



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

Fayyaz (Entrepreneurs: paragraph 41-SD(a)(i) – “provided to”) [2014] UKUT 00296 (IAC)

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 08 April and 13 May 2014**

**Determination Promulgated  
On 13 June 2014**

**Before**

**The President, The Hon. Mr Justice McCloskey  
Upper Tribunal Judge Clive Lane**

**Between**

**KIRAN FAYYAZ**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

**Appellant:** Mr I McDonald QC and Mr M Iqbal (of Counsel), instructed by  
Farani Javid Taylor Solicitors

**Respondent:** Mr P Duffy, Senior Home Office Presenting Officer

*The words “provided to” in paragraph 41-SD(a)(i) (9) of Appendix A (Attributes for Tier 1 (Entrepreneur) Migrants) have the same meaning as “available to.” Whilst the Rule has now been amended to this effect, the previous wording of the Rule did not give rise to any absurdity or doubt in construction.*

## DETERMINATION AND REASONS

### Introduction

1. Ms Kiran Fayyaz (hereinafter "*the Appellant*") appeals against the decision of the First-tier Tribunal ("*the FtT*") promulgated on 27 November 2013. This appeal was heard together with three other appeals, those of Hazrat Waqas Durrani, Parvaiz Akhter and Chandni Maqbool.<sup>1</sup> These appeals were heard together because they have certain common features. Fundamentally, the factor which unites all four cases is that they raise issues of construction of certain aspects of the provisions of the Immigration Rules which govern the acquisition of the status known as "Tier 1 (Entrepreneur) Migrant". For convenience, we shall describe this as "*entrepreneurial migrant status*". We would add that these four cases, while comparable in certain respects, are not identical.
2. This Appellant, in common with the other three litigants, applied to the Secretary of State for the Home Department (hereinafter "*the Secretary of State*") for this status. All of the applications were refused on the ground that they were non-compliant with certain requirements of the Rules. Each of the refusal decisions was challenged by appeal to the FtT. The appeals of this Appellant and Mr Durrani were dismissed. This Appellant and Mr Durrani have been granted permission to appeal to this Tribunal, contending that the FtT erred in law in dismissing their appeals. The appeals in the cases of Ms Maqbool and Mr Akhter were allowed. The distinguishing feature in their cases is that their applications for entrepreneurial migrant status had been made as partners of the proposed business enterprise. The Secretary of State has been granted permission to challenge the decision of the FtT in their cases before this Tribunal.
3. Accordingly, there are four inter-related appeals altogether. While the case management decision to list and hear all four appeals together was vindicated, time and cost undoubtedly having been saved thereby, we have decided, in the interests of clarity and comprehension, and taking into account distinguishing as well as common features, to prepare separate determinations. We further consider that this segregation is likely to be of greater assistance to the Court of Appeal in two cases in which permission to appeal has been granted, namely Secretary of State for the Home Department - v - AI (Pakistan) and Others [2014] EWCA Civ 173 and UT (India) and Another - v - Secretary of State for the Home Department C5/2014/0212.
4. Permission to appeal in the aforementioned cases was granted on 11 February 2014 and 23 April 2014. We have been provided with the grant of permission to appeal in each case. In the first case, AI (Pakistan), Sullivan LJ stated:

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<sup>1</sup> Durrani (Entrepreneurs: bank letters; evidential flexibility) [2014] UKUT 00295 (IAC) and Akhter and another (paragraph 245AA: wrong format) [2014] UKUT 00297 (IAC)

[4] .... It was common ground that the documents relied upon by the Appellant did not comply with paragraph 41-SD(a) as literally interpreted .....

[9] The Upper Tribunal (decided) that the requirements of sub-paragraphs (a) and (b) and possibly (c) were cumulative ....

[10] In my judgment that does raise an important point of principle as to the proper interpretation of the Rules which potentially affects a number of would be Tier One (Entrepreneur) Migrants who are relying on third party rather than their own funds."

In the second case, UT (India), in granting permission to appeal Moses LJ stated:

*"There is a lack of coherence in the way the evidential requirements are being interpreted which requires clarification."*

5. We have given consideration to whether our decisions in these four appeals should be deferred until determination of the two appeals to the Court of Appeal. Making the best prediction possible, we acknowledge that the decisions in AI (Pakistan) and UT (India) may have some bearing on how the present appeals should be decided. On the other hand, the two grants of permission to appeal to the Court of Appeal are of recent vintage and we are alert to the delays which may ensue. Furthermore, the uncertainty for these litigants, who are attempting to plan their futures and who have already had to endure not insubstantial delay, will merely be exacerbated if we put their appeals on hold for a period which will be of more than minimal dimensions. We also take into account that if there is a challenge to any of our decisions in these appeals, the ultimate resolution in the wake of promulgation of the Court of Appeal decisions should not be unduly delayed. Finally, we are mindful of the strictures of the Court of Appeal in AB (Sudan) - v - SSHD [2013] EWCA Civ 921, at [24] - [32]. The central theme of these passages is expressed in the following pithy statement of Jackson LJ:

*"[32] In my view the power to stay immigration cases pending a future appellate decision in other litigation is a power which must be exercised cautiously and only when, in the interests of justice, it is necessary to do so."*

His Lordship added:

*"It may be necessary to grant a stay if the impending appellate decision is likely to have a critical impact on the current litigation."*

6. What is required of the court or tribunal seized of a stay issue is a reasonable, balanced forecast made on as fully informed a basis as possible and giving effect to the values and principles enshrined in the overriding objective. Adopting this approach, applying the principles in AB (Sudan) and having given the parties an opportunity at the hearing to make representations on this discrete issue, we consider

that all of these appeals should be decided, rather than delayed. We are satisfied that this course is more likely to promote the efficient and expeditious administration of justice.

