



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

Appeal Numbers: IA/19658/2013
IA/19661/2013
IA/19666/2013
IA/19673/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 30 April 2015**

**Determination Promulgated
On 12 June 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**UME KALSOOM (FIRST APPELLANT)
MUBASHAR KHURSHID (SECOND APPELLANT)
FATIMA MUBASHAR (THIRD APPELLANT)
MURRAAD ARIF (FOURTH APPELLANT)
(ANONYMITY ORDERS NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Ahmed, instructed by 12 Bridge Solicitors
For the Respondent: Miss Brocklesby-Weller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Pakistan. The first appellant is the wife of the second appellant and the third and fourth appellants are their children.

I shall hereafter refer to the “first appellant” as “the appellant” as it is her application for leave to remain as a Tier 1 (Entrepreneur) Migrant which is the subject of this appeal. The other appellants are her dependants.

2. The appellant’s application was refused by the Secretary of State in a decision which is dated 7 May 2013. She appealed to the First-tier Tribunal (Judge Napthine) which, in a determination promulgated on 17 March 2014, dismissed the appeals. The appellant now appeals, with permission, to the Upper Tribunal.
3. The first hearing of this appeal at Field House took place on 24 June 2014 before His Honour Judge Haddon-Cave and Upper Tribunal Judge Clive Lane. On that occasion, the hearing was adjourned. It was then listed before Upper Tribunal Judge Clive Lane alone on 30 April 2015. At the first hearing, Mr Naseem of Counsel appeared for the appellants. At the hearing on 30 April 2015, the appellants were represented by Mr S Ahmed of Counsel. Miss A Brocklesby-Weller, a Senior Home Office Presenting Officer, appeared for the respondent on the second occasion.
4. Following the hearing on 30 April 2015, I invited the parties to submit further submissions in writing regarding the Secretary of State’s guidance for entrepreneur migrant applicants. I did not receive any submissions from the appellants and Miss Brocklesby-Weller informed me by email that she did not, in the circumstances, seek to make any further representations. I have therefore determined the appeal.
5. The appellant made an application and supported this with documents. She was subsequently invited to an interview on 18 April 2013 at Folkestone. Following that interview, the respondent issued a refusal having not been satisfied that, on the balance of probabilities, the appellant was genuinely intending and able to establish takeover or become a director of one or more businesses within the next six months. The reasons for refusal are lengthy. However, the appellant only scored the required 10 points for Maintenance and English Language. She was otherwise not awarded any points.
6. The grounds of appeal assert, in essence, that Judge Napthine failed to have proper regard to oral and documentary evidence put before him at the First-tier Tribunal hearing. It is asserted, *inter alia*, that the judge failed to understand that funds had already been invested in the business prior to the application but he wrongly found that funds should have been kept in a specific account (which is not required under the Rules). It is asserted that at [26], the judge failed to understand and have regard to bank statements for 2012 which had confirmed the source of the funds which had been deposited.
7. Having heard the submissions of Mr Ahmed, it seems to me likely that Judge Napthine (in a determination which is not entirely clear in all its parts) may have misunderstood some of the evidence put before him by

the appellant regarding the financing of her business. I also agree with the appellant that the judge at [24] erred in law by finding that “the claimed sale price for a five year old 5 Series BMW with a high mileage” was not credible. It is entirely unclear to me how the judge may have come to that conclusion other than by taking judicial knowledge (and not informing the parties that he was so doing) of the likely resale value of such a BMW motorcar.

8. The problem for the appellant, however, is that I have a discretion whether or not to set aside a First-tier Tribunal decision. It is unlikely that I shall exercise that discretion in the case of an appeal which was bound to fail in any event, albeit not for the reasons given by the First-tier Tribunal Judge. I have decided not to exercise my discretion in this instance for the following reasons.
9. The appellant was required to satisfy the provisions of paragraph 245DD(I) of the Immigration Rules:

“245DD. Requirements for leave to remain

To qualify for leave to remain as a Tier 1 (Entrepreneur) Migrant under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

- (I) In making the assessment in (k), the Secretary of State will assess the balance of probabilities. The Secretary of State may take into account the following factors:
 - (i) the evidence the applicant has submitted;
 - (ii) the viability and credibility of the source of the money referred to in Table 5 of Appendix A;
 - (iii) the credibility of the financial accounts of the business or businesses;
 - (iv) the credibility of the applicant’s business activity in the UK, including when he had leave as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator;
 - (v) the credibility of the job creation for which the applicant is claiming points in Table 5 of Appendix A;
 - (vii) if the nature of the business requires mandatory accreditation, registration and/or insurance, whether that accreditation, registration and/or insurance has been obtained; and
 - (viii) any other relevant information.

10. As regards the “viability and credibility of [the appellant’s] business plans and market research into her chosen business sector”, the respondent noted:

‘Effective market research would involve assessing the risk of your business start up highlighting competitors and developing ideas for ways to differentiate yourself in the market, among other factors, and this information would be backed up by statistical analysis. I have seen no evidence of in depth research into your potential market and your explanation leads me to doubt the credibility of your business.’

11. The transcript of the interview is in the papers before the Tribunal. The appellant had indicated at [17] that her market research had been evidenced in her business plan but at [57] the appellant indicated that her business plan had been “provided with the application” but immediately went on to say, “no I haven’t provided this at all”. The refusal letter noted that “you claim to have submitted a business plan in your application however this was not received initially and you have not supplied a business plan at any point since”. I can find no evidence before either Tribunal which would indicate that the appellant had prepared a thorough business plan or, more particularly, carried out any effective market research. The appellant had answered a question about her market research by stating, “the customers want something unique gift possession and something with value” (*sic*). It is apparent that the appellant had not carried out any or any market research of the kind detailed in the refusal letter. As we have seen, a failure to supply a credible and viable business plan and/or particulars of market research may constitute a legitimate reason for the respondent to doubt the genuineness of the application to become an entrepreneur under the terms of paragraph 245DD.

12. In the refusal letter it is also noted that:

‘You studied in the UK between 2006 and 2010 attending private colleges in London and the surrounding area. You were awarded an Advanced and Postgraduate Diploma in Educational Management from West London College of Business and Management Sciences, however these qualifications are not relevant to the job title sales and marketing director which you have stated on your application form.’

13. Once again, “previous educational and business experience (or lack thereof)” may be relevant in an assessment of genuineness under the Rules. The appellant has provided no evidence to show that, contrary to what is said in the refusal letter, her educational qualifications and experience are likely to equip her to work effectively as a sales and marketing director of her business.
14. The various matters detailed at paragraph 245DD(I)(i)–(vii) are not simply to be taken into account in a general way or assessed on some cumulative basis. The failure of an applicant to show that he or she has carried out

market research or assessed the likely viability of a business and a deficiency in relevant educational or business experience may be sufficient to justify a refusal on the basis of a lack of genuineness. In this appeal, whilst the First-tier Tribunal Judge has concentrated on financial matters (and has possibly erred in his assessment of those matters), there are elements of the respondent's refusal to which the appellant has been able to provide no satisfactory response at all. I find that, even if I were to set aside the First-tier Tribunal determination and to remake the decision in the Upper Tribunal I would be bound, for the reasons I have given above, to dismiss the appeal against the immigration decision. For those reasons, I dismiss this appeal.

Notice of Decision

These appeals are dismissed.

No anonymity direction is made.

Signed

Date 10 June 2015

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 10 June 2015

Upper Tribunal Judge Clive Lane