



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/52254/2013

THE IMMIGRATION ACTS

Heard at Bennett House, Hanley
On 18 September 2014

Determination Promulgated
On 6 October 2014

Before

The President, The Hon. Mr Justice McCloskey

Between

SAYED NAFIS ZAFREE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: In person and unrepresented.

Respondent: Mr Harrison, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The background to this determination is set out in my earlier decision, dated 24 July 2014, appended hereto. The further hearing convened for the purpose of remaking the decision has now been completed. It is convenient to consider, and determine, the merits of this appeal by reference to the salient passages in the Respondent's decision letter (hereinafter "*the impugned decision*").
2. By the impugned decision, dated 21 November 2013, the Respondent refused the Appellant's application for leave to remain in the United Kingdom under the Tier 1

(Entrepreneur) regime of the Points Based System. The letter of refusal rehearses the following three reasons for rejecting the application:

- (a) The Appellant has not genuinely established a business in the United Kingdom, as required by Table 4 of Appendix A.
- (b) The Appellant does not genuinely intend to invest the relevant money in such business.
- (c) The money is not genuinely available to him and will not remain available to him until its expenditure is required for the business.

The decision maker pronounced himself dissatisfied in respect of each of these three matters. The letter also made reference to paragraph 245DD(h) of the Immigration Rules.

3. The letter refers to certain documents provided by the Appellant with the application and some of the questions and answers during interview. It continues:

“From the evidence provided and the answers you have given in your interview, we are not satisfied that the £50,000 is yours to invest in a business in the United Kingdom. You have not invested any of the funds or transferred them into a business bank account, leading us to doubt the credibility over the genuineness of the funds.”

This passage can be readily related to the second and third of the refusal reasons summarised above. The letter continues:

“The fact that you stated you had no previous employment other than the contract work for the Bank of America or business experience in the United Kingdom are both contradictory to statements given during your interview.”

While the syntax in this passage is not felicitous, its gist appears to be that, when interviewed, the Appellant gave contradictory information about his business experience and previous employment. There is no elaboration, particularisation or substantiation of this assertion. Furthermore, I consider that there is no proper basis for criticising or condemning the Appellant for providing some elaboration or clarification of information previously supplied when interviewed. I conclude that the adverse assessment in this passage cannot be sustained.

4. The letter continues:

“You gave conflicting statements of how you knew Mr [MZU], director of Limited, of your previous employment/business history and the bank statements you provided demonstrate that the funds were from other means than your savings and an £8,000 gift from your father.”

This discrete passage conflates a series of issues and invites the following analysis:

- (a) While a substantial part of the letter is devoted to reproducing part of the Appellant's interview, this contains no conflicting statements about how the Appellant knew Mr MZU. In the lengthy quotation, the Appellant recounted that the two persons became acquainted as a result of attending the same MBA course. There is no conflicting statement about this matter in the interview segment quoted. Nor is there anything in the letter of decision suggesting, much less establishing, some conflict or contradiction by reference to some other source. In a separate reproduced segment of the interview transcript, the Appellant states that he also knew Mr MZU in a different context. I can discern no proper basis for the contradiction attributed to the contradiction attributed to the Appellant by the decision maker. It follows that this assertion cannot be sustained.
- (b) The second statement in the passage quoted above simply rehearses, accurately, that some of the £50,000 funding proposed for the business emanates from sources other than the Appellant's own savings. It was readily – and properly – accepted by Mr Harrison on behalf of the Respondent that in this type of entrepreneurial context the funding typically comes from a series of sources. Furthermore, the decision maker cast no doubt on the gift of £8,000 from the Appellant's father. It follows that the reservation expressed in this discrete passage has no substance.

The letter continues:

"Furthermore, no evidence has been provided to confirm why [MK], a family friend would deposit £24,460 into your personal account over a three day period and only two months prior to you submitting your application raises high concerns over the genuineness of the funds [sic]."

The Appellant has consistently made the case that this was the repayment of a personal loan and that the timing was attributable to his need for the funds to support his business. Furthermore, written confirmation of the repayment was provided by the debtor. Contrary to the decision maker's assertion, therefore, evidence was provided to explain this payment. None of this is taken into account in the letter of decision, thereby rendering this reservation untenable. Furthermore, I consider the explanation tendered satisfactory.

5. The next section of the letter begins thus:

"Your last grant of leave was as a Tier 1 (Post Study) Migrant on 25 July 2011 until 25 July 2013. You have provided no evidence to suggest that you have been developing this business during the course of your leave. There is nothing to suggest you have planned for or developed the idea prior to registering the company in May 2013."

