



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

Appeal Number: IA/18707/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24 March 2015**

**Decision & Reasons Promulgated
On 17 April 2015**

Before

**MR JUSTICE CRANSTON
DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**FURQAN KAYANI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr M Saeed, instructed by Legal Solution Advocates

DECISION AND REASONS

1. In a determination promulgated on 3 December 2014 First-tier Tribunal Judge Oakley allowed the appeal of Mr Furqan Kayani (whom we call “the claimant” in this judgment) against a decision of the Secretary of State for the Home Department (“the Secretary of State”) refusing his application to remain in the United Kingdom to operate a business under the Tier 1 (Entrepreneur) system. The Secretary of State has appealed to us against the judge’s decision.

2. The claimant is from Pakistan. He entered the United Kingdom on 9 April 2007 with entry clearance as a student valid until 21 June 2010. On 18 June 2010 he was granted leave to remain as a Tier 4 (General) Student until 31 December 2011. On 5 December 2011 he was granted leave to remain as a Tier 1 (Post-Study Work) Migrant until 5 December 2013. Meanwhile, on 22 November 2012, the claimant made a combined application for leave to remain as a Tier 1 (Entrepreneur) Migrant under the points system and for a biometric residence permit. He was interviewed on 24 April in Sheffield regarding his Tier 1 (Entrepreneur) application. The following month the Secretary of State refused the application.
3. The claimant applied for judicial review and the application was compromised by the Secretary of State agreeing to reconsider her decision. On 24 October 2013 the claimant was re-interviewed at Sheffield regarding his Tier 1 (Entrepreneur) application. The interviewer concluded that the claimant was credible and genuinely intended to establish a business in the United Kingdom and was going to invest the money available to him in the business. The claimant had the requisite funds available and did not intend to take up employment other than as an entrepreneur. The interviewer noted that funds were held in the account of the claimant's brother in Pakistan at the time the initial application had been made, and the funds had been transferred to the United Kingdom bank account belonging to the claimant on 30 April 2013. The interviewer recorded that he had seen the bank statements which were from HBL Bank, London. As of 30 September 2013 the claimant still had £51,488 in the account.
4. As regards the viability and credibility of the claimant's business plan the interviewer referred to the previous assessment. The interviewer then recorded that the claimant had studied a two year diploma in IT at Brooks College from 2007 to 2009 and had then studied an MBA in Banking Finance at Coventry University. He "has two years' experience from back home working in software house in call centres, has a strong management background from gaining his MBA, has taken two years working on a business plan which involves software and IT". The interviewer noted that the claimant had already set up a business and was looking to settle in the United Kingdom permanently: "if any further documentation is required could you please email the claimant on write2furqankayani@gmail.com."
5. In late November and early December the Secretary of State sent emails to an email address furwankayani@gmail.com requiring a copy of his Companies House current appointment report and copies of any advertising material. The First-tier Tribunal judge accepted that neither the claimant nor his representatives received that letter.
6. In any event, the Secretary of State issued a second decision, in almost identical terms, in a letter dated 11 April 2014. In that letter the Secretary of State stated that she was not satisfied that on the balance of probabilities the appellant genuinely intended to establish a business, to invest the requisite amount of money or to take employment in this country other than under the terms of the

Immigration Rules. The decision letter referred to a number of considerations. We set them out at some length because of their relevance to the appeal. First, the letter set out the evidence the claimant had submitted. There was reference under that head to the failure to respond to the email request we have mentioned. The Secretary of State concluded under that heading that there were high concerns regarding the evidence submitted.

7. The decision letter turned to the viability and credibility of the source of the funds. Firstly, the letter considered, in particular how the funds had been transferred from the claimant's brother's account in Pakistan to accounts in this country. Secondly, the letter said that there was a concern because of payments out, a loan repayment for example, and two large payments from the Halifax account to a Faraz Haider. There was also a sum of over £22,000 which had been repaid to Telebridge Communications by way of software services. Thirdly, the letter under this head raised the issue of the investment of the £50,000 in the claimant's business, Softech Consultants Limited. A passage from the interview conducted on 24 October was set out where the claimant had said that the money had not been invested at that stage because no visa had yet been granted. A further answer from the claimant was quoted in relation to advertising material.
8. There was then reference to a transfer of funds to Barclays, to the company accounts and to employees. The conclusion was that although the evidence demonstrated that the finances were present in the claimant's account the Secretary of State was not adequately satisfied with the source of the funds. It called into question the genuine nature of the deposits and whether the money had genuinely been invested in a business in the United Kingdom.
9. Thirdly, the decision letter considered the viability and credibility of the claimant's business plans and market research. There were four concerns raised here. The first concern in that regard was that Raja Zahid at Education Online Limited was a Tier 1 (General) Migrant. There was also a concern that Education Online Limited was registered at a residential address in Oldham. The agreement between Education Online Limited and the claimant's company Softech Consultants Limited had generated certain invoices. The invoices submitted raised concerns because the amount of work undertaken did not seem to justify the sums of money set out. There was also an ancillary concern that the Secretary of State, having conducted online research, could not find any reference to advertising material or a website for Education Online Limited. The fourth concern was that the agreement with Education Online Limited was for a period of one year with a possible extension agreed by the parties. However, in the interview, the claimant had not made any reference to an extension or indicated that Education Online was content to carry on trading with the claimant's company.
10. The decision letter then referred to the claimant being the director of various other companies which "does not suggest that you have been dedicating your time to marketing and planning the growth of your current business over the period of time stated by you at your interview". There was also a concern about accessing

