



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/48709/2014

THE IMMIGRATION ACTS

Heard at Field House
On 30 June 2016

Decision & Reasons Promulgated
On 13 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

MD MARUF HUSSAIN SIDDIQUE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms Z. Ahmed, Home Office Presenting Officer
For the Respondent: Mr. M. I. Hossain, London Law Associates

DECISION AND REASONS

1. In a decision of Deputy Upper Tribunal Judge Davey, promulgated on 9 April 2016, the decision of First-tier Tribunal Judge Conrath, promulgated on 25 August 2015, was set aside. The appeal came before me on 30 June 2016 to be remade.

2. The Appellant attended the hearing but did not give oral evidence. No further documentary evidence was provided. However, it did not appear that all of the documents provided with the application were on the file before me, and the Appellant provided his bundle of documents. I heard submissions from both representatives following which I reserved my decision.

Submissions

3. Ms Ahmed relied on the reasons for refusal letter dated 23 November 2014. She submitted that the only evidence that I could consider was that which had been provided with the application. She referred to the cases of Ahmed and another (PBS: admissible evidence) [2014] UKUT 00365 (IAC), and Olatunde [2015] EWCA Civ 670. The application was made on 25 July 2014 and the decision was made on 23 November 2014.
4. The application had been refused for two non-points scoring reasons, both connected to the genuineness of the business, under paragraph 245DD(h), with reference to paragraph 245DD(j). I was referred to paragraph 10 of the Appellant's statement where he referred to a document submitted by IT House 392 Limited (page 2 of the bundle before the First-tier Tribunal). This letter is at page 6 of the bundle. It is dated 20 May 2015. Ms Ahmed submitted that this letter could not be taken into account as it had not before the Respondent when she made her decision. The leaflet which had been submitted for the appeal hearing was not before the Respondent when she made her decision and could not be taken into account (page 7 of the bundle).
5. Ms Ahmed referred me to the invoices (pages 12 to 17 of the bundle). These documents also post-dated the application and decision. Similarly, the service contract also post-dated the application and decision (pages 18 to 21 of the bundle). As a consequence, they could not be taken into account.
6. She submitted that the grounds on which the Appellant had contested the refusal of the application could not stand. The issues raised in the reasons for refusal letter had not been addressed, given the restriction on the evidence which I was able to consider. She submitted that the appeal should be dismissed as the Appellant had failed to address the reasons why the application had been refused.
7. Mr. Hossain referred to the business plan. This document had been submitted with the application and could be considered by me. Mr. Hossain submitted that, although there was no mention of the café on the website, the Appellant had later submitted a document confirming the existence of the internet café and he had also provided photographs. He also provided a letter from the IT manager confirming the existence of the café. He submitted that these were not new documents. The Appellant had not been given the opportunity to submit further documents under "paragraph 245DD". He submitted that the further evidence submitted with the

appeal should be admitted as these were not new documents but arose from the refusal decision regarding the point about the internet café not existing.

8. The second issue was regarding the business contracts. He submitted that the letter should be admissible. The Appellant met the requirements of the immigration rules and he had submitted all the necessary documents. The judge had not considered the documents which had been submitted for the appeal. There was no issue about the availability of £50,000 of funds. The money was available. Money had not been credited to the business account but money had been received by instalments. He submitted that I should consider the decision of Judge Davey. The Appellant had submitted documents but some of the evidence been ignored.

Findings and Conclusions

9. In the error of law decision promulgated on 9 April 2016, Deputy Upper Tribunal Judge Davey found that the original decision could not stand and that the matter would have to be remade. No findings were preserved from the First-tier Tribunal.
10. The Respondent refused the Appellant's application as she was not satisfied regarding the viability and credibility of the business plan and market research, with particular reference to contracts, market research and advertising, and the business plan (paragraph 2455DD(j)(iii)). Further she was not satisfied in relation to the Appellant's previous educational and business experience, or lack thereof (paragraph 2455DD(j)(iv)).
11. Following the cases of Ahmed and Olatunde referred to above, I am not able to take into account any new evidence which was not before the Respondent when she made her decision. Ahmed states clearly in the headnote that "the prohibition on new evidence in s85A(4) of the Nationality, Immigration and Asylum Act 2002 applies to the non-points scoring aspect of the rule; the prohibition is in relation to new evidence that goes to the scoring of points".

Paragraph 2455DD(j)(iii)

12. The Respondent stated that the Appellant had provided no evidence to suggest that he had been developing his business during the course of his leave as a Tier 1 (Post Study Work) Migrant. He had held leave to remain in this capacity since July 2012 but there was no information to demonstrate the creation of the business before June 2014. He had provided a service contract stated 1 July 2014, approximately 29 days prior to the expiry of the visa. The limited and recent nature of the evidence provided raised concerns over the Appellant's intentions to actively run his business in the United Kingdom.
13. In his statement dated 12 June 2015 the Appellant said that the business "POS IT Solutions London Limited", an IT consultancy firm, was registered on 12 June 2014 [8]. He explained how he had first been involved in the business Blue Mango but the

joint application for an Tier 1 Entrepreneur visa was refused, so the Appellant had resigned from Blue Mango and started again with POS IT ([5] to [8]). He said that in relation to demonstrating business activity he had submitted a number of documents, which he listed, and which the Respondent had failed to consider [13]. He was actively engaged in business activities, and had concluded other service contracts with Alpa Consultants Limited, [14].

14. The service contract agreement between the Appellant and Alpa Consultants Limited is dated 21 April 2015. This post-dates the decision, and therefore I cannot take it into account. The only contract provided with the application is the contract with IT House 392 Limited.
15. Given that the Respondent would have known about the Appellant's previous involvement with Blue Mango, I find that, although the Appellant had not been developing POS IT prior to July 2014, the Respondent would have known that the Appellant had previously been involved in applying for a visa in connection with Blue Mango. However she made no reference to Blue Mango and the previous application in this part of the refusal. Given the history and circumstances, which were known to the Respondent, I find the fact that the business had only been created in July 2014, and that there was only one service contract, does not in and of itself show that the Appellant did not intend to actively run his business in the United Kingdom. However, this was only one of the Respondent's concerns, and she raised other concerns about the Appellant's lack of business experience, and what he had been doing (see [34] and [35] below).
16. The Respondent had concerns over the contract with IT House 392 Limited. At interview the Appellant was asked about IT House 392 Limited. He said that it was a cybercafé with around 12 to 15 computers. "Most of the service is to the customer on the internet". Checks by the Respondent revealed that there was no mention of any role of a cybercafé on IT House 392 Limited's website. This discrepancy cast doubt over the genuineness of the contract and raised concerns over the credibility of services provided for this client. Further the Respondent stated that the services stated on the contract were for IT Consultancy with system design and development, but as IT House 392 Limited were themselves an IT Consultancy company, the Respondent considered it questionable that they would incur an additional cost of paying the Appellant's company to perform a role in which they already appeared to work.
17. For his appeal the Appellant provided a letter from IT House 392 Limited dated 20 May 2015. This document was not before the Respondent when she made her decision. Following the case of Ahmed, I am not entitled to take into account evidence which was not before the Respondent when she made her decision. In his witness statement the Appellant said that the Respondent was wrong to allege that the Appellant's business and IT House 392 Limited were involved in the same category of business. However, he did not dispute the Respondent's statement that

her research showed that the IT House 392 website did not advertise a cybercafé. He stated that the cybercafé was not mentioned on their website [10].

