



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/27682/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14th March 2014

Determination Promulgated
On 27 March 2014

Before

UPPER TRIBUNAL JUDGE RENTON

Between

GULAM MUJTABA FAHAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W Talukder of Kalam Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a male citizen of India born on 13th December 1984. On 2nd March 2013 he applied for leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant.

That application was refused for the reasons given in a Notice of Decision dated 14th June 2013. At the same time the Respondent decided to remove the Appellant under the provisions of Section 47 Immigration and Nationality Act 2006 as amended. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Khan (the Judge) sitting at Hatton Cross on 8th January 2014. He decided to dismiss the appeal for the reasons given in his Determination promulgated on 16th January 2014. The Appellant sought leave to appeal that decision, and on 3rd February 2014 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Appellant's application for leave to remain was refused because the Appellant failed to score sufficient points for access to funds as required by paragraph 245DD(b) and Appendix A of HC 395. This was because the Appellant relied upon third party funding but he had failed to provide the documentary evidence as required by paragraph 41-SD of Appendix A.
4. The Judge dismissed the appeal because according to what he wrote at paragraph 26 of the Determination, he was likewise not satisfied that at the time of application, documents in the required format had been submitted. The Judge was satisfied that the Respondent's Evidential Flexibility Policy did not apply in the circumstances of this case.
5. At the hearing, I heard submissions from both representatives. Mr Talukder referred to the grounds of application and his skeleton argument and argued that the Judge had erred in law. The Judge had failed to properly consider the documents which the Appellant had submitted with his application appearing at pages E1, E2, F1, and F2 of the Bundle. They provided sufficient information to comply with the requirements of paragraph 41-SD. This was further established by the letter from a lawyer dated 21st December 2013 and other documents submitted with the Bundle for today's hearing. Finally, Mr Talukder pointed out that the Judge had not made an Article 8 ECHR decision.
6. In response, Mr Wilding submitted that there had been no such errors of law. The arguments of the Appellant go to the contents of the Refusal Letter and not those of the Determination. The Appellant has merely re-argued his original case. The Judge made a specific decision that the letter from HDFC Bank relied upon by the Appellant did not meet the requirements of paragraph 41-SD. The Appellant could not produce further evidence at this stage by virtue of the provisions of Section 85A(3)(b) Nationality, Immigration and Asylum Act 2002. Finally, Mr Wilding argued that it was not a material error of law for the Judge to omit to deal with the Appellant's Article 8 ECHR rights as only generic grounds had been relied upon.
7. I find myself in agreement with the arguments of Mr Wilding. Where third party financial support is relied upon, the requirements of paragraph 41-SD are very

specific. The Judge found that the letter from HDFC Bank was defective in that it did not contain the contact details of the third party, and that the declaration by the third party was not supported by sufficient evidence from a legal representative in that it did not contain a declaration of validity nor any confirmation of registration or authority to practise in India. These are findings of fact which were open to the Judge on the evidence before him. It followed that there was no error of law subsequently concluding that the requirements of paragraph 245DD(b) and therefore Appendix A of HC 395 were not met. It was not open to the Judge to consider evidence not submitted with the application. As a consequence of the decision in *SSHHD v Rodriguez and Others* [2014] EWCA Civ 2, the Evidential Flexibility Policy can have no application in a case of this nature, and the Judge was right to find accordingly.

8. It is true that the Judge failed to deal with the Appellant's Article 8 ECHR rights. This I find not to be a material error of law. The issue was not argued before the Judge, and no evidence was produced in respect of it. It therefore must be the case that the Judge would have concluded that there were no arguably good grounds for granting leave to remain outside the Immigration Rules and nor any compelling circumstances not sufficiently recognised under them. Therefore following the decision in *Gulshan (Article 8 - new Rules - correct approach)* [2013] UKUT 00640 (IAC) the Judge would not have been required to consider the Appellant's Article 8 ECHR rights.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton