



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

Appeal Numbers: IA/02541/2014  
IA/02546/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30<sup>th</sup> October 2014**

**Decision & Reasons  
Promulgated  
On 9<sup>th</sup> December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

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

Appellant

**and**

**MRS MARYAM KALEEM (FIRST APPELLANT)  
MR SHAHID HASSAN (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mr S Kandola, Home Office Presenting Officer  
For the Respondents: Mr A Jafar of Counsel

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State, against the decision of the First-tier Tribunal (Judge Kanagaratnam), sitting at Hatton Cross on 4<sup>th</sup> June 2014, to allow an appeal against a decision of the Secretary of State dated

18<sup>th</sup> December 2013, to refuse the principal Appellant leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant under the points-based system with reference to paragraph 245DD of HC 395 as amended. The point taken for the Secretary of State, and upon which permission was granted by Upper Tribunal Judge Grubb, is that the judge wrongly took into account evidence not submitted with the application, contrary to Section 85A(3) and (4) of the Nationality, Immigration and Asylum Act 2002.

2. The matter proceeded on submissions.
3. At the commencement of the hearing I queried with the representatives if this was not the point decided by the Vice President of the Tribunal in the case of Ahmed and Another (PBS: admissible evidence) [2014] UKUT 00365 (IAC). Both representatives agreed that it was and that in that case the point had been decided for the Respondent. As I did to have the benefit of a skeleton argument I asked Mr Jafar to indicate if there was any basis for my taking a different stance here. Mr Jafar submitted that the decision in Ahmed was wrongly decided, and in particular that the Appellant in that case had been unrepresented and that no arguments had been made on the points that he made, namely that Appendix A 245DD was found within the main body of the Rules outwith the points-based sections. Further the decision in Ahmed led to an absurdity because in effect it would mean that courts could not look at anything not submitted with the application including for example witness statements prepared for the hearing, or even consider oral evidence at the hearing, or even the account of any interview conducted by the Respondent of the Appellant after the application but prior to the decision.
4. The reality is that the Appellant was represented in the case of Ahmed. Indeed, Mr Ockelton, at paragraph 6 of that decision, refers to the spirited defence put forward by Mr Azmi. All of Mr Jafar's points were considered by the Tribunal in Ahmed, including the reliance on the Respondent's own reference in the decision letter to a non points based decision as well as a points based decision, so that the exception in S85 could not apply. Mr Ockelton in the case of Ahmed set out a clear rejection of that argument. The head note of Ahmed is clear:

*Where a provision of the Rules, such as that in paragraph 245DD(k) provides that points will not be awarded if the decision-maker is not satisfied as to another non-points-scoring aspect of the Rule, the non-points-scoring aspect and the requirements of points are inextricably linked and ,*

*As a result, the prohibition on new evidence in s.85A(4) of the Nationality, Immigration and Asylum Act 2002 applies to the non-points-scoring aspect of the Rule: the prohibition is in relation to new evidence that goes to the scoring of points.*

5. In short the judge can only look at all the material available to the decision-maker as to the genuineness and viability of the Appellant's proposals. There is no issue that the judge exceeded that position here. It follows the judge reached his conclusion taking into account evidence

which he was not entitled to take into account. It is impossible to say what conclusion the judge would have reached had he not taken into account inadmissible evidence.

6. The findings of fact are inadequate, not least for the reasons set out in the original application for permission to appeal to the First tier, so that it is not possible to remake the decision on the basis of the factual findings made.
7. In the circumstances I set the decision aside and remit the appeal to the First-tier Tribunal for rehearing.

**Directions**

The decision is set aside and the appeal is remitted to the First-tier Tribunal, Hatton Cross, to be determined by a Judge of the First-tier Tribunal other than Judge Kanagaratnam.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Davidge

No issue of a fee award arises.

Signed

Date

Deputy Upper Tribunal Judge Davidge