



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/20941/2014

THE IMMIGRATION ACTS

Heard at Field House
On 25 August 2015

Decision & Reasons Promulgated
On 4 September 2015

Before

UPPER TRIBUNAL JUDGE WARR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR NABIL SYED
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer
For the Respondent: Mr N Ahluwalia of Counsel instructed by Farani Javid Taylor
Solicitors

DECISION AND REASONS

1. This is the appeal of the Secretary of State but for convenience I will refer to the appellant, a national of Pakistan born on 20 December 1986, as the appellant herein. The appellant arrived in this country on 16 September 2010 with entry clearance as a student and was then given further leave to remain for post-study work until 20 February 2014. During this period the appellant having been unable to obtain work in the United Kingdom went to Dubai to join his father for some months.
2. The appellant made two applications for leave to remain as a Tier 1 (Entrepreneur). The first application was made on 7 June 2013 when he applied as part of an entrepreneurial team including Umair Anees. That application was unsuccessful. The appellant then made a further application on 12 February 2014 as a sole

entrepreneur. That application was refused on 24 April 2014 and a decision to remove the appellant was taken under Section 47 of the Immigration, Asylum and Nationality Act 2006 on the same date. The refusal is the subject of the present appeal proceedings.

3. The appeal came before First-tier Tribunal Judge Boyes on 27 January 2015. The judge heard from both the appellant and his father. She summarised the respondent's case in paragraphs 12 to 14 of her determination and put the matter shortly in paragraph 21 as follows:

“In essence, the respondent argues that the business is not a genuine one and that the appellant does not have the business acumen necessary to run the business concerned...”

4. It was submitted in addition by the Presenting Officer that certain aspects of the evidence given by the witnesses called into question the appellant's credibility. It was submitted that the appellant's father's evidence was quite vague and his lack of knowledge of the appellant's business plans was surprising.
5. The judge found that the appellant's father's evidence was broadly consistent with the appellant's evidence and rejected the suggestion that it was vague and found him to be a credible witness.
6. The judge found that there was no issue about the viability and credibility of the source of the finances in this case. The appellant held £50,000 and had been given these funds by his father who was a wealthy businessman with extensive business interests in both Pakistan and Dubai. The judge was satisfied that the appellant was involved in the family businesses while he was growing up and that his father had passed on practical skills and shared his experience with him.
7. Among other points the respondent had commented on the appellant's visit to Dubai when he could not find employment in the UK but the judge resolved this matter in favour of the appellant in paragraphs 69 and 70 of the determination finding that there was nothing about the appellant's immigration history and previous activity in the UK which caused her to doubt that he genuinely intended to run a business in the UK or invest £50,000 in the business. The judge commented that the appeal hearing was very lengthy compared with other appeals raising similar issues and much time had been given to hearing the appellant's evidence which was detailed and extensive. She found him to be a credible witness coming from a family with a proven track record of success in business. She allowed the appeal finding he met the relevant requirements of the Rules.
8. The respondent applied for permission to appeal which was granted on 1 June 2015 by Designated First-tier Tribunal Judge Zucker on the ground that the judge had regard to evidence that was not submitted with the application and was therefore not before the decision maker and so erred in her assessment of the evidence.

9. Ms Isherwood relied on the grounds and referred to paragraph 44 of the determination where there was reference to a written contract prepared in May 2014 which was after the date of the decision in April. It was submitted in the grounds that it was clearly demonstrated that the judge had based her decision “entirely on the post-oral evidence, giving it considerable weight, which was clearly not in front of the decision maker”. Apart from the contract raised in the grounds Ms Isherwood referred to documents at pages 89 to 91 of the bundle which were postdecision material. Although it was acknowledged that the judge had directed herself correctly she had in fact allowed postdecision evidence to influence her decision. A point not taken in the grounds of appeal was the amendment to the company register on 27 November 2014 showing that Umair Anees was no longer a director of the appellant’s company – see paragraph 68 of the determination.
10. Mr Ahluwalia relied on his response to the grounds of appeal received shortly before the hearing.
11. He made the point that this was not a case concerning the failure to produce documents but rather the question of the viability and credibility of the appellant’s business plans. The judge had clearly directed herself correctly that she could not consider postdecision evidence under Section 85A of the Nationality, Immigration and Asylum Act, referring to **Ahmed (PBS: admissible evidence) [2014] UKUT 00365 (IAC)** in paragraph 18 of her determination. He pointed out that the contract in May 2014 was referred to in cross-examination (see paragraph 53 of the determination). The respondent had questioned the appellant about this contract, using it as an example of how the business was neither credible nor plausible. The judge made it quite clear in paragraph 53 that the contract postdated the decision and she was making reference to it as it had been referred to in cross-examination.
12. At the conclusion of the submissions I reserved my decision. I was referred to the case of **Olatunde [2015] EWCA Civ 670** where the Court of Appeal concluded that the Tribunal had erred in taking into account a contract which had not been submitted at the time of the application and had not then come into existence.
13. In this appeal the judge, as I have said, directed herself correctly in paragraph 18 of the determination by reference to **Ahmed** stating that in the light of that case “I am therefore unable to take into account documentary evidence that was not before the respondent at the date of decision.” The judge repeats this at paragraph 25 of her decision:

“As I am bound by **Ahmed and Another**, when reaching my conclusions I have only taken into account documentary evidence which was before the decision maker at the date of decision, that is 24 April 2014. This documentary evidence is listed at page 3 of the Reasons for Refusal Letter.”
14. In paragraph 53, while referring to the contract in May 2014, the judge remarks that this contract postdates the decision and she refers to it because it was referred to cross-examination. In paragraph 75 of the decision (the penultimate paragraph of

her determination) she stated: "Having considered all of the [*pre-decision*] documentary evidence and witness evidence before me in the round ...", [emphasis added] she was satisfied that the appellant had established a genuine business and met the relevant requirements of the Rules.

15. It is therefore clear that both at the start and the end of the determination as well as during the course of it the judge was fully aware of the relevant position about the reception of evidence. It would have been impossible for her not to make reference to postdecision evidence where this was raised in cross-examination. She is meticulous about referring to dates as she did in paragraph 44.
16. Overall this is a very careful and lengthy decision where the judge focused with care and attention on the points raised by the respondent in the decision and she dealt with them all during the course of a fully reasoned decision. Having correctly directed herself on the legal principles I see no reason for doubting that she failed to apply them correctly and there is every indication that she did indeed apply them correctly.
17. Although the grounds took an additional point about the appellant being unable to find a job in Dubai or the UK and had lodged his application as an entrepreneur in order to acquire status in the UK although he had no intention of setting up a business this point was rightly not pursued. The judge correctly addressed herself to the issues of fact and came to well-reasoned conclusions on them as I have said. Despite the forceful submissions raised by Ms Isherwood I am not satisfied that the judge erred as claimed or indeed at all.

Notice of Decision

The appeal of the Secretary of State is dismissed and the decision of the First-tier Judge to allow the appeal stands.

I have made no anonymity award.

TO THE RESPONDENT **FEE AWARD**

The judge in this case made a fee award in respect of the appellant and that fee award stands.

Signed
Upper Tribunal Judge Warr

Date 27 August 2015