



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

Appeal Numbers: IA/17159/2013
IA/17161/2013
IA/17167/2013
IA/17103/2013
IA/17107/2013
IA/17114/2013

THE IMMIGRATION ACTS

Heard at Field House

On 18 July 2014

Determination

Promulgated

On 07th Aug 2014

Before

**UPPER TRIBUNAL JUDGE KING TD
UPPER TRIBUNAL JUDGE RINTOUL**

Between

**MR AYUB KHAN (FIRST APPELLANT)
MRS SARA NOOR (SECOND APPELLANT)
MASTER MUHAMMAD AHAGHAN KHAN (THIRD APPELLANT)
MR JASEEM KHAN (FOURTH APPELLANT)
MRS BUSHRA JASEEM KHAN (FIFTH APPELLANT)
MR MUHAMMAD ABDULLAH (SIXTH APPELLANT)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Z Nasir, Counsel, instructed by Lee Valley Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants appeal with permission against the determination of First-tier Tribunal Judge Oakley promulgated on 4 February 2014 in which he dismissed their appeals against the decision by the respondent to refuse to grant them further leave to remain in the United Kingdom.
2. The first and fourth appellants – Mr Ayub Khan and Mr Jaseem Khan – applied on 5 November 2012 for leave to remain as Tier 1 Migrants (Entrepreneurs), as an entrepreneurial team. The second and third appellants – Mrs Sara Noor and Master Muhammad Ahaghan Khan – are dependants of the first appellant; the fifth and sixth appellants – Mrs Bushra Khan and Mr Muhammad Abdullah – are dependants of Mr Jaseem Khan. The respondent refused the applications of the principal appellants on the basis that they had not provided any evidence that is required under Table 4 of Appendix A to show evidence of job title, Standard Occupational Classification code of the occupation; or, advertising material, articles, links to a newspaper showing the applicant’s name and business activity, information from trade fairs showing that he had had a stand or personal registration with a trade body; contracts showing trading.
3. The second, third, fifth and sixth appellants were refused leave in line. While an attempt was made to appeal against the decision to refuse to grant leave to Yaseenullah Muhammad, the son of the fourth and fifth appellants, the First-tier Tribunal considered the notice of appeal to be invalid as the decision made on his case was not a decision giving a right of appeal (IA/17120/2013).
4. The appellants appealed to the First-tier Tribunal on the grounds that:-
 - (a) the appellants had provided the required documents but that these had been overlooked;
 - (b) that the respondent had failed to act in accordance with paragraph 245AA of the Immigration Rules in that the respondent had acted unfairly in not seeking further information from the appellants;
 - (c) that the respondent had acted otherwise than in accordance with the relevant evidential flexibility policy;
 - (d) that requiring the appellants now to leave the United Kingdom would be a breach of the United Kingdom’s obligations pursuant to Article 8 of the Human Rights Convention.
5. On appeal, Judge Oakley found that:-
 - (a) in both applications from the first and fourth appellants they had left blank the question “What is the applicant’s job title” [12], a Companies House document giving no indication of the positions of the first and fourth appellants or the type of work provided [13];

- (b) only two pieces of advertising literature had been produced at the hearing and that this did not link the first or fourth appellants to their company [14];
- (c) the applications had been submitted at the same time by the appellants' solicitors in one packet and it was apparent that the respondent had divided the documents and applications submitted into two files [16];
- (d) it was asserted that the fact that the application referred to the marketing material which had been enclosed, there were none within the two packets containing the respective applicants' applications;
- (e) the application forms were deficient given the omission of information regarding job titles [19];
- (f) there was no evidence to suggest that the separate pieces of marketing material were sent as asserted to the respondent;
- (g) this case could not be distinguished from **Rodriguez [2014] EWCA Civ 2**.

6. The appellants sought leave to appeal on the basis that:-

- (a) contrary to the assertion of the Home Office, which had been accepted by Judge Oakley, the appellants' job descriptions were clearly mentioned in the business plan and advertising material and thus the conclusion flowing therefrom was unsafe;
- (b) if the applications were uncompleted as averred by the Presenting Officer then pursuant to paragraph 34C of the Immigration Rules, the respondent was obliged to return the application as incomplete or invalid;
- (c) in this case **Rodriguez** could be distinguished as the respondent had written to the appellant saying that he would write to them if any further documents or information were required and in this case details of the relevant documents had been set out in the application form and there had been no query as to whether these had been submitted in the letters sent by the respondent on 28 November 2012 and 15 March 2013.

7. On 27 March 2014 Upper Tribunal Judge Reeds granted permission noting that the judge had accepted in a submission by the respondent that there was no evidence that the relevant documents had been submitted, contrary to what was set out in the application form that included the list of five relevant documents. She also gave directions that the respondent was to produce a schedule of documents that were sent by the appellants for the purposes of the application.

8. In a response to the grant of permission dated 11 April 2014 the respondent stated that the finding that the advertising materials were not submitted was one open to the judge and that there was no evidence produced at the hearing by way of illustration of what had been sent. It is also averred that in light of the decision in **Patel and Others** [2013] UKSC 72, **Nasim and Others** [2014] UKUT 25 and **Zoumbas** [2013] UKSC 74, this is not a case with any prospect of success and so any error in failing to consider Article 8 could not be material.
9. We heard brief submissions from both representatives.
10. The omission of the job title from the application forms is not raised in the refusal letter. This appears to have been raised by the Presenting Officer only at the hearing before Judge Oakley. We consider that this issue raises two problems; as is submitted the omission of mandatory information from an application form would ordinarily make the application invalid pursuant to paragraph 34C of the Immigration Rules. Further, there is merit in the submission that in any event the job titles and responsibilities were referred to in the business plan which it is not in doubt was before the Secretary of State. We accept that ordinarily the failure to give information would result in the application being rejected as invalid but what appears to have occurred here is a decision by the Secretary of State to waive that requirement on the basis that the information was readily available from the rest of the form. There is no indication that the Secretary of State was unaware of her power reject the application as invalid; on the contrary, the application was pending before her for a considerable period and was considered under the merits giving rise to a right of appeal.
11. As is averred in the grounds of appeal, Judge Oakley was wrong to conclude that there was no evidence of the submissions of the Secretary of State of the relevant material; it is listed in the application form. The judge therefore fell into error in both of these findings which underpin the whole of his decision. We are therefore satisfied that these were material to the outcome and thus we are satisfied that the decision of First-tier Tribunal Judge Oakley did involve the making of an error of law. We therefore set it aside.
12. It is our view, given that there will in the light of our observations above need to be a full and fresh fact-finding exercise undertaken in this case, that it would be appropriate to remit the appeal to be heard afresh by the First-tier Tribunal. None of the findings of fact are preserved.

Summary of Conclusions

- (1) The determination of the First-tier Tribunal did involve the making of an error of law and we set it aside.

(2) We remit the determination to the First-tier Tribunal for a fresh decision on all issues. None of the findings of fact made by the First-tier Tribunal Judge Oakley are preserved.

Signed

Date

Upper Tribunal Judge Rintoul