



Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number: IA/23153/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 3 March 2014

Promulgated on:  
On 4 March 2014

Before

Upper Tribunal Judge Kekić

Between

Mr Shahid Mehmood Hussain

**Appellant**

and

Secretary of State for the Home Department

**Respondent**

**Determination and Reasons**

**Representation**

For the Appellant: Mr A Chohan, Legal Representative

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**Details of appellant and basis of claim**

1. This appeal comes before me following the grant of permission on 17 January 2014 by Upper Tribunal Judge McKee in respect of the determination of First-tier Tribunal Judge Andrew who dismissed the appeal following a hearing at Birmingham on 22 October 2013 by way of a determination promulgated on 31 October 2013.

2. The appellant is a Pakistani national born on 18 April 1977. He seeks to remain as a Tier 1 Entrepreneur but his application was refused on 22 May 2013 because he had not supplied the specified documents; specifically, that the letter from the bank did not confirm the required details of the third party and provider of funds. The appeal was accordingly dismissed by the judge who found that the evidential flexibility rule did not assist the appellant.

### **Appeal hearing**

3. At the hearing, Mr Jarvis conceded that the decision of the Secretary of State had been unlawful in that it had not been in accordance with the policy in force at the time (since rescinded) which required caseworkers to ask for missing information. He submitted that in the circumstances the appeal should be remitted back to the Secretary of State for a lawful decision.
4. Mr Chohan submitted that the missing information had been before the Secretary of State all along in the paperwork submitted by the appellant's 'team member' who had simultaneously made a similar application. He submitted that the judge should have considered that information and that the appeal should now be allowed outright on its merits as to remit it would mean "going round in circles". He sought to rely on paragraph 245AA (d).
5. Mr Jarvis pointed out that it had not been shown that sub section (d) was in force at the time of the Secretary of State's decision. He submitted that it was a subsequent amendment. Mr Chohan could not confirm when (d) had come into force but repeated his earlier submissions.
6. At the conclusion of the hearing I reserved my determination which I now give. In so doing I have had regard to a copy of the policy supplied by Mr Jarvis and to the written submissions from the appellant dated 3 March 2014.

### **Findings and Conclusions**

7. Given Mr Jarvis' concession, I find that the Secretary of State acted unlawfully in that she did not follow her own policy when making the decision to refuse the application. I note, as pointed out by Mr Jarvis, that the policy indicates that missing information from bank letters is an example of the kind of inadequate document which the respondent may consider it appropriate to follow up. I am not persuaded by Mr Chohan's argument that the respondent was duty bound to consider the documentary evidence submitted by the appellant's team member when considering the appellant's own application. Had that evidence also been relevant to his application, it should have been submitted with it as well as with the other individual's application. However, it appears that in accordance with her policy, a copy of which Mr Jarvis was

able to supply, the Secretary of State should have sought the missing information from the appellant before deciding his application.

8. In the circumstances the determination of the First-tier Tribunal Judge is set aside.
9. I now consider whether the matter should be remitted to the Secretary of State as Mr Jarvis submitted or whether I should re-make the decision and allow the appeal as Mr Chohan urged.
10. I am unable to follow Mr Chohan's submission. As the Secretary of State's decision was unlawful, a fact seemingly accepted in the written submissions from the appellant, it follows that a lawful decision has yet to be made and in those circumstances there is no option other than to remit the matter to the Secretary of State so that she can consider the missing information from the appellant (which was submitted as part of his appeal bundle) and make a fresh, lawful, decision.

## **Decision**

11. The First-tier Tribunal made an error of law. The decision is set aside and the appeal is allowed only to the extent that the decision was not in accordance with the law. The matter is thus remitted to the Secretary of State for a fresh decision to be made.

**Signed:**

**Dr R Kekić  
Judge of the Upper Tribunal**

4 March 2014.