



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01151/2016

THE IMMIGRATION ACTS

Heard at Field House
On 10 July 2017

Decision & Reasons Promulgated
On 11 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

AHAMED FAZLAN MOHAMED NIYAS
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr Whitwell a Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant did not attend the hearing. He had written to the Tribunal (6 July 2017) asking for his case to be determined on the papers due to his ill health. A Duty Judge determined that it would be fair for me to determine the appeal having heard from the Respondent. I saw no reason to interfere with that decision having considered the papers.
2. The Respondent refused the Appellant's application for leave to remain as an entrepreneur on 9 February 2016. His appeal against that was dismissed by First-

tier Tribunal Judge Hawden-Beale (“the Judge”) following a hearing on 16 March 2016.

3. First-tier Tribunal Judge Keane granted permission to appeal (31 May 2017). He said;

“it is arguable that the Judge did not arrive at a clear or rational finding that Equinox was not able to invest given the arguably convoluted manner in which the judge arrived at a finding in ...” [16].”

The Judgement

4. [16] of the judgement states;

“As a result of the delay in making a decision, the fact that Equinox were dormant from 2014-2015 and the fact that the appellant has not supplied information to show that even after this length of time Equinox was still able to and interested in investing in the company, I have to conclude that, as at the date of the decision, the respondent was correct to question whether the appellant had access to that money, given that there was no company in existence to transfer the funds to. I cannot not conclude that Equinox did not have the funds when the application was made because the respondent has not supported her claim in the appropriate manner but, given that the company was dormant for 2014 and 2015, I do question whether Equinox was able to fund the company as at the date of decision”.

5. It is also appropriate to set out [15];

“Having said that there were still issues with the application from the beginning which the appellant had not addressed, such as the evidence of the registration of the company with Companies House and his appointment as a director. The appellant has not produced that evidence even though in his interview on an unknown date at question 11, he said that he had registered the company at Companies House.”

6. It is also appropriate to set out [17];

“I also share the respondent’s concerns about the market research because the appellant said that he did not need to do any, knowing his market segment as he did. He may well have known his market segment, but he had to demonstrate that he knew it and market research was the way to show that knowledge. Merely saying he knows the market means nothing.”

The parties’ arguments

7. The Respondent filed a rule 24 notice (12 June 2017) saying, in essence, that the Judge having noted the dormancy of Equinox and inability of the Appellant to

demonstrate it could support him was entitled to conclude he did not meet the requirements of the rules. Mr Whitwell's oral submissions did not expand on this.

8. The Appellant submitted in the grounds that the Respondent could have made enquiries of him or Equinox during the 3 ½ years she was considering the application. Equinox agreed to fund him. Market research was not mandatory. The Respondent was obliged to consider exercising discretion outside the rules.

Discussion

9. The wording of [16] was indeed convoluted with the final sentence containing 3 negatives in the first 8 words. Excluding 2 of them leads to a less convoluted sentence.

"I cannot conclude that Equinox did have the funds when the application was made because the respondent has not supported her claim in the appropriate manner"

This in itself is hard to fathom as the respondent was not making a claim and did not have to prove anything. It is not however a material error of law as it has not infected the rest of the decision.

10. The Judge was sufficiently clear in regards to the rest of the findings he made in [15], [16], and [17]. If the tortuous sentence is excluded, the Judgement is clear, namely the Appellant had failed to establish that he had access to the funds, or a company to transfer the funds to, or that he had done relevant market research. The Respondent was not required to consider exercising discretion.
11. I am not therefore satisfied that the Judge made a material error of law.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Deputy Upper Tribunal Judge Saffer
10 July 2017