her application, even if they are relatively minor.
13. The grounds about registration with HMRC and about "credibility findings" go nowhere. The First-tier Tribunal Judge's observations are somewhat misleading, but the respondent was satisfied on those points and they make no difference to the outcome, at any stage.
14. The judge who granted permission may have overlooked that Article 8 is dealt with at paragraph 17 of the determination. The appellant had not raised any Article 8 ground of appeal; had not sought to vary her grounds; and had provided no information by which an Article 8 ground might have succeeded, even on the most benevolent view. The judge needed to say no more.
15. The determination of the First-tier Tribunal shall stand.
16. No anonymity order has been requested or made.



20 November 2015
Upper Tribunal Judge Macleman