18. In the bundle of documents provided to me at the hearing are copies of the Respondent's search for IT House 392 Limited, including a printout of various pages of the IT House 392 Limited website as of 21 October 2014. The homepage states that IT House 392 Limited are IT professionals who specialise in IT support "troubleshoot hardware or software related issues, such as hard disk recovery, retrieve file from dead hard disc if it shows a sign of life, Networking". It also states that they carry out web design, web development and web marketing including search engine optimisation. There is no mention of any cybercafé on this homepage.
19. On the "about" page it states that IT House 392 is an IT support and web development company, but again there is no mention of any cybercafé. On the "services offered" page there is reference to the web development service, the IT and networking support service, and the additional services including PC or laptop repairs. Again there is no mention of any cybercafé.
20. I find that the evidence before the Respondent was contradictory. The Appellant said at interview that he was providing IT services to a cybercafé, but the Respondent's research and check of the IT House 392 Limited website did not indicate the existence of any cybercafé. It is reasonable to expect that the existence of the cybercafé would be indicated on the website. I find that at the date of the decision the Respondent had valid concerns about the genuineness of the contract, given that the Appellant had said that he was entering into a contract to provide IT support to a cybercafé, but the Respondent's research did not show that such a cybercafé existed. I find it on the evidence available to the Respondent at the time of the decision there were valid concerns raised.
21. The website for IT House 392 Limited did not state that they were IT Consultants, but rather IT support. While there might be some overlap, were this the only concern of the Respondent regarding the contract with IT House 392 Limited, I would find that it was not significant, but given the concern over the lack of cybercafé, I find that the Respondent's concerns over the contract were valid.

Market Research

22. In relation to the market research and advertising, the Respondent stated that document provided contained no details about what had actually been completed, and held very little relevant information about the Appellant's competitors. The Respondent also referred to the answers given at interview relating to the market research completed. There was no evidence provided to support the Appellant's claim that he had visited local businesses and talked to them. The Respondent considered that the limited information provided at interview raised questions about the genuineness of any research undertaken.

23. I have considered the answers given at interview in relation to market research (Q16 to Q18). The Appellant said that he carried out online based research but also went to local businesses and talked with them. He said that there were 80 to 100 businesses in the local area offering similar services but only 50% of those were IT based. He was then asked how many companies actually offered the same services as he did, and he said it was around 40%. I find that the Appellant's answers at interview were not particularly clear. When asked "How many other businesses exist in the local area that offers similar services?" he replied "80 to 100", but then added that "only IT based is 50%". Given that the Appellant's business is an IT consultancy, it is difficult to see that of the businesses offering similar services, only a proportion of those are IT based. It is presumably for this reason that the interviewer asked a follow-up question "How many actually offer the same services as you", to which his reply was "around 40%". This is presumably 40% of "80 to 100", but it is not clear. I find that his answers at interview were vague and unclear.
24. The market research evidence before the Respondent consisted of a lengthy document consisting of printouts from Yell.com and approvedindex.co.uk along with copies of some of the websites of the companies listed. This document is referred to in the reasons for refusal letter but there is no copy in the Respondent's bundle. I have carefully considered the documents before me, and there is no document which fits this description. The Appellant has not addressed the issue of market research at all in his statement. The burden of proof lies on the Appellant to show that he meets the requirements of the immigration rules and given the Respondent's concerns, including her concerns about the vagueness of his replies at interview relating to the research he had carried out, I find that the Respondent's concerns in relation to the lack of market research were genuine, and cast doubt on the genuineness of the business of the Appellant.

Advertising

25. The Respondent also stated in the reasons for refusal letter that the Appellant claimed at interview that he advertised his business in newspapers, on Gumtree and with leaflets. However a check on Gumtree undertaken on 21 October 2014 did not show any current advertising campaign for the Appellant's company. The Appellant had provided a copy of the Gumtree advert along with an advert in the newspaper, Bangla Times, which showed that a one-time advert was placed in June 2014.
26. I have considered the Gumtree advert which the Appellant provided. It is a document which contains very similar wording to the wording from Soft Bliss Limited (see [28] to [33] below). I have considered the document showing the Respondent's Gumtree search. This indicates she searched for POS IT Solutions London Ltd. In the list of companies underneath that there is no reference to the Appellant's company. The Appellant did not address this point in his statement. He said that the Respondent not taken into account the business advertising material he had provided to prove his business engagement [13], but he did not address the issue

of the Respondent searching Gumtree and not being able to find any advert for his company.

27. I find that the Respondent's concerns concerning the Appellant's advertising were valid, and the Appellant has failed to address this issue.

Website

28. The Respondent also had concerns about the Appellant's website. Internet checks showed that the web address was registered by Bees2Bees, a company registered in Chittagong, Bangladesh. The Respondent stated that there was a company with the name of Soft Bliss Limited whose wording on their website was very similar to that on the Appellant's website. The Respondent considered that this indicated that the website been copied from another source and not designed specifically for the Appellant's business venture.
29. I have considered the evidence of the Appellant's website against the evidence from Soft Bliss. The wording under the headings "Motto" and "Mission" is almost exactly the same. The text under the heading "Core Services" is very similar to the text under the heading of "Services" on the Soft Bliss website. In his statement the Appellant said that he asked a third party to develop his website and did not develop it himself. He did not address the fact that the text appeared to have been copied from another website. Given that the Appellant's business is an IT solutions business, and given that the Appellant has an MSc in information technology, it is surprising in and of itself that the Appellant handed over the development of his website to someone else. I find that the Respondent's concerns were valid regarding the apparent copying of text from someone else's website.

Business plan

30. The Respondent stated that given the wording in the business plan was taken from the information provided on the website, and given that the website was a copy of the Soft Bliss Limited website, this led the Respondent to doubt the genuineness of the business plan, and to question the credibility of the information in it.
31. I have considered the business plan. Without comparing it word for word, it is clear that there are large overlaps between the Appellant's business plan and the Soft Bliss website. The "Motto" and "Mission" sections are taken directly from the website. The same wording is used in the "Services" section in the business plans as is used in the "Services" section of the Soft Bliss website. The section on "IT Security and Integrity" in the business plan is very similar to the "Software and IT Systems Security" section of the Soft Bliss website. The section on "Software quality assurance and maintenance" in the business plan contains much of the same wording as the "software testing and validation" section of the Soft Bliss website. The "Software systems design and development" section of the business plan is very

similar to the “Software systems design and development” section of the Soft Bliss website.

32. The Appellant admitted that he did not design the website but gave it to someone else to develop. I find that this casts doubt on the amount of personal input which the Appellant had into his own business plan, given that large sections are copied from his website, or the Soft Bliss website. He stated in his witness statement that as Soft Bliss was a similar business, they may have similar wording which would be “very normal”. However, the similarities do not stop at the website, but continue into the business plan. The Appellant did not address this at all in his statement. I find that at the date of the decision the Respondent had before her a website which appeared to have been copied from another website, and a business plan which was based on that website and which contained the same wording. I find that given the evidence before her, the Respondent had valid concerns regarding the genuineness and credibility of the business plan, which the Appellant has failed satisfactorily to address.
33. Taking into account all of the evidence which was before the Respondent, in particular the evidence of the website and business plan which appear to have been largely copied from the Soft Bliss website, I find that the Respondent had valid questions as to the viability and credibility of the Appellant’s business with reference to paragraph 245DD(j)(iii).

Paragraph 245DD(j)(iv)

34. The Respondent also refused the Appellant’s application with reference to his previous educational and business experience. I have considered the interview record referred to in the reasons for refusal letter. At Q4 the Appellant was asked whether he had had any paid work whilst on his Post Study Work (“PSW”) visa. He replied “Actually I didn’t work but since Jan this year I’ve had part-time job in retail shop food shop”. He said that he had been doing 16 hours per week. At Q5 he was asked what other previous employment and business experience he had. He replied “Well back home I was employed by an IT consultation firm, I finished my graduation in IT and I did masters in IT so all my career and background related to IT. Worked for that company more than 2 years back home”.
35. I find that the Appellant came to United Kingdom in January 2007 as a student. He completed his MSc in IT from the University of East London in February 2011. He obtained his PSW visa in July 2012. He said at his interview that he had not done any paid work while on his PSW visa until January 2014 when he was worked for 16 hours per week in a food shop. Even if the Appellant had previously been employed as he claims in an IT firm in Bangladesh, that would have been before he came to United Kingdom in January 2007. The Appellant did not address this issue at all in his witness statement. I find that the Respondent’s concerns as to the Appellant’s previous business experience were valid. The only role which supported the knowledge he gained from his qualification was that from his first attempt for an

Entrepreneur visa. The other experience is limited to work in a food shop. I find that the Respondent's concerns were valid based on the evidence before her at the time of the decision, and cast doubt on the genuineness of the Appellant's intentions.

36. I have carefully considered the concerns of the Respondent set out in the reasons for refusal letter, together with the evidence which the Respondent had before her at the time of the decision, including the interview with the Appellant. I find that on the basis of the evidence before her, the Respondent's concerns were justified. I find that the evidence before her raised concerns about the genuineness of the Appellant's business, and his intentions. I find that the Appellant failed to show that he was genuinely intending to set up in business. As I have made clear above, the evidence that I can consider is that provided with the application and which was before the Respondent at the date of the decision. However, even had I been able to take into account the letter from IT House 392 Limited, this does not address all of the Respondent's concerns. I find that she had other valid concerns about e.g. the business plan, the website, and the Appellant's lack of experience, which are not addressed by this letter, or by the other evidence provided by the Appellant for the appeal. Neither are these issues satisfactorily addressed in the Appellant's witness statement.
37. In his witness statement the Appellant said that the Respondent had doubted the availability of funds. Although the Respondent stated that she was not satisfied that the money was genuinely available to the Appellant, she did not give any further details as to why she considered this to be the case with reference to paragraph 245DD(h)(ii) or 245DD(j)(ii). In this regard, I note paragraph [11] of Judge Davey's decision discussing the issue raised relating to the bank statements and invoices. He stated that if this matter was not addressed on any remaining "it is a perfectly sensible freestanding basis to reject the application".
38. However, given that I have found that the Respondent's concerns in relation to the viability and credibility of the business with reference to paragraphs 245DD(h)(i), 245DD(j)(i), (iii) and (iv), I find that the Respondent was entitled to refuse the Appellant's application under paragraph 245DD. I find that the Appellant has failed to show on the balance of probabilities that he meets the requirements of the immigration rules.

Article 8

39. In the grounds of appeal to the Upper Tribunal it was asserted that the First-tier Tribunal judge had erred by not finding a family life. However, in the refusal of permission to appeal from the First-tier Tribunal, and in the grant of permission from the Upper Tribunal, it was stated that there was no factual basis upon which the judge could have found that the Appellant had established a family life.
40. No submissions were made before me relating to the family or private life of the Appellant under Article 8 ECHR.

41. Although the Appellant has established a private life in the United Kingdom, he cannot meet the requirements of paragraph 276ADE(1) as he has only been in the United Kingdom since 2007, and he is 30 years of age. There is no evidence before me to suggest that the Appellant had would face very significant obstacles to his integration into Bangladesh. In relation to any consideration of Article 8 outside the immigration rules, no evidence has been provided to show that there are any compassionate or compelling circumstances which would warrant a grant of leave to remain outside the immigration rules. There is no evidence of any medical problems, and no evidence to suggest that the Appellant would not be able to continue his private life in Bangladesh.
42. With reference to the factors listed under section 117B of the 2002 Act, there is a significant public interest in refusing leave to remain to those who do not meet the requirements of the immigration rules. The Appellant came to United Kingdom as a student and I accept that he must speak some English. He provided evidence of funds in his account amounting to £50,000, but have no further details of his financial situation. Any private life has been established when his leave to remain was precarious. I find taking into account the evidence that the Appellant has failed to show on the balance of probabilities that the decision is a breach of his rights to a private life under Article 8 ECHR.

Notice of Decision

43. The appeal under the immigration rules is dismissed.
44. The appeal is dismissed on human rights grounds.

Signed

Date 13 July 2016

Deputy Upper Tribunal Judge Chamberlain

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 13 July 2016

Deputy Upper Tribunal Judge Chamberlain