### **The Immigration Rules**

7. The provisions of the Immigration Rules which the Appellant's application had to satisfy are contained in paragraph 245DD, paragraphs 35 – 43 of Appendix A (in particular paragraph 41-SD) and Table 4 of Appendix A. As these are somewhat bulky and unwieldy, they are reproduced in an appendix hereto. While any summary of these lengthy and intricate provisions will inevitably be inadequate, we attempt the following overview.
8. Paragraph 245DD and its sister provisions may properly be viewed as a self-contained code within the Immigration Rules governing applications for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant. The scheme of these provisions is that a person who has, or has last been granted, entry clearance or leave to enter or remain in a specified guise may apply for Entrepreneurial Migrant Status. There is no dispute between the parties about the meaning of paragraph 245DD of the Rules. Every applicant for this status must comply with all of the requirements pertaining to the particular application. A failure to comply with any of the applicable requirements results in refusal. One of the requirements is that the applicant must have a minimum of 75 points, or "*attributes*". The acquisition of the necessary points is governed by Tables 4, 5 and 6 in Appendix A. In all of these appeals, Table 4 is the focus of the contentious issues.
9. During the hearing, both parties concurred with the Tribunal's suggestion that the detailed requirements prescribed in this self-contained code, particularly in Table 4, have two identifiable purposes. The first is to ensure that the person or partnership concerned is making a *bona fide* application for the desired status. The second is to establish that the proposed business venture is financially viable. Compliance with the relevant requirements of Table 4 is necessary in order to secure 25 of the requisite 75 points. Under Table 4, there are four possible mechanisms for scoring the 25 points concerned. The first is that the applicant has "*access to*" at least £200,000. Pursuant to the other three mechanisms, the applicant must have "*access to*" at least £50,000. Under all four mechanisms the applicant must comply with the relevant requirements of paragraphs 41 and 41-SD. These require the production of "*specified documents*". As stated in paragraph 41-SD(a), the purpose of the specified documents is "*to show evidence of the money available to invest*" in the proposed venture. This theme is also expressed in paragraph 41(a) and (b), which states that the specified documents must be provided "*to show cash money to the amount required*" and "*to show that the applicant has permission to use the money to invest in a business in the UK*". Paragraph 41(c) is concerned with the source of the finance: it must be "*either held in a UK regulated financial institution or is transferrable to the UK*". By paragraph 41(d), the money must "*remain available to the applicant until such time as it is spent in the establishment or running of the applicant's business or businesses*". We consider that the

provisions of paragraph 41 inform the correct construction of what follows, namely paragraph 41-SD and its elaborate regime.

10. The interconnecting nature and operation of paragraph 245DD, Table 4, paragraph 41 and paragraph 41-SD is apparent from the opening words of the latter, which are:

*“The specified documents in Table 4 and paragraph 41 are as follows: .....”*

This is followed immediately by paragraph 41-SD(a):

*“The specified documents to show evidence of the money available to invest are one or more of the following specified documents: .....”*

This is followed by three separate provisions within which a series of requirements is rehearsed. These provisions contemplate three different scenarios:

- (i) The necessary funds are held in a financial institution outside the United Kingdom.
- (ii) The necessary funds are held in a financial institution in the United Kingdom.
- (iii) The provider of the funds is a “Venture Capital” firm, a “Seed Funding Competition” or a “UK Government Department”.

These are clearly disjunctive scenarios, or categories, as the parties accepted in argument. It is the first of these three which has given rise to the main issue canvassed before us in the three appeals. We shall describe this as “*the first category*”.

11. The requirements relating to the “*specified documents*” in the first category are detailed in paragraph 41-SD(a)(i). We shall describe this for convenience as “*section (i)*”. Within this category provision is made for two possibilities, which are not mutually exclusive. The first is that the necessary funds are provided in whole or in part by the applicant. The second is that they are provided in whole or in part by a third party. We draw attention to the opening words in this category, contained in paragraph 41-SD(a)(i):

*“A letter from each financial institution holding the funds, to confirm the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). Each letter must: .....”*

There follows a schedule of 11 disjunctive requirements. Thus, in the first category, the “*specified document*” is a letter from the relevant financial institution or institutions which must accord with the requirements listed to the extent that these are applicable. We have added the qualification “*to the extent that these are applicable*” because it is clear, for example, that requirement (8) has no application in a case (such as the present) where the applicant is dependent exclusively on third party funding.

12. The requirements in category (i) which have given rise to controversy are those contained in sub-paragraphs (6) and (8) – (10) inclusive. The contentious requirements are that the letter must:

*“(6) state the applicant’s name and his team partner’s name if the applicant is applying under the provisions in paragraph 52 of this Appendix ....*

*(9) confirm the amount of money provided to the applicant from any third party (if applicable) that is held in that institution .....*

*(10) confirm the name of each third party and their contact details, including their full address including postal code, landline phone number and any email address ....”*

There is also some controversy about the word “applicant” in category (i):

*“A letter from each financial institution holding the funds, to confirm the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 2 of the Appendix).”*

This is followed by the words “Each letter must ...” and the 11 sub-paragraphs mentioned above.

13. Where the provider of the necessary funds is a “third party”, category (i) of paragraph 41-SD(a) of the Rules is not exhaustive of the requirements relating to the “specified documents”. This is clear from the opening words of paragraph 41-SD(b), which are:

*“If the applicant is applying using money from a third party, he must provide all of the following specified documents .....*”

This is followed by two further and separate categories of “specified documents” (i) and (ii). The use of the word “AND” makes clear that these are cumulative, not alternative, requirements. Thus, where a third party funder is involved, the requirements pertaining to “specified documents” are more rigorous. The two additional specified documents which must be provided with the application are:

(i) Per paragraph 41-SD(b)(i), an original declaration from every third party that they have made the money available for the applicant to invest in a business in the United Kingdom. This declaration must have the contents specified in the sub-paragraphs which follow.

(ii) Per paragraph 41-SD(b)(ii), a letter from a legal representative (described in the shorthand “legal letter” in some places).

The aforementioned letter must comply with four stipulations. The first is that it must confirm that the signatures of the signatories of each third party declaration are authentic. Secondly, it must be an original letter. Thirdly, its author must be a legal

representative permitted to practise in the country where the third party or the money is located. Fourthly, the letter “*must clearly show*”, to the extent applicable, the information and matters detailed in the seven sub-paragraphs which follow. The parties’ representatives agreed with this Tribunal’s analysis that the requirements enshrined in columns (i) and (ii) are freestanding and cumulative. We would add that none of the four appeals generates any issue relating to the construction of any of these provisions.

