



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

Appeal Number: IA/18669/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd April 2015**

**Decision & Reasons Promulgated
On 19th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR MOHAMMAD YASIN KOTOWAROO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Nasim (Counsel)

For the Respondent: Mr David Clarke (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Cooper, promulgated on 23rd December 2014, following a hearing at Taylor House on 27th November 2014. In the determination, the judge allowed the appeal of Mohammad Yasin Kotowaroo. The Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Mauritius, who was born on 6th October 1987. He appeals against the decision of the Respondent dated 31st March 2014 to refuse to grant him leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant and to remove him by way of directions given under Section 47 of the IANA 2006.

The Appellant's Claim

3. The Appellant's claim is that he can meet the requirements of the Immigration Rules with respect to the required level of funding in order for him to qualify as a Tier 1 (Entrepreneur) Migrant because he has been able to produce bank statements showing credit balances in excess of £50,000, which is the figure required by the Rules. The Respondent has not believed that the Appellant has access to this amount and has questioned the "viability and credibility of the source of the money". The Respondent did not believe the Appellant's account given at the interview that he had accumulated approximately £10,000 by way of savings, given his salary of £1,485.02 per month from his employers. The Barclays Bank statements did not highlight any transactions that had been made into the account from overseas as confirmation as to the source of the funds. Therefore, in his Notice of Appeal, the Appellant confirmed that he had been able to save money from his personal income and from financial support which he had been given by his parents. The £40,000 had come from his parents.

The Judge's Determination

4. At the hearing before the judge on 27th November 2014, there was further evidence. As the judge recounted,

"He has now produced affidavits from his parents confirming transfers made by them, and letters from two individuals confirming that they have transferred money direct to the Appellant in lieu of repaying loans due from them to his parents. The Appellant has also produced associated banking documents. Taking all this evidence together, I am satisfied on the balance of probabilities that the Appellant did indeed have the required amount of funds, which were legitimately provided and which he was entitled to use to invest in his business" (paragraph 18).
5. The next question that the judge considered was in relation to the "viability and credibility of the Appellant's business plans". Here the Respondent had referred to the service agreement with Aronex, but considered that it was not clear what his exact duties would be under the agreement. In the interview, the Appellant had stated that he had given them engineering support, construction, design in the planning/layout and material choice. However, their website showed that they already employed an architect and design assistant, "who had shown the relevant qualification and experience to carry out all the above duties that you have mentioned at interview". Accordingly, a question mark was raised as to why they would want to pay an additional fee to a newly established company to undertake the same work. (See paragraph 19).

6. The judge observed that, “the Appellant has now produced a letter from Aronex (AB18) which, among other things, confirms that the Appellant did indeed have a contract with them in relation to the development of a building called Penta House in Liverpool ...”. It also states that, “although they did employ an architect and design assistant she was not a UK qualified architect, and her duties were entirely different to the services Meta had been providing ...” (paragraph 20).
7. The judge also went on to hear the Appellant’s oral evidence where he “explained that he had been drafted in to check that the building was feasible ...” (paragraph 21). In the end, the judge was of the view that he was “satisfied that this was a genuine contract which did involve the Appellant working for a third party company and was indicative of the ability of Meta to carry out such work in the future ...” (paragraph 22).
8. The appeal was allowed.

Grounds of Application

9. The grounds of application state that the judge erred in law because he allowed evidence that was submitted after the date of the application contrary to Section 85A of the NIAA 2002. This was contrary to the Upper Tribunal’s determination in **Ahmed (PBS: admissible evidence) [2014] UKUT 00365**.
10. On 12th February 2015, permission to appeal was granted.

