



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/03412/2015
IA/03399/2015

THE IMMIGRATION ACTS

Heard at Field House
On 22 February 2016

Decision & Reasons Promulgated
On 17 March 2016

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

KAMLESHKUMAR MAHENDRABHAI PATEL (FIRST APPELLANT)
ARCHANA KAMLESHKUMAR PATEL (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms S Anzani, Counsel
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant is an Indian national born on 26 November 1988. The second appellant is his wife who is dependent on the first appellant's application and appeal.
2. The appellants appeal against the decision of First-tier Tribunal Judge N M K Lawrence dismissing the appeal of the first appellant against the refusal of the respondent to grant him leave to remain in the UK as an entrepreneur. The second appellant was named as his dependant in this application.

3. The issue in this is stated by the judge as following at paragraph 4

*“4. In order to achieve points under ‘Applicant has access to funds are required’ the appellant has not [sic] has to demonstrate he has access to £50,000 to invest, with his team partner, in the UK but he has [sic] also has to demonstrate that the funds are from a source or held in an account of an institution listed on the Financial Conduct Authorities (hereinafter ‘FCA’) website, thereby indicating it is regulated by FCA. In the instant appeal the funds in question are to be provided by Nomisma Venture Capital LLP. The respondent found that Nomisma is not registered with the FCA. Further, the respondent found that the offer from Nomisma is couched in conditional terms. It reads I (one) hereby confirm that **subject to prevailing market conditions** Nomisma Venture Capital LLP will make available £50,000 for investment ...”*

The respondent found this conditional offer does not meet the requirements.

4. The judge’s findings are as follows

“My Findings

9. *The appellant’s case is quite simple. He relies on an ‘expert’ report prepared by one Daniel Tunkel. This report stipulates that Nomisma is ‘connected to a regulated entity Providentia Captial LLP Providentia is the Managing Member of Nomisma.” A flow chart has been provided to demonstrate the connection between Providentia and Nomisma. The ‘expert’ slates that “(I)t seems to me to be self-evident that when the Immigration Rules refer to funding being generated from ‘one or more registered venture capitalists firms regulated by Financial Conduct Authority this has to refer to the competence of a regulated firm such as Providentia to arrange for an entity like Nomisma, which it manages, to make this funding available” (see: para 18 of the report).*
10. *The relevant provisions in Table 4 of Appendix A, namely “(T)he applicant has access to not less than £50,000 from: (i) one or more registered venture capitalists firms (regulated by the FCA).” The report does not dispute that Nomisma is itself registered with FCA but it is in turn managed my Providentia and that should be sufficient for the purposes of relevant Immigration Rule. The wording of the relevant Rule is clear and, to me, is unambiguous. It stipulates that the venture capital firm itself must be registered and not must be managed by an entity registered with the FCA. In my view, the wording of the relevant Rule does not bear the interpretation the ‘expert’ seeks to put on them. I reject the expert’s opinion.*
11. *The second point raised by the respondent is that the offer is conditional, namely ‘prevailing market conditions.’ Mr Hossain submits that the venture capitalist will itself decide when the conditions are met. The relevant Rule does not read “(T)he applicant has access to not less than £50,000 from one or more registered venture capitalists, **subject to conditions stipulated by the venture***

capitalists.” On simple and straightforward constructions of the words in the relevant Rule indicates to me that the funds has [sic] to be available to the applicant, without conditions, for him/her to invest. Accordingly, I find the appellant and his team member has no access to £50,000 to invest in the UK.”