### **The Secretary of State’s Decision**

14. The completed application form disclosed that the Appellant is of Pakistani nationality, aged 23 years at the material time. She was the holder of a United Kingdom Biometric Residence Permit, issued in September 2010 and scheduled to expire on 27 August 2012. She had originally entered the United Kingdom pursuant to a visa issued in May 2009, as a student. This remained her immigration status. Section 3A of the application is concerned with points and “attributes”. In completing this section, the Appellant indicated that she was applying as a sole entrepreneur. She represented that she was relying on “*funds held overseas .... third party funding*”. Paragraph G6 of the form states:

*“The applicant must provide a letter of permission from each third party providing funds together with a letter from a legal advisor confirming the validity of the permissions.”*

The form then makes provision for attaching each of these documents. In completing this discrete section, the Appellant stated that she was submitting a “*Letter of Permission from third party funds provider*”. She did not complete the box adjacent to the words “*Letter of Confirmation from a legal advisor*”. In completing paragraph G10, she represented that she was submitting a letter from the “Allied Bank” and that the “*amount of money available*” was £693,011. It is common ground that the Appellant had to demonstrate the availability of minimum funding of £200,000. In response to paragraph J1, the Appellant stated that “*all the funds are disposable in the UK*”. In a later passage in the form, under the heading “Attributes”, it is stated:

*“In order for an extension application to be approved the applicant must score 75 points in the Attributes section. If they do not score 75 points the application will be refused. In addition, the applicant must score 10 points in each of the English language and maintenance sections.”*

These latter two requirements are prescribed by the Immigration Rules and give rise to no controversy in this series of appeals.

15. The final two pages of the application form (Section 7) consist of a “Summary Sheet”. In completing this discrete part, the Appellant indicated the following:
- (a) She was claiming 25 points for having access to the requisite funding and was providing an affidavit for this purpose.

- (b) She was claiming a further 25 points in respect of the relevant financial institution and was providing a bank letter accordingly.
- (c) She was claiming 25 points for the money being disposable in the United Kingdom and was providing an affidavit accordingly.

This discrete part of the form broadcasts the following warning:

*“Failure to submit required evidence is likely to lead to refusal of the application.”*

16. Bearing in mind the issues raised in this appeal, it is necessary to draw attention to only two of the documents submitted with the Appellant’s application for entrepreneurial migrant status. The first is the document entitled “Declaration of Availability of Funds used for an Application for Entrepreneur Status”. This is addressed to UKBA. In it, the named person *“solemnly declares”* the following:
- (i) He is a national and resident of Pakistan.
  - (ii) He has available funds of £693,011 in the Allied Bank (Lahore, Pakistan), specifying the account number.
  - (iii) He *“will make the said money available to”* the Appellant for the purpose of investing in business in the United Kingdom.
  - (iv) The Appellant is a family friend and the investor has *“agreed to invest the mentioned money in a business of his choice on business terms”*.

The declaration also contains particulars of the investor’s address and telephone. On its face, it was executed and witnessed in the presence of a lawyer.

17. The second of the accompanying documents on which attention is focused bears the title “Account Maintenance Certificate”. This recites, in material part:

*“This is to certify that Mr [XY] is ..... [sterling] Account [number .....] since [date] ..... the current balance of account is £693,011.”*

Particulars of the account holder’s name, the account number and the date of commencement are provided. The document further states that it is *“issued on specific request of the client”*. On its face, it is signed by the Customer Services Manager of Allied Bank Limited.

18. On 7 February 2013, some six months after submission of the Appellant’s application, UKBA communicated in writing with her solicitors. The communication indicated that the application was being processed and continued:

*“Unfortunately we are unable to continue as your client has not submitted the required documentation. As such we are requesting that your client submits an original bank letter from the third party account (Allied Bank) that states her name, how much is available from the account, the regulatory body for the bank and that the money is disposable in the United Kingdom. **This request for the documents is therefore being made under the UKBA flexibility provision.** You should also note that the required documents should meet the full requirements of the Immigration Rules.”*

[Emphasis added.]

This request elicited a response from the Appellant to UKBA, by letter dated 12 February 2013, attaching a letter dated 8 February 2013 from the Allied Bank of Lahore, Pakistan. The latter identified the relevant account number and stated:

*“We refer to the above and your recent request to provide a letter confirming the balance amount and the transfer of the same to Ms Kiran Fayyaz (26/08/1988) who is residing in the UK for her to invest the same in her business venture. As per our Bank Policy we can only confirm the available funds and the availability of transfer to the UK upon the request of the Account Holder. In view of that we hereby confirm that the available balance of the above mentioned Account is £320,098.27 as at 08/02/2013 and the same amount can be instantly transferred to any Bank Account holder in the United Kingdom upon your request.”*

The letter was signed by a person describing himself as “Branch Manager”.

19. Chronologically, the next material event was the Secretary of State’s refusal decision, contained in a letter dated 13 May 2013. The stated reasons for the refusal were twofold. First, it was stated that the Appellant had failed to provide a letter from the Allied Bank of Pakistan which, *inter alia*, specified -

*“..... the name of each third party and their contact details, including their full address including postal code, landline phone number and any email address.”*

The second reason for refusal was expressed in these terms:

*“In addition, no Legal Letter has been submitted with your application as required under Appendix A of the Immigration Rules.”*

“Legal Letter” is understood as a term of art: see the relevant description in [13] above. Having rehearsed these two defects in the application, the decision letter stated:

*“As a result of the above you have not demonstrated that you meet the requirements of the Immigration Rules to be awarded points under provision B of Table 4 of the Immigration Rules.”*

Continuing, the letter explained that while the Appellant had claimed 25 points in respect of “*funds held in regulated financial institutions*” and “*funds disposable*” in the United Kingdom”, by virtue of the aforementioned failures to comply with the Rules she

qualified for an award of no points in both respects. This was described in argument as the “domino” effect. The letter concluded:

