



IAC-FH-CK-V1

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

Appeal Number: IA/45073/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 April 2016**

**Decision & Reasons Promulgated
13 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR MUHAMMAD NOMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Saini, Counsel, instructed by Hanson Young Solicitors
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan born on 20 November 1982. He appealed against the respondent's decision dated 27 October 2014 to refuse his application dated 28 August 2014 for leave to remain as a Tier 1 (Entrepreneur) Migrant and to remove him from the United Kingdom under Section 47 of the 2006 Act. First-tier

Tribunal Judge Talbot dismissed the appellant's appeal in a determination dated 20 August 2015. Permission to appeal was initially refused by First-tier Tribunal Judge Hollingworth on 19 January 2016. Upper Tribunal Judge Grubb granted the appellant permission to appeal stating that it is arguable whether the judge properly considered that the evidence actually submitted did or did not predate 11 July 2014 and whether his conclusion in relation to whether the website was or was not established is flawed.

2. The First-tier Tribunal Judge made the following findings which I paraphrase. The judge's findings are found primarily in paragraphs 11 and 12 of the decision. He stated at paragraph 11 that there is no indication that any of these advertising items were published before 11 July 2014. The appellant claims that additional advertising materials were submitted with the application that the respondent failed to consider. The problem for the appellant is that none of these materials show that they were produced or published prior to 11 July 2015. The appellant places particular emphasis on his website and on advertising media. The problem is that there is no evidence as to when this website went live. The appellant asked me to accept on the balance of probabilities that the website went live before 11 July 2014 given that the business had existed since 29 May 2014. He pointed to contracts dated 20 June 2014 and invoices as evidence of the appellant's trading activity. However, neither invoices nor the contracts display the website address unlike the later invoices and the judge found this to be surprising that if the website had been operational at that time and in the absence of any adequate evidence he could not therefore accept that the appellant's claim that the website went live prior to 11 July 2015. He concluded that given the lack of evidence that any of the advertising materials predated that date he must conclude that the requirements of the Rules had not been fulfilled.
3. At paragraph 12 he sets out that the Immigration Rules are extremely detailed and prescriptive and this means that applicants may feel that the consequences of them which are particularly harsh. The particular Rule change which has affected the appellant was introduced in Parliament by a minister to have almost immediate effect and was clearly intended as a further tightening up of the Rules. He states that this does not render the respondent's decision unlawful and dismissed the appellant's appeal under the Immigration Rules.
4. The grounds of appeal state in summary that the appellant submitted the required specified documents in line with the Immigration Rules. They state that the fact that the business had been incorporated since May 2014 speaks volumes and highlights the appellant's ability to conduct business and full use of his leave to remain. The appellant's business plan and market research are comprehensive. He has done extensive market research and provided his marked research and analysis to the respondent. They have got other challenges such as the respondent's duty of evidential flexibility and that there was no period of time which the applicants had to abide by the new Rules because there was no transition period.

5. At the hearing I heard submissions from both parties as to whether there was an error of law in the determination. I will not set out these submissions but the full notes of these are in my Record of Proceedings.

Findings as to whether there is an error of law

6. Now my findings as to whether there is an error of law in the determination. The judge's findings are essentially made at paragraph 11. He states that the appellant had not provided any evidence that his business had been established or running prior to 11 July 2014. The judge noted that there were several invoices as evidence of his trading activities and said that neither these nor the contracts display the website address unlike the later invoices.
7. Essentially the judge did not take into account the invoice dated 6 June 2014 for graphic and print design (letterhead, leaflet, business card and marketing): online advertisements, printing, domain registration, one year hosting, website design and development amounting to £791.54. The judge noted that there is no evidence but in fact there was evidence. There was evidence of that invoice and most importantly there was also evidence of the appellant. The appellant in his witness statement stated that he had advertised on the website before that date. The judge seemed not to have accepted the appellant's evidence as evidence and gave no reasons for why he did not. The appellant's evidence is as good as any other evidence, unless there is reason not to believe him. Coupled with the invoice which was not considered by the judge's determination, I do not consider the determination to be safe. I therefore set aside the determination and remake the decision.

The re-making of the decision

8. The evidence is that the appellant made an application for an entrepreneur visa on 20 August 2014. He was not represented when he made his application. In support of his application he submitted evidence of invoices and evidence in his witness statement to demonstrate that his business had been advertised and marketed before 11 July 2014 which is one of the requirements of the immigration rules. The invoice dated 6 June 2014 for graphic and print design (letterhead, leaflet, business card and marketing): online advertisements, printing, domain registration, one year hosting, website design and development amounting to £791.54 demonstrates that the appellant had marketed and advertised his business before that date. There is no reason for me not to accept the appellant's evidence that he had indeed advertised and marketed his business before 11 July 2014.
9. I therefore find, on a balance of probabilities I accept the appellant's evidence that the advertising and marketing was done before 11 July 2014. I therefore remake the decision and I allow the appellant's appeal as I find that the appellant has satisfied the requirements of the immigration rules for further leave to remain in the United Kingdom as an entrepreneur.

10. Mr Saini indicated at the hearing that he had said that Judge Hollingworth said that the appeal was out of time when in fact it was timely made.
11. The upshot is that the decision of the first-tier Tribunal dismissing the appellant's appeal is set aside as it is materially erroneous in law and I remake the decision allowing the appellant's appeal.

Notice of Decision

The appeal is allowed under the immigration rules.

No anonymity direction is made.

Signed

Date 11th day of April 2016

Deputy Upper Tribunal Judge Chana

TO THE RESPONDENT
FEE AWARD

I have considered making a fee award and have decided to make no fee award

Signed

Date 11th day of April 2016

Deputy Upper Tribunal Judge Chana