



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/17942/2013
IA/18029/2013

THE IMMIGRATION ACTS

Heard at Field House
On 23 June 2014

Determination Promulgated
On 23 September 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MUHAMMAD FARHAN AKBAR (FIRST APPELLANT)
MUHAMMAD AHMED MUJAWID (SECOND APPELLANT)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M A Saeed, Legal Solutions
For the Respondent: Mr S Kandola, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, Muhammad Farhan Akbar (date of birth 18 July 1984) and Muhammad Ahmed Mujawid (date of birth 13 February 1978) are citizens of Pakistan. The appellants claim that they carry on a joint business in the United

Kingdom (Analog Solutions Limited) of which they are equal shareholders and directors. The first appellant claims to possess £25,000, held in a Barclays Bank account; the second appellant has £25,000 in a Santander Bank account. They applied, as an entrepreneurial team, for further leave to remain in the United Kingdom as Tier 1 (Entrepreneur) Migrants but were refused by the respondent on 2 May 2013. The appellants appealed to the First-tier Tribunal (Judge Britton) which, in a determination promulgated on 23 January 2014, dismissed the appeal. The appellants now appeal, with permission, to the Upper Tribunal.

2. The applications fell to be considered under HC 395 (as amended), Appendix A Table 4. Of particular relevance here are the Notes for Entrepreneurial Teams:

Entrepreneurial teams: Notes

52. Two applicants, and no more than two applicants, may claim points for the same investment and business activity in Tables 4, 5 or 6 providing the following requirements are met.

Requirements:

- (a) The applicants have equal level of control over the funds and/or the business or businesses in question;
- (b) The applicants are both shown by name in each other's applications and in the specified evidence required in the relevant table; and
- (c) Neither applicant has previously been granted leave as a Tier 1 (Entrepreneur) Migrant on the basis of investment and/or business activity linked in this way with any applicant other than each other if the same funds are being relied on as in a previous application.

53. (a) No points will be awarded for funds that are made available to any individual other than the applicant, except:

- (i) under the terms of paragraph 52 above; or
 - (ii) where the money is held in a joint account with the applicant's spouse, civil partner or partner (defined as a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application), and that spouse or partner is not (or is not applying to be) another Tier 1 (Entrepreneur) Migrant.
- (b) No points will be awarded for investment and business activity shared with another Tier 1 (Entrepreneur) applicant, except under the terms of paragraph 52 above.
- (c) If the applicant is not the sole partner or director in the business, he must state:
- (i) the names of the other partners or directors,
 - (ii) whether any of the other partners or directors are also Tier 1 (Entrepreneur) Migrants, and
 - (iii) if so:
 - (1) the dates they became partners or directors,
 - (2) whether they are applying under the provisions in paragraph 52 above, and
 - (3) if they have made (or are making at the same time) an application in which they claimed points for creating jobs, the names of the jobholders in question.

3. In addition, the applicants were required to satisfy the provisions of paragraph 41-SD.

4. The facts of the case are not in dispute. As the grounds state,

the appellants could not open a joint bank account when they made their applications as all the banks that they approached asked them for six months' valid visa. In such a scenario, it is submitted that the appellants' applications were covered by paragraphs 52 and 53 of Appendix A having the heading 'Entrepreneurial Teams: Notes'. It is

clearly laid down in paragraph 52(a) 'that applicants have equal level of control over the funds and/or the business or businesses in question;'

The appellants had made declarations in writing to the effect that each had an equal level of control over the funds and the business.

5. The judge in the First-tier Tribunal heard evidence from both appellants. The judge rejected [19] new evidence submitted following the submission of the application to the respondent to the effect that the appellants had now opened a joint bank account with Santander. The judge found [24] that, because the appellants had been unable to produce evidence of a joint bank account which the Tribunal could take into account, the appeals must fail. The grounds of appeal challenge that conclusion and refer to the requirement (quoted above) that applicants should have an equal level of control over funds **and/or** the business or businesses in question; although they did not have a joint bank account, the appellants had shown that they had joint control over their business as evidenced by the declarations which they had made.
6. I refer to the requirements of paragraph 41-SD. Paragraph 41-SD(c)(ii)(4) requires, for money held in the UK only, that "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". Both appellants assert they should be treated as an entrepreneurial team and confirm that the funds for their business are located in the United Kingdom only. It follows, therefore, that "for an entrepreneurial team" the bank account for which they had to produce original statements must be in *both* names of the *joint* applicants. The appellants acknowledge that the bank accounts containing the funds upon which they seek to rely were held respectively in their sole names only. There existed no bank mandates authorising the control jointly and severally of either account by the other applicant. Paragraph 245DD is of no assistance to the appellants in the light of this fundamental deficiency in their applications. Accordingly, I do not find that Judge Britton erred in law by concluding that the appellants could not satisfy the Rules. These appeals are dismissed.

DECISION

7. These appeals are dismissed.

Signed

Date 10 September 2014

Upper Tribunal Judge Clive Lane