Continuing, it is stated that an internet search revealed a website identical in content to that of the Appellant. This passage is contradicted by the evidence that the Appellant established his first business, Zafrees Limited, in 2012, which continued for almost two years, including amongst its clients, the Bank of America and performed relatively well. His present company, SNZ Solutions Limited, was established some two months before the submission of his Tier 1 application. The Appellant's previous history is ignored completely in the decision letter. Thus a significant factor has been left out of account. This represents yet another infirmity in the impugned decision.

6. In the next section of the decision letter, there is a focus on the market research conducted by the Appellant and a reference to questions and answers during the interview, in which he explained that he had conducted a questionnaire survey of 85 small businesses, with around 50 results, supplemented by some 50 telephone calls to businesses which elicited certain positive responses. The decision letter states:

"From the above answers it is clear that you have not made a genuine attempt to advertise your business or carry out any substantive or formal market research."

This passage lacks clarity and reasoning, particularly since there is no challenge to the veracity of the market research information supplied by the Appellant. Nor is any doubt expressed about the Appellant's professed engagement in "telemarketing".

7. Next, the decision letter states:

"We conducted an internet search and found over 22 competitors in your area. You have provided no evidence to suggest how your company will compete in the local market against more established competitors."

This passage fails to engage with the Appellant's intention to provide services on a nationwide basis and places disproportionate weight on the geographical, physical location of his business base. Furthermore, in this and other passages, there is a failure to recognise the Appellant's experience of two years within the highly regulated financial industry. This failure is especially acute in the next succeeding passage. Furthermore, the Appellant is given no credit for his third level education qualifications. All of this undermines the conclusion which follows:

"Therefore we are not satisfied that during your period of Post-Study leave you have undertaken genuine and credible steps to make preparation for planning, launching and developing a business idea in the United Kingdom."

8. The omnibus conclusion in the decision letter is expressed in the following terms:

“Based on the above consideration the Secretary of State is therefore refusing your application because you have not satisfactorily demonstrated that you are a genuine entrepreneur”

As the analysis in the preceding paragraphs hereof demonstrates, much of the assessment and reasoning in the decision lacks real substance. In particular, some important pieces of information were not considered, either properly or at all. Furthermore, assertions of contradiction and conflict are not substantiated. I have also taken into account the information provided with the Appellant’s application and his evidence to this Tribunal. The Appellant was an articulate, impressive and plausible witness and I accept his evidence without hesitation. His attributes as a witness may explain why Mr Harrison, representing the Secretary of State, questioned the Appellant on one issue only, namely the profitability of his business during the difficult, interim period initiated by the Appellant’s application for Tier 1 Entrepreneurial Status. The Appellant’s evidence to this Tribunal was basically unchallenged.

9. For the reasons elaborated above, I conclude that the impugned decision was not in accordance with the law. The proper application of the relevant provisions of the Immigration Rules should have resulted in the Appellant’s application being granted.

DECISION

10. Thus I allow the appeal under the Immigration Rules.

Bernard McCloskey.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 21 September 2014

APPENDIX



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/52254/2013

THE IMMIGRATION ACTS

Heard at Stoke-on-Trent
On 14 July 2014

Determination Promulgated

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Before

The President, The Hon. Mr Justice McCloskey

Between

SAYED NAFIS ZAFREE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: In person and unrepresented.
Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This appeal has its origins in a decision made on behalf of Secretary of State for the Home Department (the "Secretary of State"), dated 21 November 2013, whereby the application of the Appellant, a national of Bangladesh aged 28 years, for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant was refused. The ensuing appeal to the First-tier Tribunal (the "FtT") was dismissed. In dismissing the appeal the Judge held, in substance, that the Appellant's application was properly refused because he had failed to place his funds in "*a discrete business account*". This

is the first ground on which permission to appeal was granted. The second ground related to a lack of sufficient findings and inadequate reasoning in the FtT's determination.

2. At the conclusion of the hearing, I gave an *ex tempore* judgment, allowing the appeal for the following reasons, in summary:
 - (a) As there is no requirement under the Rules for the funds in question to be held in an applicant's business account, the FtT committed a clear error of law.
 - (b) There was a related failure to engage with the Appellant's explanation for this, to link this with the refusal reasons and to make findings accordingly.
 - (c) The Judge rehearsed the Appellant's evidence relating to the provenance of the funds and made certain comments about same. However, no specific clear findings on this issue were made.
 - (d) The Judge repeated the supposed business account error, confirming its materiality in his decision.
 - (e) Finally, the Judge, on the face of the determination, failed to properly explore the underlying evidence (rehearsed in the refusal decision) and to make findings accordingly.
3. For these reasons, I announced that the appeal would succeed.

DECISION

4. This gives rise to the following decision:
 - (a) The decision of the FtT is set aside.
 - (b) The appeal is retained in the Upper Tribunal for the purpose of remaking the decision.
 - (c) The case will be listed before me on 18 September 2014 at this venue for this purpose.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 24 July 2014