*“Therefore you do not satisfy the requirements of the Immigration Rules and it has been decided to refuse your application .... as you do not meet the requirement at paragraph 245DD(b).”*

### **FtT decision**

20. It would appear from the determination of the FtT that the Appellant’s appeal against the Secretary of State’s refusal decision proceeded on two grounds. First, it was argued that the requirements of the Immigration Rules (outlined above) pertaining to the letter required from the third party funder’s bank are tainted by absurdity and are unlawful in consequence: [11] of the Determination. Second, the Appellant challenged the failure to apply to the “evidential flexibility” mechanism in respect of the missing letter from the legal representative (the “legal letter”). The Judge rejected the second ground in the following terms:

*“[10] The fact is that having received the letter from Allied Bank dated 07/02/2013, no further evidence could have resulted in success for the Appellant.”*

As regards the first ground, the Judge rejected the absurdity argument. He reasoned that the “*crux*” of the relevant requirements is that an applicant must demonstrate access to the requisite level of funding, describing this as “*purpose driven*”. The Judge’s omnibus conclusion is formulated in these terms:

*“[18] In the absence of the mandatory evidence from the Allied Bank and no reliable evidence that the funds are available, I see no reason for the SSHD to have sought any further evidence because the application was bound to fail.”*

The rationale for this conclusion appears to have been the Judge’s view that the third party funder should properly have transferred the funds to the Appellant’s bank account in the United Kingdom, whereby the availability of the finance would have been demonstrated. He considered the Secretary of State’s decision to have been in accordance with the law.

### **The Issues**

21. The two fundamental issues in the further appeal to this Tribunal are unchanged. Most of the argument was devoted to the absurdity ground. This ground focuses on the “*specified documents*” requirements relating to the necessary letter from the third party financial institution listed in category (i) of paragraph 41-SD(a) of the Immigration Rules. The contentious requirements of paragraph 41-SD(a)(i) are those enshrined in sub-paragraphs (6), (9) and (10). These three sub-paragraphs prescribe that the necessary letter from the financial institution holding the funds must:

- (a) state the applicant’s name;

- (b) confirm the amount of money provided to the applicant from any third party that is held in such institution; and
- (c) confirm the name of each third party and their contact details, including their full address, to include postal code, landline phone number and any email address.

The Appellant's arguments were based on an acknowledgement that her application was governed by paragraph 41-SD(a)(i) and paragraph 41-SD(b)(i) and (ii).

22. It was submitted on behalf of the Appellant that a literal interpretation of the three requirements in paragraph 41-DS(a)(i) under scrutiny produces absurd results. Thus, it was contended that, giving effect to the principle in Stock - v - Jones [1978] 1 WLR 231, this Tribunal would be justified in departing from the apparent meaning of the words in question. Counsel's submissions drew to our attention a series of decisions which have held that the Immigration Rules should be construed less strictly than a statute, reaffirmed most recently by the Supreme Court in Mahad - v - Entry Clearance Officer [2009] UKSC 16. In that case, Lord Brown exhorted that the Rules be construed:

*"... sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy".*

We are also mindful of the statement of Bingham J in R - v - Immigration Tribunal, ex parte Shaikh [1981] 3 All ER 29, at 35:

*".... It is, in my judgment, incumbent upon anybody seeking to give effect to these Rules to read what they say and, so far as possible, give effect to the language used, unless of course that leads to absurdity or inconvenience so gross as to have been clearly outside anyone's contemplation."*

This approach, which was common ground between the parties, imports the Stock - v - Jones principle to the exercise of construing the Immigration Rules.

23. The specific contentions advanced on behalf of the Appellant with reference to the contentious requirements listed in paragraph 41-SD(a)(i) were:
- (a) In requirement (6), the word "*applicant's*" should be deleted and substituted by "*account holder's*", with deletion of all of the words following "*name*" where this first appears.
  - (b) In requirement (9), the words "*provided to the applicant from any third party (if applicable)*" should be deleted and substituted by "*available to the account holder*".
  - (c) In requirement (10), the words "*third party*" should be deleted and substituted by "*account holder*".

This exercise, it was submitted, would involve a purposive construction and is necessary to avoid absurdity or anomaly.

24. The second ground of appeal entails, in substance, a contention that the Secretary of State's failure to make an "evidential flexibility" request was unlawful. After some bilateral vacillation, the parties were agreed that the following version of paragraph 245AA applied to the Appellant's application for entrepreneurial migrant status:

*"(a) Where Part 6A or any appendices referred to in Part 6A state that specified documents must be provided, the UK Border Agency will only consider documents that have been submitted with the application and will only consider documents submitted after the application where they are submitted in accordance with subparagraph (b).*

*(b) If the applicant has submitted:*

*(i) a sequence of documents and some of the documents in the sequence have been omitted (for example, if one bank statement from a series is missing);*

*(ii) a document in the wrong format; or*

*(iii) a document that is a copy and not an original document*

*The UK Border Agency may contact the applicant or his representative in writing and request the correct documents ....*

*(c) The UK Border Agency will not request documents where a specified document has not been submitted (for example an English language certificate is missing), or where the UK Border Agency does not anticipate that addressing the omission or error referred to in subparagraph (b) will lead to a grant because the application will be refused for other reasons."*

[our emphasis]

The remaining provisions of paragraph 245AA are immaterial in the present context. For completeness, we add that the Tribunal was informed that while paragraph 245 AA has been the subject of subsequent amendments, on 13 December 2012 and 1 October 2013, the provisions rehearsed above governed all of the applications culminating in this series of appeals.

## Our Conclusions

25. The Appellant's absurdity argument is confined to the first of the two reasons proffered by the Secretary of State for refusing her application. We remind ourselves that the ingredients of this first reason for refusal were that the letter from the Allied Bank was (or letters were) non-compliant with the requirements of the Rules enshrined in sub-paragraph (10) of paragraph 41-SD(a)(i). This discrete requirement prescribes that the bank letter contain specified particulars relating to the third party funder: name, full address including postal code, landline phone number and any

email address. The first communication (labelled “*Account Maintenance Certificate*”) from the Allied Bank contained the name of the third party funder. However, neither of the two communications contained any of the other prescribed particulars viz the third party funder’s address, landline phone number and any email address. While the “Declaration” (or affidavit) of the third party submitted with the application contains, *inter alia*, his address and cell phone number, it was not argued that this sufficed to satisfy requirement (10) in section (i). Plainly, it did not do so.