the website from the link which had been provided to the claimant's business. The conclusion under this head was that from the evidence provided and the answers given at interview the Secretary of State was not satisfied with the viability and credibility of the claimant's business plans and market research.

11. The next head in the decision letter dealt with the claimant's previous experience. Under this head the Secretary of State raised her concern with a letter dated September 2007 coming from Telebridge Communications. The decision letter noted that the claimant had been a director of a company called Telebridge Communications and that was also the name of his brother's business in Pakistan. This raised questions about credibility of the letter and of any actual work experience undertaken by the claimant. There was also an issue that the claimant had stated at interview that he had not worked during his student leave and had not given details of any further work experience. The insurance policy taken out by the claimant with an insurance company named Catlin was also an issue since the documents submitted did not contain any official address for Catlin and contained bad grammar. The decision letter under the head 'Any other relevant information' stated that it "cast doubt over the [genesis] and credibility of your business Softech Consultants Limited and of the feasibility of any trading activities taking place".
12. The claimant appealed. The matter came before the Tribunal. The judge set out various findings of fact reflected earlier in our judgment. The judge then said, at paragraph 30, that it was very significant that in the claimant's interview the interviewer was in all respects recommending the claimant as credible and intending genuinely to establish a business in this country and also having the money genuinely to invest:

"It would appear that the Secretary of State in considering their decision has totally ignored the interviewer's recommendation or in the alternative has given no reason whatsoever in the letter of refusal as to why they have ignored the recommendations and the remarks in the Entrepreneur interview recommendation".
13. The judge then considered four matters. The first was the attempt by the Secretary of State's representative to obtain information from an entirely incorrect email address. Secondly, the judge notes the concern about the origin of the funds. Thirdly, he referred to the previous work experience letter from Telebridge Communications and fourthly, the passage in the decision letter about the claimant's being the director of other companies. The judge returned again to the Secretary of State rejecting her own interviewer's record and the interviewer's recommendation: "These have been singly ignored by the Secretary of State and if they have not been ignored then no reasons whatsoever have been given by the Secretary of State as to why they did not rely on the interviewer's recommendations..."
14. The Secretary of State now quite justifiably contends that this judgment contains material errors of law. Firstly, it is evident to us that the judge has not considered

in detail the reasons given by the Secretary of State as regards the funds available to the claimant. The concern raised in the decision letter did not simply focus on the origins of the funds but as we have described, various other aspects as well. Secondly, the Secretary of State's queries about the previous work experience letter are not addressed in the judge's reasons, the judge simply accepting its credibility. Thirdly, the viability and credibility issues raised in the decision letter are not addressed at all except for the point about the appellant being a director of other companies. We cannot accept the submissions made to us on the claimant's behalf this morning by Mr Saeed that this determination by the First-tier Tribunal is a thorough scrutiny of the Secretary of State's consideration in the decision letter. The decision letter canvassed many issues, as we have described and it was an error for the judge to identify a couple and pick holes in them.

15. Nor are we impressed by the submissions Mr Saeed made about the conduct of the Secretary of State. Certainly this matter has dragged on for a number of years. There was the earlier refusal and the judicial review which led to the Secretary of State's reconsideration of the matter. But that goes nowhere as a point of criticism of the Tribunal's decision on this occasion. There was the issue which the judge raised about the emails being directed to the wrong email address but not to put a fine point on it Mr Saeed's criticism of that goes nowhere when the emails were simply requiring a Companies House current appointment report and copies of advertising material. It is clear that the Secretary of State in the decision letter had a wealth of material to consider, albeit those two emails having gone astray. In our view the decision of the Tribunal is inadequate and we will allow the appeal.
16. Mr Saeed raised various additional points about the claimant having been waiting for over three years and now having daughters and the money still being in the account. That is not a matter we can consider here. As we have said, we allow the Secretary of State's appeal.
17. The decision of the First-tier Tribunal is set aside and shall be remade at the Hatton Cross hearing centre, before a judge other than First-tier Tribunal Judge Oakley.

Notice of Decision

The appeal is allowed.

No anonymity direction is made.

Signed

Date **17 April 2015**

Mr Justice Cranston