



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

Appeal Number: IA/39847/2014  
IA/39852/2014

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE  
On 26<sup>TH</sup> January 2016**

**Decision & Reasons Promulgated  
On 1<sup>ST</sup> February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE  
G A BLACK**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR SURENDAR CHINTAGINJA  
MR SURYA MANNEPALLI**

Respondents

**Representation:**

For the Appellant: Miss J Isherwood (Home officer presenting officer)

For the Respondent: Mr A Slatter (Counsel)

**DECISION AND REASONS**

1. This matter comes before me for consideration as to whether or not there is a material error of law in the decision of the First-tier Tribunal (Judge O'Malley) (FtT) promulgated on 4th August 2015 in which the appeal was dismissed on immigration grounds but allowed to the extent that the FtT found the removal decision made under section 47 Immigration Asylum &

Nationality Act 2006 (“section 47”) to be unlawful. This is a cross appeal in which both parties have applied for permission on the section 47 point. I refer to the parties in accordance with the proceedings before the FtT.

## **Background**

2. The appellants application for leave to remain under Tier 1 was refused on the grounds that they failed to meet the point scoring provisions as to Attributes under paragraph 41 SD(e). Specifically they failed to produce evidence in the specified form under (d) (iv) of Table 4 Appendix A of the Immigration Rules; the advertising material did not cover the specified period prior to the application and the documents produced did not carry dates. The Face book entry was not acceptable as is was dated 11<sup>th</sup> July 2014 and failed to show the required information, and there was no documentary evidence to show that the website domain was owned by the appellants, who had produced the print outs of the company website. The contract between the appellants business and ‘A Tech IT’ did not show any duration. In relation to the second appellant the trading contract was not signed.
3. The FtT found that the appellants were directors of ‘SRM Software and Business Solutions’ [30] and that the business was not web based [31]. The FtT found that an invoice showing the date 4<sup>th</sup> July 2014 raised for the production of business cards and leaflets was capable of showing that the advertising requirements were met as to the continuous period of time under (iii) para 41SD(e) [33]. However, as the date was obscured the FtT could not be satisfied that this information in the document was visible to the decision maker for the Respondent [32]. The FtT took the view that the evidential flexibility policy in paragraph 245 AA could not be applied to any error on photocopying which was the responsibility of the appellants [34 & 35]. The FtT concluded that paragraph 41(e)(iii) was not met. It found that the contract did contain a reference to duration in that it was “indefinite” at clause 8 [38], but that there was no definition of the “effective date” which was to be the start date for the proposed trading. In considering the absence of the second appellant’s signature the FtT was unable to apply paragraph 245AA as there had been no verification checks carried out and so it was not possible to exercise the evidential flexibility provision [41-45]. As to the application of section 47, the FtT relied on **Ahmadi (section 47 deicsison; validity:Sapkota) [2012]** in finding that the removal decision was unlawful.

## **Grounds for permission**

4. Both parties argued that the FtT erred by misdirecting itself and in failing to apply the lawful position post 8.5.2013 to a section 47 removal decision, as per section 51 of the Crime & Courts Act 2013.
5. The appellant argued that the reasoning given by the FtT was inadequate as to finding that the documents were not dated but that the invoice was capable of supporting that the documents were available for the period.

Further that the FtT erred by failing to apply paragraph 245AA. It was argued that the FtT was wrong to find that the contract did not establish a duration and that the absence of the second appellants name could not be considered under paragraph 245AA.

### **Permission**

6. The grant of permission was made in respect of the section 47 point. As to the further grounds relied on by the appellant the reasons in the grounds state that the decision "is arguably inflexible". It is not entirely clear whether the permitting Judge was or was not granting permission.

### **Error of law hearing**

7. Miss Isherwood and Mr Slatter agreed that the FtT's decision under section 47 was unlawful in light of the amendment made by section 51 Crime & Courts Act 2013. It was entirely proper for the Secretary of State to make such a decision which shall stand. In that regard I am satisfied that the FtT erred. Accordingly I set aside that part of the decision and substitute a decision that the appeal under section 47 is dismissed.
8. Turning to the substantive grounds, I heard and have considered the lengthy submissions made by Mr Slatter and those from Miss Isherwood. However, I am satisfied that there is no material error of law by the FtT in dismissing this appeal. Whilst acknowledging that the FtT decision was at times muddled in its approach in particular towards the application of paragraph 245AA, having considered the decision as a whole I am satisfied that no material error are disclosed. I find that none of the advertising material produced was dated and even if reference had been made to the invoice bearing the date 4th July, this did not show a continuous period as required under the rules. It seems clear that the originals were in the Respondent's file and were produced before me by Miss Isherwood. They were separated and each page properly visible. However this makes no difference to the failure to meet the requirement for a continuous period, and is thus fatal to the application.
9. I find that the contract did not establish what "the effective date" was. The FtT accepted that the term "indefinitely" was a duration, but in the absence of any specific date or definition of the "effective date", there was no evidence that the company were trading over the required period. This ground amounts to a disagreement with the findings and decision made by the FtT which was entirely sustainable on the evidence before it. The only date shown on the contract was 4<sup>th</sup> July 2014 which was the date that the agreement was signed.
10. I am satisfied that the contract did not show the name and/or signature of the second appellant. The requirements of the rules are for the names of the applicants and the name of the business to be shown on the contract. The appellants did not meet the requirements of the rules and whether or not such information (the name) was verifiable from other potential

sources, the fact is that the contract did not show the name of the second appellant.

**Decision**

11. I find that the grounds pursued by the appellant have not been made out. There is no material error of law disclosed in the substantive decision which shall stand. The decision is remade as to the section 47 decision, which is dismissed.

Signed

Date 29.1.2016

GA Black

Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 29.1.2016

GA Black

Deputy Judge of the Upper Tribunal