26. It is tolerably clear that the bank was not requested to provide the second, third and fourth items of information prescribed by requirement (10) in section (i). This is apparent from the opening paragraph of its letter dated 08 February 2013. We acknowledge that the “evidential flexibility” request contained in the UKBA communication of 07 February 2013 to the Appellant’s solicitors did not specify precisely that these three items of information were required. Rather, the express request was for an original letter from the Allied Bank stating the Appellant’s name, the amount of money available to her from the account, the regulatory body for the bank and confirmation that the money was disposable in the United Kingdom. However, the letter did not purport to detract from, dilute or waive the requirements of the Rules and the contrary was not contended. Moreover, the UKBA request for an original letter from the Allied Bank contained the admonition:

*“You should also note that the required documents should meet the full requirements of the Immigration Rules.”*

In the event, only three of the four items of information expressly requested were provided. The remaining item, which can be linked to requirement (5) in paragraph 41-SD(a)(i), namely confirmation that the bank is regulated by the appropriate body, was not provided.

27. The ingredients of the first refusal reason were, therefore, the failure of the Pakistani Bank to provide in either of its communications the full address, landline phone number and any email address of the third party funder. The conclusion that the requirement in the Rules that the bank letter contain this information does not give rise to any absurdity or anomaly is, in our view, easily made. This conclusion is driven by two considerations. The first is that there is no evidence lending weight to the Appellant’s argument. Evidence of absurdity could conceivably have been provided by the Appellant, her solicitors, the bank or the third party funder. There is no evidence from any of these sources. The second consideration is that, viewed purely objectively and in the abstract, there is no detectable absurdity or anomaly. The requirement that the bank provide this information does not give rise to any ascertainable insurmountable hurdle or impossibility. On the contrary, we readily infer that the information in question would be easily available and, further, that a genuine third party funder would be willing to provide it to the bank and to authorise its disclosure to the Secretary of State. The Appellant’s absurdity argument is further confounded by the evidence of a fully compliant bank letter (albeit provided belatedly) in two of the related appeals, the combined cases of Akhter and

Maqbool: see [9] of our determination in those cases. Furthermore, there was no contention or, more important, evidence that any provision of Pakistani banking law OR internal bank rule on regulation OR bank/customer contract precludes disclosure of the information required by the Rules and we have no warrant for making an inference to this effect. Thus the first ground of appeal must fail.

28. Having regard to the Secretary of State's reasons for refusing the Appellant's application, the submissions relating to the construction of the words "*provided to*" in paragraph 41-SD(a)(i), sub-paragraph (9) do not arise. Notwithstanding, we consider it appropriate to make clear our view that this discrete argument has no merit. It is trite that in construing these words the whole of the context must be considered. This includes Appendix A, Table 4, which repeatedly employs the terminology "*access to*" a minimum sum of money. This is repeated in the opening words of paragraph 41. In paragraph 41(b) and (c), the language includes "*permission to use the money to invest in a business in the UK*" and "*transferrable to the UK*". In paragraph 41(d), the phraseology is "*available to*". This is repeated in paragraph 41-SD(a)(i). In sub-paragraph (8) of the latter, one finds the words "*available from*". In paragraph 41-SD(b)(i), the language used is "*available for*". In our view, it is clear that the words "*provided to*" in sub-paragraph (9) of paragraph 41-SD(a)(i) denote "*available to*". We note, in passing, that this discrete provision of the Rules has now been amended to this effect. While this amendment serves the interests of maximum clarity, we do not consider that it was necessary to remove any doubt or obscurity or to remedy any absurdity.
29. We have outlined the gist of the second ground of appeal in [24] above. The argument advanced in support of this ground was that, viewed through the lens of paragraph 41-SD, the letter from the legal representative required by paragraph 41-SD(b)(ii) forms part of, in the language of paragraph 245AA(b)(i), a "*sequence of documents*" and is to be considered a document omitted therefrom. While we acknowledge the resourcefulness of this argument, we are satisfied that this provision of paragraph 245AA does not contemplate or embrace a case such as the present where the single document required by paragraph 41-SD(b)(ii) has not been provided with the application. In our judgement, this document does not form part of any sequence. Rather, its provision is decreed by a freestanding requirement. It is one of several documents which, in a case such as the present, are prescribed by the Rules. To characterise these documents as a "*sequence*" is to distort the ordinary and natural meaning of this word and to neglect the context. It also fails to give effect to the evident intention underlying paragraph 245AA. We consider that a document dictated by a substantive requirement of the Rules, even if one of several, is not contemplated by the intention and purpose underpinning paragraph 245AA. If any reinforcement of this conclusion is needed, it is provided by the example of a bank statement missing from a series. Its correctness is reaffirmed beyond peradventure by sub-paragraph (c) of paragraph 245AA, which states unequivocally that where a "*specified document*" has not been submitted UKBA "*will not*" request same. The "*legal letter*", where required (as here), is a discrete, separate "*specified document*". Accordingly, the second ground of appeal must fail.

**Decision**

30. While our analysis and reasoning are rather different from those adopted by the FtT, we conclude that the appeal must be dismissed.
31. We dismiss the appeal and affirm the decision of the FtT.

*Bernard McCloskey.*

**THE HON. MR JUSTICE MCCLOSKEY  
PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER**

**Date: 24 May 2014**

## APPENDIX

### Relevant provisions of Immigration Rules [HC 395, as amended]

#### **Part 6A - Points-based system**

#### **Tier 1 (Entrepreneur) Migrants**

#### **245D. Purpose of this route and meaning of business**

- (a) This route is for migrants who wish to establish, join or take over one or more businesses in the UK.
- (b) For the purpose of paragraphs 245D to 245DF and paragraphs 35 to 53 of Appendix A 'business' means an enterprise as:
- (i) a sole trader,
  - (ii) a partnership, or
  - (iii) a company registered in the UK.

