



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

THE IMMIGRATION ACTS

**Heard at Field House
On 28 July 2014**

**Promulgated on
On 29 July 2014**

Before

UPPER TRIBUNAL JUDGE PITT

Between

MYHAMMAD ASIF GUL

ILYAS AHMAD

and

Appellants

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Choudhry of A M Legal Consultants
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. These are appeals against the decision promulgated on 10 February 2014 of First-tier Tribunal Judge Monro which refused the appeal against the Secretary of State's decision dated 28 June 2013 refusing leave to remain in the United Kingdom as Tier 1 (Entrepreneur) Migrants.
2. The respondent refused the applications as it was not found that the appellants had shown that the required amount of finance was available or that these funds were available to be transferred to them. Those points fell away when Judge Monro found in the appellants' favour at [15] and [16].

3. The respondent also refused the applications as the legal representative's letter provided did not meet the documentary requirements of the Immigration Rules as it did not confirm the pace of issue and dates of issue and expiry of the sponsors' passports.
4. Also, the third party declaration signed by the third party sponsors, here the parents of Mr Ahmad, did not also contain the signatures of the appellants.
5. It was common ground at the hearing before me that both of these requirements were contained within the Immigration Rules in paragraph 41 of Appendix A.
6. Ms Everett conceded for the respondent that the alleged shortcoming in the legal representative's letter would have fallen to have been addressed by the respondent under paragraph 245AA of the Immigration Rules if the issue concerning the required funds had not led to the application being refused summarily. The numbers of the passports of the sponsors were contained in the third party declaration. Even though the required details of the passports were not included in the legal representative's letter it was obvious that those details could be provided if requested. The policy guidance on evidential flexibility supported this approach, indicating at page 5 that information of this sort would be requested by the respondent. The dispute concerning the legal representative's letter therefore also fell away.
7. The remaining point relates to the signatures of the appellants on the third party declarations. There is no doubt that the signatures were not on the third party declaration submitted to the respondent. The appellants maintain that they could not have complied with this evidential requirement as they were in the UK and the sponsors and lawyer attesting to the third party declaration in the legal representative's letter were in Pakistan. It did not appear to me that the Immigration Rules required the legal representative in Pakistan to be attesting to the signatures of the appellants, merely that their signatures were on the document. As above, they were not.
8. It remains the case that the appellants also approached this issue in another way. Both provided the respondent with an affidavit dated 27 April 2013 containing their attested signatures and confirmed the financial arrangements in place with the sponsors for the business venture in the UK. It was common ground before me that these affidavits were before the respondent prior to the date of the decision and they were included in the respondent's bundle of materials produced for the First-tier Tribunal hearing.
9. It appeared to me that, with the additional affidavits from the appellants, the respondent had before her the required documentary details and information as set out in paragraph 41 of Appendix A. If I am wrong on that, the same reasoning that allowed the respondent to accept that the

shortcoming in the legal representative's letter fell to be remedied by a request in line with paragraph 245AA and the respondent's guidance on evidential flexibility also appeared to me to apply to the question of the signatures of the appellants on the third party declaration. If I am wrong on that, it was also my view that the discretion in paragraph 245AA (d) fell to be exercised by the respondent as the required information was available albeit in the format of the third party declaration and affidavits of the appellants and, if the outcome of the appeal turned on this point, the appeal would have to be remitted for the respondent to deal with this point. The facts here, where the appellants had provided all the required details prior to the respondent's decision, can be distinguished from those in the reported case of Akhter and another (paragraph 245AA; wrong format) [2014] UKUT 00297 (IAC). This case therefore turns on its own particular facts.

10. For these reasons, I accepted that the First-tier Tribunal erred in finding against the appellants on the legal representative's letter and third party declaration not meeting the documentary requirements of the Immigration Rules. I set aside that part of the decision, remaking it as allowed, again for the reasons set out above.
11. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside. I re-make the appeal, allowing it under the Immigration Rules.

Signed: 
UPPER TRIBUNAL JUDGE PITT

Date: 28 July 2014