Submissions

11. At the hearing before me on 23rd April 2015, Mr Clarke, appearing on behalf of the Respondent Secretary of State, relied fundamentally on **Ahmed (PBS: admissible evidence) [2014] UKUT 00365** had submitted that the new Section 85A(4) makes it quite clear that subsequent evidence in relation to a non-points scoring aspect of the Rule cannot be legitimately admitted. He submitted that there was little doubt that there was an error, but the question for this Tribunal was whether this was a material error. At paragraph 18 of the determination, the judge referred to how the Appellant “has now produced affidavits from his parents confirming transfers made by them”. However, this evidence was not available earlier. Furthermore, the judge also referred to how, “the Appellant has now produced a letter from Aronex (AB18) which, among other things, confirms the Appellant did indeed have a contract ...”. These were new matters and relevant because page 3 of the refusal letter disputed the sums that were relied upon. The Appellant’s income simply was not sufficient for him to have accumulated these sums. Had it not been for the affidavits from the Appellant’s parents and the letter from Aronex, on the basis of what the judge had set out at paragraphs 16, 17, and 18, the Appellant could not have succeeded. Therefore the error was a material one.
12. For his part, Mr Nasim relied upon the fact that at the time of his application he did provide all the documents required by the Immigration Rules. Thereafter, the Appellant was called in for an interview because there was a question mark about

the “viability and credibility of the source of the money”. There were concerns about the genuineness of the application. New matters were raised for the first time in the interview and the interviewing officer required satisfaction in relation to these matters. Given that the Appellant then purported to provide such evidence, which was forthcoming within a reasonable period of time, which included the affidavits from the parents, and the letter from Aronex, the judge was entitled to take into account these matters, which were not specifically enshrined in the Rules any longer. The Appellant’s interview took place on 13th March 2014. His application took place a month earlier on 5th February 2014. It was only at the interview that these matters were raised. There is a question mark about his having saved £10,000, and the source of the £40,000. These matters were not earlier in issue as far as the application was concerned. For the purposes of his application, all that the Appellant had to do was to furnish his bank statements showing that he had the adequate funds, and this was evidently plain from the bank statements themselves. Finally, if one looks at the case of **Ahmed** itself, it is plain that there is a discretion on the Secretary of State to take into account evidence even under Section 85A(3) and (4) which is subsequently produced. This is set out at paragraph 4 of the decision in **Ahmed**. It relates to exception 2. It allows the Tribunal to consider evidence adduced by the Appellant provided that it “is adduced in connection with the Secretary of State’s reliance on discretion under Immigration Rules ...” Furthermore, pointed out Mr Nasim, if one looks at **Ahmed** itself, this was a case where it is made clear at the outset (at paragraph 2) that, “the Secretary of State interviewed the applicants *and* was prepared to accept further documentation in April 2013 ...”. This acceptance of further documentation, submitted Mr Nasim, was on the basis of the provisions in the Immigration Rules themselves because these allowed for a discretion in the manner that he had just described.

13. In reply, Mr Clarke submitted that what this is authority for is the statement that non-points-based reasons cannot go to points-based findings of fact.

No Error of Law

14. I am satisfied that the making of the decision by the judge did not involve the making of an error of law such that is material in a way that should lead to this decision being set aside (see Section 12(1) of TCEA 2007). There is one reason for this. Whilst the admission of evidence in relation to produced affidavits and a letter from Aronex may well have been tantamount to an error as this evidence was not available earlier, because the relevant child here is with the parent, in **Ahmed [2014] UKUT 00365**, the Tribunal stated that Section 85A(4) of the 2002 Act “applies to the non-points scoring aspect of the Rule: the prohibition is in relation to new evidence that goes to the scoring of points”. In this case, the new evidence is not such that goes to the scoring of points. What goes to the scoring of points was the pre-existing evidence that was before the Respondent Secretary of State, namely, the production by the Appellant of bank statements that showed credit balances in excess of £50,000. Accordingly, the judge was entitled to consider this evidence in the manner that he did.

Notice of Decision

15. There is no material error of law in the original judge's decision. The determination shall stand.
16. No anonymity order is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

14th May 2015