



IAC-AH-CO-V1

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

Appeal Number: IA/21933/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 15 October 2015**

**Decision & Reasons  
Promulgated**

**On 27 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**MRS CATHREEN ANUM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Baruah, Counsel instructed by Marks & Marks Solicitors

For the Respondent: Ms Sreeraman, Specialist Appeals Team

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Maciel sitting at Columbus House, Newport on 3 February 2015) dismissing her appeal against a decision of the respondent to refuse to vary her leave to remain as a Tier 1 (Entrepreneur) Migrant, and against the Secretary of State's concomitant decision to make directions for her removal under Section 47 of the Immigration, Asylum and Nationality Act 2006. The First-tier Tribunal did not make an

anonymity direction, and I do not consider that the appellant requires to be accorded anonymity for these proceedings in the Upper Tribunal.

### **Relevant Factual Background**

2. The appellant is a national of Pakistan, whose date of birth is 27 August 1978. On 3 February 2014 she applied for leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system. She was interviewed about her application at Vulcan House, Sheffield on 29 March 2014. On 29 April 2014 the Secretary of State gave non-point scoring reasons for refusing her application. She was not satisfied on the balance of probabilities that the appellant genuinely intended and was able to establish a business or businesses within the next six months; or that she genuinely intended to invest the money referred to in Table 4 of Appendix A in her business or businesses; or the money referred to in Table 4 of Appendix A would genuinely be available to her and would remain available to her until such time as it was spent by her business or businesses.
3. In making the decision to refuse her application, careful consideration had been given to the evidence which she had submitted; the viability and credibility of the source of the money referred to in Table 4 of Appendix A; the viability and credibility of her business plan and market research into her chosen business sector; and her previous educational and business experience (or lack thereof).
4. The respondent raised a number of specific points on the topic of the viability and credibility of the appellant's business plans. Some of these were based on what the appellant had said at interview, and others were based on the outcome of enquiries that the Home Office had made, such as the results of logging on to the appellant's business website address.
5. When asked at interview whether she was working from home or if she had business premises, she replied that she had business premises. She had already given the address. The office had a meeting room, Wi-Fi, reception, security and there were twenty other businesses in the building.
6. The address given on her business card was 1 Olympic Way, Wembley which had an office block next to Wembley Stadium. But after contacting the buildings manager, he confirmed that they did not rent an office to her company. They also did not rent a virtual office to her company, and they had never heard of her at the address supplied on her business card. The respondent contended that this, together with the other points relied upon, undermined the whole credibility of her application as a Tier 1 entrepreneur and also undermined the credibility of her proposed business.

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

7. Although the appellant was legally represented, there was no appearance by her or by her legal representatives at the hearing which took place before Judge Maciel on 3 February 2015.
8. At paragraph 2 of her subsequent decision, Judge Maciel noted the matter had previously been listed but adjourned due to the appellant's ill-health. Her representatives had submitted a similarly worded doctor's letter which indicated that the appellant was (still) too unwell to travel. She had however provided a detailed witness statement which sought to address the issues raised in the refusal letter.
9. So she had decided to proceed with the appeal in the absence of the appellant and her representative. Her reasoning was that she was satisfied they were both aware of the hearing, and the solicitors had written to excuse the appellant's non-attendance. At the same, there was no application to adjourn the case.
10. The judge received oral submissions from Ms Lane, Home Office Presenting Officer, on behalf of the respondent and at the end of the hearing she reserved her decision.
11. Her reasoning on the merits of the appeal was contained in paragraphs [11] to [14}, which I set out below:
  - "(11)I do not find that the fact that the appellant has not transferred the investment money to the UK to be evidence that undermines the credibility of the application as the appellant may well not want to spend money on an investment in circumstances where the visa is not granted.
  - (12) However, the application has other significant issues, the primary one being the lack of a business address despite claims by the appellant that she was functioning from a particular office building. I note that the Companies House document is provided on the basis of information provided to them from the appellant and it is not an independent document. The appellant appears to have made no enquiries with the building manager or provided any confirmatory evidence, such as bills or a licence agreement to evidence that the business occupies an office in the building. This would be evidence that the appellant would reasonably have in her possession in any event and the failure to provide the same undermines the credibility of her assertion. There would also be evidence of funds paid for rent or a licence or receipts and invoices in respect of the same which have not been produced. I find that this undermines the application as a whole and find that the appellant has failed to provide evidence that her business is functioning in the manner claimed.
  - (13) I have not gone to the appellant's website to verify her claims and have not held this issue against her. I do not find that the provision of two business plans undermines the application and accept that one business can provide cash flow for the other.
  - (14) I find that the appellant has failed to provide evidence reasonably available to prove that her application is genuine. I find that the appellant has failed to fulfil paragraph 245DD(k) of the Immigration Rules and is accordingly not entitled to the points that she has claimed. Accordingly, the immigration appeal fails."

