



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

Appeal Numbers: IA/24965/2013
IA/24953/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 17th July 2014**

**Determination
Promulgated
On 22nd July 2014**

Before

The President, The Hon. Mr Justice McCloskey

Between

BIMMAL LAKNATH COLAMBAGE AND CHATURI WASANA LIYANAGE

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellants: Mr S Khan, Solicitor.
Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. By its determination promulgated on 20 December 2013, the First-tier Tribunal (the "FtT") dismissed the Appellants' appeals. The first-named Appellant's appeal was against a decision made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), dated 07 June 2013, refusing his application for leave to remain in the United

Kingdom as a Tier 1 (Entrepreneur). The second-named Appellant's application was for leave to remain as the dependent of a Tier 1 Migrant.

2. At the conclusion of the hearing of this appeal, I provided an *ex tempore* judgment dismissing the appeals, for the following reasons, in summary:

- (a) On the purely factual issue of whether the application made to the Secretary of State included any advertising or marketing materials containing the first Appellant's name (to be contrasted with his business name) all the available evidence pointed decisively to a negative answer. Ultimately, this was properly conceded by the Appellants' legal representative, Mr Khan.
- (b) While it is clear that the name of the registered company, Bilaco Limited, is an abbreviation of the first Appellant's full name, I consider this to be insufficient to comply with the clear and specific requirement of the Rules. At best, this is a shortened version of the Appellant's two forenames and his surname. I am of the opinion that the Rules cannot be construed in a manner which renders this description compliant.
- (c) Giving effect to well established principle, I consider that there is no scope for allowing this appeal on the basis that the Appellant's failure to comply with the serial requirements of the Rules is both single and of narrow dimensions. This species of provision in the Rules establishes a bright line. Either it is satisfied or it is not. There is no hybrid, third possibility. The latest authority on this issue is the decision of the Supreme Court in Patel - v - Secretary of State for the Home Department [2013] UKSC 72, at [50] and following.
- (d) Finally, I consider that the original decision maker committed no error of law in not invoking paragraph 245AA of the Rules. The only provision therein which could conceivably have been of assistance to the Appellants is the "*document in the wrong format*" one. I am satisfied that this provision cannot be applied to the defect, or omission, which rendered the application non-compliant with the Rules, which was one of content, rather than shape, layout or form.

3. I dismiss this appeal with considerable regret. The FtT found that this is an authentic serious application, a point readily acknowledged on behalf of the Secretary of State's representative. The non-compliance does not, as the FtT noted, frustrate the underlying purpose of the rule in question, which is to demonstrate that the business is a real one and, further, that it is the applicant's. This was at no time doubted and, further, there was ample evidence to this effect. The application of the Rules in this particular instance produces an unfair and austere outcome, with an unjustifiably harsh impact on the Appellants. Moreover, it frustrates the public interest of the economic wellbeing of the country.

4. If, as seems likely, the Appellants proceed to make fresh applications, I trust that the Secretary of State's officials will take full cognisance of the comments above, and further, will process and determine the further applications as expeditiously as possible and with such priority as can be accorded to them.

DECISION

5. I dismiss the appeals and affirm the decision of the FtT.

Bernard McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Date: 17 July 2014