



IAC-FH-CK-V1

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

Appeal Numbers: IA/46461/2014
IA/46462/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 November 2015
Delivered Orally**

**Determination Promulgated
On 15 December 2015**

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

**MR CHIRAG MANSUKHBHAL PATEL
MRS MOHINI CHIRAG PATEL
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Burrett, Counsel

For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Appellant, a citizen of India born on 22 March 1985, his wife being a dependant to his appeal, against a decision of First-tier Tribunal Judge D Ross, who, sitting at Richmond on 27 April 2015 and in a determination subsequently promulgated on 8 May 2015, dismissed the Appellant's appeal against a decision of the Respondent dated 5 November 2014 refusing his application for a variation of his leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant under the

points-based system and for a biometric residence permit and to remove the Appellant and his wife by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The Appellant had successfully obtained permission to appeal against that decision, First-tier Tribunal Judge P J M Hollingworth having been satisfied that an arguable error of law had occurred in the interpretation of the relevant Rules. In that regard it would be as well in light of the Home Office concession were I to set out the relevant passages from the grounds as follows:

“(i) The SSHD rejection letter specifically relied on Appendix A paragraph 41-SD(e)(iii) only, as it was accepted that A had met the requirements of (i), (ii) and (iii) of provision d under Table 4 (see pages 2 and 3 of the refusal letter).

(ii) Therefore the reason the SSHD refused A’s application was because she was not satisfied A had met requirement (iv) which requires certain specified documents to be provided under paragraph 41-SD(e). It is clear that the FTJ erroneously failed to direct himself to this paragraph given that there was no mention of 41-SD(e) subparagraphs (i) and (ii).

(iii) It is submitted that a properly directed Judge would address the actual Rules referred to and state whether by failing to refer to 41-SD(e)(i) and (ii) it could be assumed that A actually met those paragraphs, or alternatively that the decision maker had erred in law by failing to properly address herself to the Rules.

(iv) This is important as the basis of the refusal, paragraph 41-SD(e)(iii) was not properly set out as the basis of the refusal, paragraph 41-SD(e)(iii) was not properly set out in the refusal letter and erroneously the FTJ failed to notice the material error. The actual Rule as at the date of decision stated:

“(iii) One or more of the following specified documents covering (either together or individually) a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application.”

3. I would observe more particularly that the Rule was clear that one or more of the “specified documents listed” covered a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of the application. Whilst (1), (2) and (3) related to such matters as advertising or marketing material, articles or online links to articles in a newspaper etc. most importantly (4) was expressed as “or” personal registration with a UK trade body linked to the applicant’s occupation.
4. Thus, following the basis of the Respondent’s refusal, if the Appellant could show that at the time of his application he met the requirements of (4) then his appeal would be likely to succeed.

5. The Appellant claimed that he was a member of a trade body sufficient to meet that requirement, namely the ACCA. The Judge made no findings on whether he actually was a member as claimed and at paragraph 12 of his determination he erroneously continued (omitting to notice that the requirement at (4) was clearly in the alternative) by stating even if it was the case that he was a member the Appellant had failed to submit with his application any evidence relating to other requirements.
6. As the grounds pleaded:

“In short the Judge failed to direct his attention to the fact that the Appellant only had to provide one document under this provision and contrary to his assertion there was no need to look any further within this provision if the Appellant had made out his trade body membership”.
7. It has been noted that most fairly and realistically the Respondent in her Rule 24 response dated 14 September 2015 made it clear that she did not oppose the Appellant’s application and invited the Tribunal to determine the appeal afresh. For the avoidance of doubt at the outset of the hearing before me Ms Sreeraman confirmed that that was the case.
8. When this matter came before me on 26 November 2015 my first task was to decide whether the determination of the First-tier Tribunal Judge disclosed an error or errors on a point of law such as may have materially affected the outcome of the appeal. For the reasons set out in the grounds and accepted by the Respondent and for like reason, I am satisfied that the First-tier Tribunal Judge did indeed materially err in law and that in such circumstances his decision must be set aside with none of his findings preserved.
9. We considered how the decision should be remade. After discussion with both parties it was agreed that the case ought to be heard afresh having regard to the error of law found, the length of the hearing (estimated at two hours) and there were highly compelling reasons falling within paragraph 7.2(b) of the Senior President’s Practice Statement as to why the decision should not be remade by the Tribunal. It was clearly in the interests of justice that the appeal of the Appellant be heard afresh in the First-tier Tribunal.
10. For the reasons I have above given and by agreement with the parties, I conclude therefore that the appeal should be remitted to a First-tier Tribunal Judge other than First-tier Tribunal Judge D Ross to determine the appeal afresh at Hatton Cross Hearing Centre on the first available date. I am informed that for this purpose no interpreter will be required.
11. I was informed by the parties’ representatives that there had since been a further development in that it was claimed that the Appellant had now achieved ten year’s lawful residence. This of course was not a matter for the Tribunal to decide. It formed no part of the present appeal but the question arose as to whether in the circumstances the Appellant was

entitled to indefinite leave to remain. This of course was a matter for the Secretary of State to determine. I would anticipate that it will, however, form part of the remitted appeal in all the circumstances.

Notice of Decision

The First-tier Tribunal erred in law such that the decision should be set aside and none of its findings preserved. I allow the Appellant's appeal to the extent that I remit the making of the appeal to the First-tier Tribunal at Hatton Cross before a First-tier Tribunal Judge other than the Judge to whom I have above referred.

No anonymity direction is made.

Signed

Date 9 December 2015

Upper Tribunal Judge Goldstein