#### **245DA. Entry to the UK**

All migrants arriving in the UK and wishing to enter as a Tier 1 (Entrepreneur) Migrant must have a valid entry clearance for entry under this route. If they do not have a valid entry clearance, entry will be refused.

#### **245DB. Requirements for entry clearance**

To qualify for entry clearance as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below. If the applicant meets those requirements, entry clearance will be granted. If the applicant does not meet these requirements, the application will be refused.

#### **Requirements:**

- (a) The applicant must not fall for refusal under the general grounds for refusal.
- (b) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.
- (c) The applicant must have a minimum of 10 points under paragraph 1 to 15 of Appendix B.
- (d) The applicant must have a minimum of 10 points under paragraph 1 to 2 of Appendix C.
- (e) An applicant who has, or was last granted, leave as a Student or a Postgraduate Doctor or Dentist, a Student Nurse, a Student Writing-Up a Thesis, a Student Re-Sitting an Examination or as a Tier 4 Migrant and:
- (i) is currently being sponsored by a government or international scholarship agency, or
  - (ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,
- must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents as set out in paragraph 245A above, to show that this requirement has been met.
- (f) Except where the applicant has had entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator in the 12 months immediately before the date of application and is being assessed under Table 5 of Appendix A, the Entry Clearance Officer must be satisfied that:

- (i) the applicant genuinely intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months;
- (ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);
- (iii) that the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent by his business or businesses. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A;

- (iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DC;

(g) In making the assessment in (f), the Entry Clearance Officer will assess the balance of probabilities. The Entry Clearance Officer may take into account the following factors:

- (i) the evidence the applicant has submitted;
- (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
- (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;
- (iv) the applicant's previous educational and business experience (or lack thereof); (v) the applicant's immigration history and previous activity in the UK; and
- (vi) any other relevant information.

(h) The Entry Clearance Officer reserves the right to request additional information and evidence to support the assessment in (f), and to refuse the application if the information or evidence is not provided. Any requested documents must be received by the UK Border Agency at the address specified in the request within 28 working days of the date of the request.

(i) If the Entry Clearance Officer is not satisfied with the genuineness of the application in relation to a points-scoring requirement in Appendix A, those points will not be awarded.

(j) The Entry Clearance Officer will not carry out the assessment in (f) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.

#### **245DC. Period and conditions of grant**

(a) Entry clearance will be granted for a period of 3 years and four months and will be subject to the following conditions:

- (i) no recourse to public funds,
- (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
- (iii) no employment other than working for the business(es) the applicant has established, joined or taken over, and
- (iv) no employment as a professional sportsperson (including as a sports coach).

#### **245DD. Requirements for leave to remain**

To qualify for leave to remain as a Tier 1 (Entrepreneur) Migrant under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

**Requirements:**

- (a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.
  - (b) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.
  - (c) The applicant must have a minimum of 10 points under paragraphs 1 to 15 of Appendix B.
  - (d) The applicant must have a minimum of 10 points under paragraphs 1 to 2 of Appendix C.
  - (e) The applicant who is applying for leave to remain must have, or have last been granted, entry clearance, leave to enter or remain:
    - (i) as a Highly Skilled Migrant,
    - (ii) as a Tier 1 (General) Migrant,
    - (iii) as a Tier 1 (Entrepreneur) Migrant,
    - (iv) as a Tier 1 (Investor) Migrant,
    - (v) as a Tier 1 (Graduate Entrepreneur) Migrant
    - (vi) as a Tier 1 (Post-Study Work) Migrant,
    - (vii) as a Businessperson,
    - (viii) as an Innovator,
    - (ix) as an Investor,
    - (x) as a Participant in the Fresh Talent: Working in Scotland Scheme,
    - (xi) as a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme),
    - (xii) as a Postgraduate Doctor or Dentist,
    - (xiii) as a Self-employed Lawyer,
    - (xiv) as a Student,
    - (xv) as a Student Nurse,
    - (xvi) as a Student Re-sitting an Examination,
    - (xvii) as a Student Writing Up a Thesis,
    - (xviii) as a Work Permit Holder,
    - (xix) as a Writer, Composer or Artist,
    - (xx) as a Tier 2 Migrant
    - (xxi) as a Tier 4 Migrant, or
    - (xxii) as a Prospective Entrepreneur
  - (f) An applicant who has, or was last granted, leave as a Student or a Postgraduate Doctor or Dentist, Student Nurse, Student Re-Sitting an Examination, a Student Writing-Up a Thesis or as a Tier 4 Migrant and:
    - (i) is currently being sponsored by a government or international scholarship agency, or
    - (ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,
- must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents as set out in paragraph 245A above, to show that this requirement has been met.
- (g) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.
  - (h) Except where the applicant has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator and is being assessed under Table 5 of Appendix A, the UK Border Agency must be satisfied that:

(i) the applicant genuinely:

- (1) intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months, or
- (2) has established, taken over or become a director of one or more businesses in the UK and continues to operate that business or businesses; and

(ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);

(iii) that the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent by his business or businesses. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A;

(iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DE.

(i) In making the assessment in (h), the UK Border Agency will assess the balance of probabilities. The UK Border Agency may take into account the following factors:

- (i) the evidence the applicant has submitted;
- (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
- (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;
- (iv) the applicant's previous educational and business experience (or lack thereof);
- (v) the applicant's immigration history and previous activity in the UK;
- (vi) where the applicant has already registered in the UK as self-employed or as the director of a business, and the nature of the business requires mandatory accreditation, registration and/or insurance, whether that accreditation, registration and/or insurance has been obtained; and
- (vii) any other relevant information.

(j) The UK Border Agency reserves the right to request additional information and evidence to support the assessment in (h), and to refuse the application if the information or evidence is not provided. Any requested documents must be received by the UK Border Agency at the address specified in the request within 28 working days of the date of the request.

(k) If the UK Border Agency is not satisfied with the genuineness of the application in relation to a points-scoring requirement in Appendix A, those points will not be awarded.

(l) The UK Border Agency will not carry out the assessment in (h) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.