12. At paragraph [15], the judge gave her reasons for dismissing an alternative claim under Article 8 ECHR on both family and private life grounds.

### **The Application for Permission to Appeal to the Upper Tribunal**

13. The appellant's solicitors settled an application for permission to appeal. Ground 1 was the judge should have granted an adjournment based upon the medical evidence submitted by the appellant. The adjournment should have been granted on the basis that the judge made findings against the appellant's business address without her having the opportunity to address the court. The respondent had not provided any details of the person they had spoken to at the business address and had not adduced any evidence before the Tribunal to show that the mere assertion in the refusal letter was correct.
14. The appellant had provided sufficient evidence in the form of a director's appointment report to show on the balance of probabilities that the business address which the appellant had given was the correct address. As the Secretary of State had raised concerns in relation to the genuineness of the address, the Secretary of State bore the burden of proof: see inter alia **JC (Part 9 HC 395 - burden of proof) China [2007] UKAIT 00027**. The judge had erred in law in directing herself that the burden of proof was on the appellant on the issue of her business address.
15. Ground 3 was that the judge's reasoning on the Article 8 claim was flawed/inadequate/insufficient. The judge had failed to follow the guidance set out in **CDS (Brazil)**. She had clearly been residing in the UK since 2009 and had spent a significant amount of money on her studies, and further to that she had spent money on her business.

### **The Initial Refusal of Permission**

16. On 9 April 2015 Judge Pooler refused permission to appeal on all three grounds raised. In the circumstances where the appellant was legally represented and no adjournment request was made to the judge, there was no arguable error of law in proceeding to hear the appeal in the absence of the appellant. The judge had correctly directed herself to the burden of proof and the reliance on the case of **JC** was misplaced as the decision was not taken on the basis of any of the general grounds under Part 9 of the Rules. The judge gave succinct but adequate reasons in respect of the Article 8 claim, there being no evidence before the Tribunal of the establishment of private life or of circumstances which would have required consideration of the issue outside the Rules.

### **The Eventual Grant of Permission**

17. On a renewed application for permission to appeal to the Upper Tribunal, Upper Tribunal Judge Grubb granted permission to appeal on ground 1 for the following reason:

“Whilst I see little or no merit in the grounds’ challenge to the substance of the decision under the Rules or Art 8, the findings are predicated on adverse findings made in the absence of the appellant. The absence of the representatives from the hearing is unexplained as yet. The Judge had before her a doctor’s letter which stated the appellant could not attend. Whilst it was not accompanied by a letter from the representatives including an explicit request for an adjournment, it is arguable that such an application was implied particularly given the previous adjournment on much the same medical grounds. In failing to consider it is such, it is arguable that the proceedings continued unfairly in the absence of the appellant.”

