



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/43369/2014
IA/43377/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 24 November 2015**

**Decision and Reasons
Promulgated
On 2 December 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**(1) Mr NAVEED IQBAL
(2) Mr SALMAN RAUF
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: In person

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellants appealed with permission granted by Upper Tribunal Judge Goldstein on 8 July 2015 against the determination of First-tier Tribunal Judge Lloyd-Smith who had dismissed the Appellants' linked

appeals as Tier 1 (Entrepreneur) Migrants. The decision and reasons was promulgated on 3 March 2015.

2. The Appellants are nationals of Pakistan, business partners, born respectively on 14 July 1987 and 5 September 1981. Judge Lloyd-Smith found that the Appellant had failed to show that they had submitted the specified documents with their applications and so had failed to satisfy the Immigration Rules. Their appeals to the First-tier Tribunal thus failed.
3. Permission to appeal was granted by Upper Tribunal Judge Goldstein because he was “just persuaded” that it was arguable that the judge had erred in his application of the relevant Immigration Rules and “less persuaded” that the judge had erred in relation to the Article 8 ECHR claim.
4. Standard directions were made by the tribunal.

Submissions – error of law

5. The Appellants were unrepresented. In summary they submitted that the Respondent should have applied paragraph 245AA of the Immigration Rules and requested further information from them, which they were willing to supply. Their onwards appeals should be allowed.
6. Mr Kandola for the Respondent opposed the onwards appeals. It was plain that the judge’s decision had been based on the Appellants’ failure to provide the specified documents. He submitted that the judge’s decision had been open to her, indeed that no other decision would have been possible. There was no scope for the application of the evidential flexibility policy as contained in paragraph 245AA as the documents identified by the judge had not been produced with the applications as required. They were not documents in the wrong format or documents from which a page or pages were missing. There had been no misdirection in law by the judge.
7. There was nothing the Appellants wished to add by way of reply
8. The tribunal indicated at the conclusion of submissions that it found no error of law and that its determination was reserved.

No material error of law finding

9. In the tribunal’s view the grant of permission to appeal by the Upper Tribunal Judge was not easy to follow and was at best over generous. It was for the Appellants to show that Judge Lloyd-Smith had erred in law, e.g., in her findings of fact, and in the tribunal’s judgment the Appellants manifestly failed to do so. The permission to appeal application was simply an expression of disagreement with the judge’s findings and the Appellants’ brief submissions were to the

same effect. In the tribunal's view, the refusal of permission to appeal by First-tier Tribunal Judge Astle on 6 May 2015 had been correct: "There were critical omissions in that evidence and the Appellants have not demonstrated that paragraph 245AA would have assisted them". The tribunal accepts and endorses Mr Kandola's submissions which were to the same effect.

10. It is plain from Judge Lloyd-Smith's thorough and well balanced decision that she carefully weighed the evidence placed before her. The burden of proof was on the Appellants. Judge Lloyd-Smith explained why (with regret) she had to find that the Appellants had not complied with the Immigration Rules: see [10] of the decision and reasons which it is unnecessary to repeat here. The judge specifically referred to paragraph 245AA of the Immigration Rules at [10(iii)] of the decision and reasons, and explained why those provisions were incapable of providing assistance to the Appellants. The judge mentioned all of the factors which it was permissible for her to take into account when assessing the Article 8 ECHR claim and her concluding treatment of that claim at [14] was sufficient. Her findings were all open to her and were clearly explained.
11. Accordingly, the tribunal finds that there was no error of law in the determination and there is no basis for interfering with the judge's decision. It is, of course, open to the Appellants to submit fresh and compliant applications for further leave to remain under any relevant category of the Immigration Rules. If so, they must ensure they apply promptly.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell