



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/33811/2015

THE IMMIGRATION ACTS

Heard at Field House
On 2nd January 2018

Decision & Reasons Promulgated
On 5th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR MOHAMMAD SHOHEL RANA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Biggs (Counsel)
For the Respondent: Mr E Tufan (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Miller, promulgated on 13th March 2017, following a hearing at Taylor House on 17th February 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, who was born on 24th December 1984. He appealed against the decision of the Respondent Secretary of State dated

27th August 2014, refusing his application made on 10th July 2014 for leave to remain as a Tier 1 (Entrepreneur) Migrant.

The Appellant's Claim

3. The Appellant's claim is that, having been granted leave to remain as a Tier 1 (Post-Study) Migrant until 28th July 2014, after he had first entered as a student in 2009, he now had access to at least £50,000 to invest in a business. He had provided a NatWest business account bank statement as evidence of this. He also had a legal agreement between himself and his company. He was able to satisfy the requirements of paragraph 41SD(c)(ii)(4) and paragraph 46SD(a)(iii) of Appendix A. The Respondent in her decision of 27th August 2014 decided that this was not the case.

The Judge's Findings

4. On 17th February 2017, this appeal came up before Judge Miller as a "float case". The judge set out the basic elements of the Appellant's claim (at paragraphs 4 to 5), and noted how the Respondent Secretary of State had rejected the claim made by the Appellant on all fronts. There was a bundle of 130 pages before the judge (see paragraph 8). The judge referred to the oral evidence, and noted that the Appellant stated in his evidence that when he had applied he had money in his business account, which was transferred into his personal account (see page E1). It was noted that the company account was at D3 of the bundle. The personal account was at E1 (see paragraph 12). In cross-examination the Appellant was asked how he had transferred £20,000 and he had said that he had transferred £20,000 and then £19,990 into his personal account (see E1), because, "when my solicitor found out that the company should be in the personal account, he told me and I transferred it" (see paragraph 13). The judge noted that the legal agreement between the Appellant and his company, Continental Properties Global Limited, was documented at pages 107 to 108 (see paragraph 14). The conclusion of the judge was that it was clear that the Appellant had failed to meet the requirements of the Immigration Rules "as set out in the refusal notice" (paragraph 15). The appeal was dismissed.

Grounds of Application

5. The grounds of application state that the determination of the judge is very short (less than three pages including the headings) and the Tribunal's assessment and conclusions in respect of the Appellant's appeal are contained only in a single paragraph at paragraph 15 and do not explain how it is that the Appellant failed to satisfy the requirements in the Rules.
6. On 30th October 2017 permission to appeal was granted by the Upper Tribunal. It was said that the judge did not set out the relevant Rules. The judge did not set out the material submitted in purported fulfilment of the requirements. The judge did not set out why the material submitted fell short of the requirements. It was said that an ordinary reader trying to make sense of the determination could not reasonably derive any benefit from the two sentences at paragraphs 12 and 13 save to infer that money was in the wrong account. Permission to appeal was granted on this basis.

7. On 16th November 2017 a Rule 24 response was entered to the effect that the case of **Ahmed and Another (PBS: admissible evidence) [2014] UKUT 00365** stood for the proposition that the proper date for determination of an application is the date of the application itself. At the date of the application all the documents had not been submitted.

