



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/16983/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 16 September 2015

Decision & Reasons Promulgated  
On 22 December 2015

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ANEET GOVINDARAJAN  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr Bramble  
For the Respondent: Ms Sharkey

DECISION AND REASONS

1. Mr Govindarajan is a citizen of India born in 1976. On 25 March 2014 a decision was made by the Secretary of State to refuse to vary his leave to remain as a Tier 1 (General) Migrant and to remove by way of directions. His application was made on 21 January 2014.
2. He appealed.
3. Although in proceedings before me the Appellant is the Secretary of State, for convenience I retain the designations as they were before the First-tier Tribunal, thus, Mr Govindarajan is the Appellant and the Secretary of State, the Respondent.

4. The Respondent's decision was made under paragraph 245CA of the Immigration Rules. Specifically, the Respondent was not satisfied that the Appellant met the requirements to be awarded 75 points under Appendix A (245CA(b)). In that regard the Appellant had claimed 40 points for earnings in the range of £35,000 to £39,999 (£22,862 from his employment and £13,175 from self-employment). The figure for employment was not in dispute. However, the Respondent did not accept the self-employment earnings. Accordingly, the Respondent awarded 15 points for previous earnings in the range £20,000 to £22,999.
5. It was stated in the decision letter that the Respondent had applied the Genuine Earnings Test to the application as outlined in paragraph 19(i) in Appendix A. The Respondent was not satisfied that the earnings which the Appellant had claimed from his self-employment trading in the UK were from genuine self-employment. The Respondent had considered all nine points of the Genuine Earnings Test, but it was stated that she only had concerns with the following: the evidence which the Appellant had submitted; whether the earnings claimed had been earned through genuine employment, rather than being borrowed, gifted, or otherwise shown in the financial transactions or records without being earned; whether the business from which the earnings were claimed can be shown to exist and be lawfully and genuinely trading.
6. Further, the Respondent expressed concerns in the decision in respect of the legitimacy of the earnings claimed as income from his business trading as 'M Power'. It was stated that during his interview he was asked about how he was paid and the payment period he gave his customers, but that he failed to specify how these arrangements were made. He did not specify the agents he referred to in his interview or the reasons for delays in payment. The Respondent was unable to determine the payment process for his trading and considered that he had failed to detail the involvement of these agencies.
7. The Respondent was also concerned with the business relationship he had with his accountant.
8. Following a hearing at Hatton Cross on 25 November 2014 Judge of the First tier Sieffert allowed the appeal.
9. The judge, from paragraph 14ff of the determination, narrates in detail the documents submitted by the Appellant with his application. At [31]-[32] she notes that he sought at the hearing to lodge additional documents. This was opposed by the Presenting Officer because, this being a Points Based case, only documents which had been provided at the time of the application could be considered.
10. However, the judge admitted them as evidence accepting the representative's submission that comments in the refusal letter amounted to an allegation of deception.
11. The judge's conclusions are at [37]-[40]. She found that *'having considered the evidence as a whole'* the Appellant was a credible witness [37].

12. She went on (at [38]): *“(He) submitted documents with his application form which were included in the Appellant’s bundle. This included business bank statements showing payments from each of his clients, a letter from his accountant identifying and confirming the sums earned from his self-employment together with other documents. (He) made a number of criticisms of the interview process which are referred to in his witness statement and additional oral evidence at the hearing. The interviewer was not satisfied with his answers and doubted the reliability of his claim to income from self-employment. (He) sought to clarify the position in a letter following the interview. However, his application was refused. ... He has produced further documentary evidence to rebut the Respondent’s rejection of his application which Ms Sharkey submitted amounted to a ‘veiled allegation of deception’”.*
13. She concluded (at [39]): *“I have carefully considered the documents and evidence overall. There is nothing to suggest that the firm of accountants have not acted properly and professionally throughout. I am satisfied that (he) has explained the mechanics of how the business is run and that this is a genuine business which generated the income claimed”.*
14. The Respondent sought permission to appeal which was granted.
15. At the error of law hearing Mr Bramble sought to rely on the single ground, namely, that the judge erred in permitting the production of post application documents. It was speculation on the part of the representative that there was a veiled allegation of deception. There was no evidence to support that assertion. Had the Respondent wished to assert deception she would have done so under the Rules.
16. Ms Sharkey’s position before me was essentially the same as it had been before the First-tier Tribunal. There was clear indication in the Respondent’s reasons for refusal that she considered the documents lodged with the application to be fraudulent.
17. In considering this matter the sole issue is the admissibility of evidence. Section 85 of the Nationality, Immigration and Asylum Act 2002 reads:

“ ...

(4) *On an appeal under Section 82(1) ... against a decision the Tribunal may consider evidence about any matter which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.*

(5) *But sub-section (4) is subject to the exceptions in section 85A.*

*Section 85(A) states:*

...

(3) *Exception 2 applies to an appeal under section 82(1) if*

(a) *the appeal is against an immigration decision of a kind specified in section 82(2)(a) or (d);*

(b) *the immigration decision concerned an application of a kind identified in immigration rules as requiring to be considered under a 'Points Based System';*

...

(4) *Where Exception 2 applies the Tribunal may consider evidence adduced by the Appellant only if it -*

(a) *was submitted in support of, and at the time of making, the application to which the immigration decision related;*

...

(c) *is adduced to prove that a document is genuine or valid."*

18. The First-tier Judge noted (at [20]) the following from the refusal letter:

*"When you were asked why you chose your accountant you replied 'I have known them for about 3 years. I have sought business advice from them'. You failed to elaborate on the nature of the business advice you received from your accountant during the interview and there are questions surrounding his involvement in your application and whether the documents supplied may not have been created by yourself."*

19. I do not find merit in the submission that had the Respondent wished to allege dishonesty she would have done so under the Rules. In my judgment the words "... there are questions surrounding (accountant's) involvement in your application and whether the documents supplied may not have been created by yourself" are clear in meaning. The judge was entitled to treat them as amounting to a "veiled allegation of dishonesty". Indeed, they are scarcely even "veiled". They are overt in respect of the documents submitted with the application. As such the judge was entitled to find that the documents submitted at the hearing, and which she found directly relevant as rebuttal to the allegation that the earlier documents submitted were not "genuine or valid", were admissible under section 85A(3)(c).

20. It is not submitted that having admitted the later documentary evidence she was not entitled to reach, for the reasons she gave, her conclusion that the income from self-employment was as claimed and that the Appellant was entitled to the points claimed and that he thereby satisfied the Rule.

## **Decision**

The decision of the First-tier Tribunal shows no material error of law and that decision allowing the appeal shall stand.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Conway