



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01189/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14 August 2013

Determination Promulgated
On 21 August 2013

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MR ASIF SAEED BUTT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Kirk, Counsel instructed by Abbott Solicitors
For the Respondent: Mr L Tarlow, HOPO

DETERMINATION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Jhirad dismissing his appeal against the decision of the respondent refusing his application for leave to remain as a student under paragraphs 322(1A) and 245C(b and c) of the Immigration Rules.

2. The appellant is a citizen of Pakistan born on 15 October 1979. He arrived in the UK in September 2003 on a student visa that conferred leave to enter until 31 October 2006. Subsequent applications for leave to remain as a student were made and granted and then he was granted leave to remain as a Tier 1 (Post-Study Work) Migrant valid until 6 August 2011. He applied on 5 April 2011 for further leave to remain as a Tier 1 (General) Student Migrant under the points-based system. It is the refusal of that application which is under appeal.
3. The judge found as follows:
 - “5. With his application, the appellant submitted wage slips issued to him by Samantha Business Solutions (“SBS”) that covered the period 21.5.2010 to 11.3.2011. The respondent applied to HMRC for verification that SBS was genuinely trading. On 11 December 2012 an H.E.O. employed by HMRC confirmed that SBS along with 16 other named businesses had not demonstrated that they participated in any legitimate trade.
 6. On being questioned by me, the appellant stated that SBS employed him as a marketing consultant. The nature of SBS’s business was to provide services such as *new business set-up; computer networking; provision of furniture etc.* Before working at SBS he was a Manager at Domino’s Pizza and a warehouse operative at Ocado and he was undertaking both those jobs when he made his application. He told me was employed by SBS as it office in Luton and that SBS occupied 3 rooms above a parade of shops and working there was a *Manager, assistant Manager, the appellant, 3 other staff and other marketing guys.* The appellant had never been to SBS’s Slough address. A letter purporting to be from SBS at an address in Slough dated 25.3.2011 stated that the appellant was employed part time from 15.5.2010 to 15.3.2011 gross wage being £39,810 and that he was paid net, in cash.
 7. The appellant submitted P45 from SBS. It is undated by SBS in section 13 and I cannot therefore accept it as a valid P45. Given that SBS’s reputation is at stake it is a little short of incredible that the appellant has not provided from SBS any evidence whatsoever to counter HMRC’s allegation. The evidence one would have like to see would have been tax returns by SBS, or audited accounts, accountant’s confirmation etc. No such evidence has been forthcoming. In the absence of that I do not find it has been established that SBS is a genuine business that is genuinely trading, had a turnover sufficient to support payment of salary for all staff members or that payslips and P45 issued are genuine.
 8. The appellant has not made out his case. The respondent’s decision was in accordance with the law and the Rules.”
4. The grounds on which permission was granted argued that the judge failed to identify and apply the correct burden and standard of proof in relation to paragraph 332(1A) and to consider the requirement for the respondent to establish that the

appellant had acted dishonestly. The judge granting permission said this is arguable and is material in that it is not apparent from the determination whether the judge found that the application was subject to mandatory refusal under that paragraph or failed only under paragraph 245C. It is also arguable that the judge failed entirely to address the appellant's case under Article 8 and her failure to consider it was a material error.

5. Mr Kirk submitted the appellant's written submissions, which he relied on.
6. Mr Kirk argued that the judge made two material errors of law; the first is that the judge misdirected himself as to the burden of proof. The Secretary of State had the burden of proving that the document in question was dishonest or fraudulent. The judge did not determine whether the document was dishonest. She simply took note of the respondent's allegation that the document was false and proceeded to require the appellant to disprove it. In taking that approach the judge fell into error in three ways, firstly, the judge failed to determine whether the documents were honest; secondly, she failed to consider whether the burden of proof which was on a higher spectrum of the balance of probabilities had been met, and thirdly, by taking the approach that the burden had shifted on the appellant.
7. Mr Kirk submitted that the second material error was that the judge failed to consider Article 8. The appellant has lived, studied and worked in the UK since 2003, almost a period of ten years. Due to his length of time he has established a strong private life in the UK. His removal would constitute interference sufficiently serious for the purposes of Article 8 and it would be disproportionate to the legitimate aim pursued by the respondent.
8. Mr Tarlow relied on the Rule 24 response submitted on behalf of the respondent. He accepted that paragraph 7 of the determination did not mention paragraph 322(1A) or 245C but there was an inference which could be read into it. The inference was that on the evidence provided by the Secretary of State, that is, the communication from Her Majesty's Revenue and Customs, another government department, the SBS was not a legitimate business. Given that the reputation of SBS was at stake, and there was no information from the company regarding its trading and paid employees, the judge came to the correct conclusion that the evidence submitted by the Secretary of State was sufficient to discharge the burden of proof on her.
9. Mr Tarlow accepted that dishonesty can be made on behalf of a company. The burden of proof on the Secretary of State had been discharged in light of the documentation from HRMC.
10. Mr Tarlow conceded that the judge made a material error of law by not considering the appellant's Article 8 appeal. He conceded that the appellant has been in the UK for a period of almost ten years studying and working the permitted number of hours. However, his right to remain in the UK was not unlimited. Consequently it would not be disproportionate to remove him to Pakistan.
11. The respondent's Rule 24 reply stated as follows:

- “3. HMRC confirmed that the SBS could not be shown to have participated in any legitimate trade. This is reliable evidence produced by an organisation who deals with tax issues on a daily basis and would have a record of tax returns, VAT payments, etc. The fact that a search carried out by one of its employees did not produce evidence of a legitimate company trading under the name SBS is sufficient to discharge the burden on the SSHD to show that SBS was not a legitimate trader.
4. It can be inferred from the finding at paragraph 7 that the First-tier Judge was dismissing the appeal both in respect of 322(1A) and 245C. The FtTJ found that the SBS company was not trading or a genuine business. Therefore they were not in a position to pay wages or produce payslips or P45s. The FtTJ quite rightly found that there was no evidence to show that the company was in fact trading as none was provided by the appellant. This evidence could quite easily have been provided by the appellant if he was genuinely working for the company.”
12. I agree entirely with the Rule 24 response. The reputation of the company was at stake and the appellant had not provided any evidence from the company to rebut the evidence from HMRC.
13. I find that it can be inferred from the judge’s findings that she was making a decision in respect of both paragraphs 322(1A) and 245C. In light of the evidence from HMRC, I find that the judge did not make an error of law. Her decision shall stand.
14. In respect of the appellant’s appeal under Article 8 of the ECHR, I find that the judge made a material error by not determining this appeal. The appellant’s Article 8 appeal relies only on the private life he has established in the UK. Mr Tarlow accepted that the appellant has been in the UK for a period of almost ten years living, studying and working the permitted number of hours. He has established a private life as a consequence. His removal would constitute interference sufficiently serious to engage Article 8. I find however that the removal would not be disproportionate to the legitimate aim of maintaining immigration control. His private life is tarnished by either his own dishonesty or the dishonesty on the part of SBS in submitting false documents to support an application for further leave to remain in the UK. The qualifications the appellant has obtained as a result of his studies in the UK should help him find a job and settle back to life in his own country.
15. The appellant’s appeal under Article 8 of the ECHR is also dismissed.

Signed

Date 19th August 2013

Upper Tribunal Judge Eshun