#### **245DE. Period, conditions and curtailment of grant**

(a) Leave to remain will be granted:

- (i) for a period of 2 years, to an applicant who has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant,
- (ii) for a period of 3 years, to any other applicant.

(b) Leave to remain under this route will be subject to the following conditions:

- (i) no recourse to public funds,
- (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
- (iii) no employment, other than working for the business or businesses which he has established, joined or taken over, and
- (iv) no employment as a professional sportsperson (including as a sports coach).

(c) Without prejudice to the grounds for curtailment in paragraph 323 of these Rules, leave to enter or remain granted to a Tier 1 (Entrepreneur) Migrant may be curtailed if:

(i) within 6 months of the date specified in paragraph (d), the applicant has not done one or more of the following things:

- (1) registered with HM Revenue and Customs as self-employed,
- (2) registered a new business in which he is a director, or
- (3) registered as a director of an existing business, or

(ii) the funds referred to in the relevant sections of Appendix A cease to be available to him, except where they have been spent in the establishment or running of his business or businesses. 'Spent' excludes spending on the applicant's own remuneration. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A.

(d) The date referred to in paragraph (c) is:

- (i) the date of the applicant's entry to the UK, in the case of an applicant granted entry clearance as a Tier 1 (Entrepreneur) Migrant where there is evidence to establish the applicant's date of entry to the UK,
- (ii) the date of the grant of entry clearance to the applicant, in the case of an applicant granted entry clearance as a Tier 1 (Entrepreneur) Migrant where there is no evidence to establish the applicant's date of entry to the UK, or
- (iii) the date of the grant of leave to remain to the applicant, in any other case.

(e) Paragraph 245DE(c) does not apply where the applicant's last grant of leave prior to the grant of the leave that he currently has was as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator.

#### **245DF. Requirements for indefinite leave to remain**

To qualify for indefinite leave to remain as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, indefinite leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

#### **Requirements:**

(a) DELETED

(b) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.

(c) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.

(d) The applicant must have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with paragraph 33BA, unless the applicant is under the age of 18 or aged 65 or over at the date the application is made.

(e) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.

## Appendix A

### Attributes for Tier 1 (Entrepreneur) Migrants

35. An applicant applying for entry clearance, leave to remain or indefinite leave to remain as a Tier 1 (Entrepreneur) Migrant must score 75 points for attributes.

36. Subject to paragraph 37, available points for applications for entry clearance or leave to remain are shown in Table 4.

36A. An applicant who is applying for leave to remain and has, or was last granted, entry clearance, leave to enter or leave to remain as:

- (i) a Tier 4 Migrant,
- (ii) a Student,
- (iii) a Student Nurse,
- (iv) a Student Re-sitting an Examination, or
- (v) a Student Writing Up a Thesis,

will only be awarded points under the provisions in (b) in Table 4.

37. Available points are shown in Table 5 for an applicant who:

(a) has had entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator in the 12 months immediately before the date of application, or

(b) is applying for leave to remain and has, or was last granted, entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator.

38. Available points for applications for indefinite leave to remain are shown in Table 6.

39. (a) Notes to accompany Table 4 appear below Table 4.

(b) Notes to accompany Tables 4, 5 and 6 appear below Table 6.

**Table 4: Applications for entry clearance or leave to remain referred to in paragraph 36**

Investment and business activity	Points
(a) The applicant has access to not less than £200,000, or	25
(b) The applicant has access to not less than £50,000 from: <ul style="list-style-type: none"> <li>(i) one or more registered venture capitalist firms regulated by the Financial Services Authority,</li> <li>(ii) one or more UK Entrepreneurial seed funding competitions which is listed as endorsed on the UK Trade &amp; Investment website, or</li> <li>(iii) one or more UK Government Departments, or Devolved Government</li> </ul>	

<p>Departments in Scotland, Wales or Northern Ireland, and made available by the Department(s) for the specific purpose of establishing or expanding a UK business, or</p> <p>(c) The applicant:</p> <p>(i) is applying for leave to remain,  (ii) has, or was last granted, leave as a Tier 1 (Graduate Entrepreneur) Migrant, and  (iii) has access to not less than £50,000, or</p> <p>(d) The applicant:</p> <p>(i) is applying for leave to remain,  (ii) has, or was last granted, leave as a Tier 1 (Post-Study Work) Migrant,  (iii) was, on a date falling within the three months immediately prior to the date of application,</p> <p>(1) registered with HM Revenue and Customs as self-employed, or  (2) registered as a new business in which he is a director, or  (3) registered as a director of an existing business,</p> <p>(iv) is working in an occupation which appears on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the Codes of Practice in Appendix J, and provides the specified evidence in paragraph 41-SD. "Working" in this context means that the core service his business provides to its customers or clients involves the business delivering a service in an occupation at this level. It excludes any work involved in administration, marketing or website functions for the business, and</p> <p>(v) has access to not less than £50,000</p>	
The money is held in one or more regulated financial institutions	25
The money is disposable in the UK	25

**Investment: notes**

40.DELETED.

41. An applicant will only be considered to have access to funds if:

- (a) The specified documents in paragraph 41-SD are provided to show cash money to the amount required (this must not be in the form of assets);
- (b) The specified documents in paragraph 41-SD are provided to show that the applicant has permission to use the money to invest in a business in the UK;
- (c) The money is either held in a UK regulated financial institution or is transferable to the UK; and
- (d) The money will remain available to the applicant until such time as it is spent in the establishment or running of the applicant's business or businesses. 'Spent' excludes spending on the applicant's own remuneration. The UK Border Agency reserves the right to request further evidence or otherwise verify that the money will remain available, and to refuse the application if this evidence is not provided or it is unable to satisfactorily verify. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A.