The Hearing

8. At the hearing before me on 2nd January 2018, Mr Biggs, appearing on behalf of the Appellant, submitted that the gravamen of the application was not that the judge had failed to set out the Immigration Rules but that, following the House of Lords judgment in **South Bucks DC v Porter [2004] UKHL 33** at paragraph 36, it was not possible for the Appellant to know why it was that his case had not been made out.
9. Mr Biggs drew my attention to pages 3 to 5 of the bundle, which contained the Appellant's witness statement, where he states at paragraph 3 (second sentence) that all the documents had been provided as required by the Secretary of State, such that it was simply not correct for the Secretary of State to maintain that the specified evidence had not been submitted. At paragraph 6 the Appellant states that he had already invested the money. The shortfall, he maintained, could be made up by the fact that the money had been invested. At pages 106 to 107 (which the judge had alluded to in passing at paragraph 14 of the determination) there was a letter from the Appellant's accountant, and this was sent before the date of the decision, which explains how the investment has come about. Moreover, at pages 107 to 108 there is a formal written agreement confirming the director's loan which meets the requirements of paragraph 46SD.
10. Furthermore, if one looks even at the Respondent's bundle (at E1) one can see a personal bank account with £47,000 in it, which came out of the business account of the Appellant into his personal account, as he was advised to do. Also in the Respondent's own documentation there is at D1 to D4 the business bank account showing the investment. At D1 onwards there is a personal account of the Appellant showing the money which was originally in the business account of the Appellant. At page 103 one has the unaudited account from the accountant.
11. Mr Biggs submitted that when all of this is cumulatively taken into account, it was clear that the Appellant satisfied the terms both of paragraph 41SD and paragraph 46SD. The judge's failure to engage with this evidence, and simply to adopt the reasoning of the Respondent Secretary of State, was an error of law, and did not demonstrate to the Appellant why it was that he lost his appeal.
12. For his part, Mr Tufan submitted that he would rely upon his Rule 24 response, and the reference there made to the case of **Ahmed [2014] UKUT 00365**, which was authority for the proposition that the date of the application is the relevant time to consider the documentation. It is true that at D1 there is reference to £41,000, but this document came in after the application. Indeed the grounds of application accept that all the relevant information was not all sent out at the same time.

13. In reply, Mr Biggs submitted that if one looks at paragraph 5 of the determination in Ahmed [2014] UKUT 365, it is stated that, in relation to Section 85A, that “the purpose of that provision is quite clear. It is that where a points-based application is made and refused, the assessment by the judge is to be of the material that was before the decision-maker rather than a new consideration of new material”. He argued that the material was before the decision-maker at the time of his decision. Second, he was not relying upon the “evidential flexibility Rule” because all of the relevant documents were actually submitted in time for the decision-maker’s decision. Some of the documents, such as at E1, were actually in the Respondent’s bundle already.
14. Both sides agreed that, if I were to make a finding of an error of law, the appropriate course of action was to remit this matter back to the First-tier Tribunal, because of the complex nature of the provisions here. These involved the precise manner in which the Rules should be interpreted. They also involved a consideration of what material was before the decision-maker, if all the relevant documentation had not all been sent out at the same time in the “application”. This required careful argumentative analysis before the First-tier Tribunal Judge, so that if there was to be an error in the decision, the aggrieved party could preserve their right of appeal to the Upper Tribunal thereafter. As for this matter not having arisen before, Mr Biggs made it clear that his original Grounds of Appeal were preserved at E27, where it is argued that there was insufficient reasoning provided by the judge in this case. Both sides also agreed that this matter should not be entered into the list of the First-tier Tribunal on a remittal as a “float case” the next time around.

Error of Law

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and re-make the decision. My reasons are as follows.
16. It is plain that, whilst the judge sets out the alternative arguments put forward by the Appellant at paragraphs 4 to 5 of the determination, there is no engagement with the evidence, particularly given that the conclusions reached in the refusal letter were patently not open to the decision-maker to reach. The Appellant had invested the money he claimed to have invested. There was evidence even in the Respondent’s bundle at E1 and D1 to D3. There was an agreement between himself and the company.
17. In these circumstances, the application of paragraph 41SD and paragraph 46SD required a proper and fuller analysis. The statement that, “with regard to the legal agreement between himself and his company, Continental Properties Global Limited, reference was made to page 107-108” (at paragraph 14) does not demonstrate an engagement with the evidence and clear findings of fact made on that evidence. There is, in short, insufficient reasoning.

Notice of Decision

18. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is to be allowed to the extent that it is remitted back to the First-tier Tribunal under Practice Statement 7.2(a), to be heard by a judge other than Judge Miller. This appeal should not be set down as a float case. This appeal is allowed.
19. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

26th February 2018