



IAC-AH-SC-V1

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

Appeal Numbers: IA/44251/2014
IA/44658/2014

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On 17 March 2016**

**Decision & Reasons
Promulgated
On 13 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

**MR MUHAMMAD RAFIQUE (FIRST APPELLANT)
MR MUHAMMAD ASIM (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Janjua, Legal Representative
For the Respondent: Mr M Diwncyz, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellants applied for leave as First-tier (Entrepreneur) Migrants on the points-based scheme.

2. Their application was refused by the respondent on 21 October 2014 having conducted an interview. However, the appellants satisfied the requirements of the points-based scheme in that they achieved the necessary points for the Appendix A attributes.
3. The refusal to give the appellants the leave that they sought was appealed under Section 82 of the Nationality, Immigration and Asylum Act 2002 ("2002 Act"). The appeal came before Judge of First-tier Tribunal Cox ("the Immigration Judge") sitting at Bradford on 29 January 2015. The Immigration Judge having heard evidence and submissions by the parties decided to dismiss the appellants' appeal against the respondent's refusal. The appellants appealed that decision to the Upper Tribunal.

The Upper Tribunal Proceedings

4. The appellants state in their grounds that the necessary attributes for the entrepreneur scheme were satisfied and the judge should have allowed the appeal based on his own conclusions at paragraph 38. At paragraph 38 the Presenting Officer had not challenged an important aspect of their evidence namely the bank statements they had produced. The grounds go on to state that the Immigration Judge had mistakenly concluded that the appellants had entered disguised employment with the company they had set up when this conclusion was not justified as a matter of law as well as a matter of fact. Their permission to appeal application was dated 27 February 2015.
5. The application for permission to appeal was considered by Judge Wellesley-Cole on 16 April 2015. Judge Wellesley-Cole noted that the application had been under paragraph 245DD(i) of the Immigration Rules, that the appellants had a business plan, had given their financial details and had undertaken market research. Furthermore, it was noted that the important evidence referred to at paragraph 38 of the decision had not been challenged. Therefore, arguably, the Immigration Judge ought to have accepted their income status. They were not, it appeared to Judge Wellesley-Cole when she granted permission to appeal, in disguised employment. Furthermore, the Immigration Judge appeared to have applied the wrong standard of proof. The correct standard was that of a balance of probabilities. The finding that the appellants were in fact in contracts of employment went against the weight of the evidence.

Conclusions

6. At the hearing I have heard submissions by both representatives. Mr Janjua maintained that the business was a genuine one and no part of the initial refusal by the Secretary of State had said to the contrary. The appellants had been awarded their full points yet the Immigration Judge had gone on to dismiss the appeal.

7. Mr Diwncyz sought to maintain the decision on the basis that adverse credibility findings had been included within the decision notwithstanding the Secretary of State's broadly accepting their case. Mr Janjua went on to say that the Immigration Judge's findings had been largely speculative as was demonstrated by a consideration of paragraph 56 of his decision. At that paragraph the Immigration Judge had considered the nature of the work as letting agents and made adverse findings about credibility which Mr Janjua said were not justified.
8. In conclusion, the Immigration Judge appears to have made adverse findings which were not justified by the evidence in the case before him. As Judge Wellesley-Cole said the standard of proof was that of a balance of probabilities. If that standard was applied the evidence produced appeared to be satisfactory as was found by the Secretary of State broadly prior to the interview he conducted. In the circumstances the adverse findings by the Immigration Judge were not justified by the evidence. Accordingly, I find that there was a material error in the decision of the First-tier Tribunal and the decision will be set aside and I substitute the decision of the Upper Tribunal which is to allow the appeal against the Secretary of State's refusal of leave to remain as Tier 1 (Entrepreneur) Migrants under the points-based scheme.
9. There is no anonymity direction in this case.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award but have decided to make no fee award

Signed

Date

Deputy Upper Tribunal Judge Hanbury