41-SD. The specified documents in Table 4 and paragraph 41 are as follows:

(a) The specified documents to show evidence of the money available to invest are one or more of the following specified documents:

(i) A letter from each financial institution holding the funds, to confirm the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). Each letter must:

- (1) be an original document and not a copy,
- (2) be on the institution's official headed paper,
- (3) have been issued by an authorised official of that institution,
- (4) have been produced within the three months immediately before the date of your application,
- (5) confirm that the institution is regulated by the appropriate body,
- (6) state the applicant's name, and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix,
- (7) state the date of the document,
- (8) confirm the amount of money available from the applicant's own funds (if applicable) that are held in that institution,
- (9) confirm the amount of money provided to the applicant from any third party (if applicable) that is held in that institution,
- (10) confirm the name of each third party and their contact details, including their full address including postal code, landline phone number and any email address, and
- (11) confirm that if the money is not in an institution regulated by the FSA, the money can be transferred into the UK;

or

(ii) For money held in the UK only, a recent personal bank or building society statement from each UK financial institution holding the funds, which confirms the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). The statements must satisfy the following requirements:

- (1) The statements must be original documents and not copies;
- (2) The bank or building society holding the money must be based in the UK and regulated by the Financial Services Authority;
- (3) The money must be in cash in the account, not Individual Savings Accounts or assets such as stocks and shares;
- (4) The account must be in the applicant's own name only (or both names for an entrepreneurial team), not in the name of a business or third party;
- (5) Each bank or building society statement must be on the institution's official stationary and confirm the applicant's name and, where relevant, the applicant's entrepreneurial team partner's name, the account number, the date of the statement, and the financial institution's name and logo;
- (6) The bank or building society statement must have been issued by an authorised official of that institution and produced within the three months immediately before the date of the application; and
- (7) If the statements are printouts of electronic statements from an online account, they must either be accompanied by a supporting letter from the bank, on company headed paper, confirming the authenticity of the statements, or bear the official stamp of the bank in question on each page of the statement;

or

(iii) For £50,000 from a Venture Capital firm, Seed Funding Competition or UK Government Department only, a recent letter from an accountant, who is a member of a recognised UK supervisory body, confirming the amount of money made available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). Each letter must:

- (1) be an original document and not a copy,
- (2) be on the institution's official headed paper,
- (3) have been issued by an accountant engaged by the Venture Capital firm, Seed funding competition or UK Government Department to provide the information,
- (4) have been produced within the three months immediately before the date of the application,
- (5) state the applicant's name, and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix,
- (6) state the date of the document,
- (7) confirm the amount of money available to the applicant or the applicant's business from the Venture Capital firm, Seed funding competition or UK Government Department, and
- (8) confirm the name of the Venture Capital firm, Seed funding competition or UK Government Department and the contact details of an official of that organisation, including their full address, postal code, landline phone number and any email address,

(b) If the applicant is applying using money from a third party, he must provide all of the following specified documents:

(i) An original declaration from every third party that they have made the money available for the applicant to invest in a business in the United Kingdom, containing:

- (1) the names of the third party and the applicant (and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix),
- (2) the date of the declaration;
- (3) the applicant's signature and the signature of the third party (and the signature of the applicant's team partner if the applicant is applying under the provisions in paragraph 52 of this Appendix),
- (4) the amount of money available to the applicant from the third party in pounds sterling,
- (5) the relationship(s) of the third party to the applicant,
- (6) if the third party is a venture capitalist firm, confirmation of whether this body is an Financial Services Authority-registered venture capital firm, in the form of a document confirming the award and the amount of money, and including the Financial Services Authority registration number that the firm's permission to operate as a Venture Capital firm is listed as permitted under,
- (7) if the third party is a UK entrepreneurial seed funding competition, a document confirming that the applicant has been awarded money and that the competition is listed as endorsed on the UK Trade & Investment website, together with the amount of the award and naming the applicant as a winner,
- (8) if the third party is a UK Government Department, a document confirming that it has made money available to the applicant for the specific purpose of establishing or expanding a UK business, and the amount, and
- (9) confirmation that the money will remain available to the applicant until such time as it is transferred to the applicant or the applicant's business.

and

(ii) A letter from a legal representative confirming the validity of signatures on each third-party declaration provided, which confirms that the declaration(s) from the third party/parties contains the signatures of the people stated. It can be a single letter covering all third-party permissions, or several letters from several legal representatives. It must be an original letter and not a copy, and it must be from a legal representative permitted to practise in the country where the third party or the money is. The letter must clearly show the following:

- (1) the name of the legal representative confirming the details,
- (2) the registration or authority of the legal representative to practise legally in the country in which the permission or permissions was/were given,
- (3) the date of the confirmation letter,
- (4) the applicant's name (and the name of the applicant's team partner if the applicant is applying under the provisions in paragraph 52 of this Appendix),
- (5) the third party's name,
- (6) that the declaration from the third party is signed and valid, and
- (7) if the third party is not a venture capitalist firm, seed funding competition or UK Government Department, the number of the third party's identity document (such as a passport or national identity card), the place of issue and dates of issue and expiry.

(c) If the applicant is applying under the provisions in (d) in Table 4, he must provide:

- (i) his job title,
- (ii) the Standard Occupational Classification (SOC) code of the occupation that the applicant is working in, which must appear on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the Codes of Practice in Appendix J,
- (iii) one or more of the following specified documents:

- (1) Advertising or marketing material, including printouts of online advertising, that has been published locally or nationally, showing the applicant's name (and the name of the business if applicable) together with the business activity,
- (2) Article(s) or online links to article(s) in a newspaper or other publication showing the applicant's name (and the name of the business if applicable) together with the business activity,
- (3) Information from a trade fair(s), at which the applicant has had a stand or given a presentation to market his business, showing the applicant's name (and the name of the business if applicable) together with the business activity, or
- (4) Personal registration with a trade's body linked to the applicant's occupation.

and

(iv) one or more contracts showing trading. If a contract is not an original the applicant must sign each page of the contract. The contract must show:

- (1) the applicant's name and the name of the business,
- (2) the service provided by the applicant's business; and
- (3) the name of the other party or parties involved in the contract and their contact details, including their full address, postal code, landline phone number and any email address.

42. Points will only be awarded to an applicant to whom Table 4, paragraph (b) applies if the total sum of those funds derives from one or more of the sources listed in (b)(i) to (iii) in Table 4.

43. A regulated financial institution is one, which is regulated by the appropriate regulatory body for the country in which the financial institution operates.