5. Permission was granted on the following basis “*it is arguable that because the Rule is unclear the judge has misconstrued the relationship between the financial institutions involved and their regulatory body.*” Miss Anzani relied on her skeleton argument and the expert report by Daniel Tunkel. She submitted that it provided a clear picture of the position of Nomisma in relation to its trade as a venture capital firm as well as its FCA registration. In her grounds she submitted that it was confirmed in the expert report that Nomisma was in fact managed by Providentia LLP (“*Providential*”), which is listed as on the FCA’s register. While it was accepted that Nomisma is not itself listed as a regulated entity, it was clear from the expert report that Providentia clearly had a legal commitment to manage Nomisma and arrange for Nomisma to make the venture capital funding available and that Judge Lawrence failed to identify that.
6. Miss Anzani submitted that the judge dismissed the expert report without any explanation. Since the case rests entirely on the expert report, it was incumbent on the judge to give reasons why he did not accept it. Further, she argued that as Nomisma is managed by Providentia, it meets the requirements of the Immigration Rules. She also argued that there is clearly an inconsistency in the manner in which the Home Office operates this Rule. Some First-tier Judges have allowed appeals of this kind and some have been dismissed by First-tier Judges.
7. Mr Walker submitted that the Immigration Rule is clear and unambiguous and that was why the judge disregarded the expert opinion on this point.
8. He relied on the Rule 24 response. It said “one of the reasons for the refusal of the appellant’s application was that the Venture Capital firm Nomisma Venture Capital LLP does not have the appropriate permission, and the Secretary of State was therefore unable to award the required points for Attributes. Under the Immigration Rules Venture Capital firms must be registered with the Financial Conduct Authority (FCA) and their entry in the register must include a permission to arrange, deal in or manage investments, or to manage alternative investment funds. The First-tier Tribunal considered this ground of refusal at paragraphs 9 and 10. The First-tier Tribunal considered the evidence before, including the expert report prepared by Mr. Daniel Tunkel, before concluding that the appellant does not have access to the required funds from one or more registered venture capital firms (regulated by the FCA). Cogent and adequate reasons are provided for that conclusions.”
9. Miss Anzani’s second argument relied on the submission in her skeleton argument that the judge erred in his interpretation of the Immigration Rules and his understanding of the relationship between Nomisma and Providentia and the relevant regulatory law. Mr Tunkel made clear that the FCA regulates managers of funds, not the funds themselves. The Immigration Rules require a Tier 1

Entrepreneur applicant to demonstrate that he has received funding from “*one or more registered venture capitalist firms regulated by the Financial Conduct Authority.*” Ms Anzani submits that the Investment Management Agreement (“*the IMA*”) under the terms of which Nomisma’s business is managed by Providentia means that this requirement is met. Further, that an alternative interpretation would mean “*the Rule can never have any utility.*” This would produce an absurd result and must, therefore, be interpreted in some other manner.

10. My understanding of the alternative argument put forward by Miss Anzani in her skeleton argument is that Mr Tunkel made clear the FCA regulates managers of funds, not the funds themselves. But, according to paragraph 4 of the Rule 24 response, under the Immigration Rules venture capital firms must be registered with the FCA and their entry in the register must include a permission to arrange, deal in or manage investments, or to manage alternative investment funds. The appellant sought leave to remain in the UK as an entrepreneur on the basis of funds he was to receive directly from Nomisma. It is not disputed that Nomisma is not a venture capital firm that is registered by the FCA, albeit that it is managed by Providentia which is registered by the FCA. Therefore, as Nomisma does not meet the criteria identified in the respondent’s Rule 24 response, in that it is not a venture capital firm that is registered with the FCA, notwithstanding that it’s managing member, Providentia, is registered with the FCA, it means that the appellant cannot succeed in this appeal as found by the judge.
11. I find that the judge gave reasons why he disregarded Mr Tunkel’s report.
12. I note that the judge also dismissed the appeal because the funds being made available by Nomisma were conditional on market forces. However, this particular refusal was not dealt with in Miss Anzani’s skeleton argument or in her oral arguments.
13. I have not heard any further from the respondent as to whether this rule is applied inconsistently because of the different judgments being made by different judges.
14. On the substantive issues, however, I find that the appellant’s appeal cannot succeed. The judge did not err in law and his decision dismissing the appellant’s appeal shall stand.

Signed

Date

Upper Tribunal Judge Eshun