### **The Hearing in the Upper Tribunal**

18. At the hearing before me to determine whether an error of law was made out, I reviewed the correspondence between the appellant’s solicitors and the Tribunal which had preceded the hearing before Judge Maciel. I also noted what the appellant had said in her witness statement on the topic of her business address. At paragraph 3(viii) the appellant said:

“The respondent also objected on my business premises. My business address is obvious from my director’s appointment report submitted with the application. The director’s appointment report is not a self-generated document. It is an official document provided by the Companies House under the relevant legislation/rules. The respondent stated in NOR ‘however after contacting the building’s manager...’. The respondent did not give any detail i.e. who was contacted, what was his/her name when that contact was made, where is any fax or email from the said person. I would like to inform the court that this is still my registered office address. “

19. Ms Baruah submitted that a distinction needed to be drawn between the appellant’s business premises and her registered office. They were not the same. The appellant’s business premises were somewhere else, and this had been the case at the time of her interview. If the appellant had had the opportunity to give oral evidence at the hearing before the First-tier Tribunal, this would have been clarified through supplementary questions. I pointed out that it did not appear from the interview transcript that the appellant had taken the opportunity then to give this clarification. Ms Baruah said that the transcript of the appellant’s answers did not purport to be verbatim, and she did not accept that the appellant had not given this clarification at the interview.

### **Discussion**

20. I find that the judge acted reasonably in proceeding with the hearing of the appeal, rather than adjourning the hearing of her own motion. Although a previous hearing had been adjourned on account of the appellant’s illness, it did not follow that the appellant’s solicitors were to be taken as requesting a further adjournment on account of the

appellant's continuing illness. If they had instructions to seek an adjournment, there was no reason for them not to say so plainly in their correspondence with the Tribunal. Moreover, the implication of the covering letter dated 2 February 2015 from the appellant's solicitors was that their client was content for the appeal to be dealt with on the papers. This was reinforced by the fact that since the previously aborted hearing the solicitors had provided a detailed witness statement from the appellant. In this statement she responded in some detail to each point taken against her in the refusal letter.

21. In the event, the judge based her adverse conclusion on only one of the many points which had been raised against the appellant in the refusal letter. This was the asserted discrepancy between what the appellant had said about her business premises in the interview as against the information which the Secretary of State had obtained subsequently from the building manager at the claimed business address.
22. I do not consider that basing her conclusion on this discrepancy was procedurally unfair, either by reference to the evidence that was before the First-tier Tribunal or by reference to the additional information that was imparted to me at the UT hearing.
23. As evidenced by the interview transcript, the appellant plainly represented in interview that her business premises were the same as the company's registered office. In her witness statement the appellant was, on the face of it, merely repeating this assertion. She was not purporting to support the assertion by providing corroborative evidence, such as utility bills or a licence agreement to show that her business occupied an office in the building. So it was open to the judge to find the appellant had not discharged the burden of proof.
24. The additional information given to me in support of the error of law challenge makes matters worse for the appellant, not better. Her witness statement plainly does not contain a clarification to the effect that at the interview the appellant was talking about her registered office, and was not talking about where she actually carried on her business. Accordingly, the witness statement is in retrospect mischievous and misleading in questioning the veracity of the claim attributed to the unnamed building manager. For the appellant, through her Counsel, has now made clear that she has never used the company's registered office as a place to do business. So it is only to be expected that the building manager will not have heard of the appellant or her company as someone who uses the address as a place to do business. As it is now admitted that the address which the appellant gave in interview is not the correct address for her business premises, the appellant cannot by way of appeal assert that it was unfair of the First-tier Tribunal to find that it was not her business address, contrary to what she falsely represented in her interview and in her witness statement. So there was no procedural irregularity or unfairness in the judge reaching an adverse conclusion on the business premises issue, without hearing oral evidence from the appellant and

without having further and better particulars, supported by a witness statement, of the inquiry made of the building manager, including details of his name etc.

25. The appellant was not granted permission to appeal on grounds 2 or 3, and I find that there is no merit in either of these grounds. The burden always rested with the appellant to show that the refusal of her application on non-point scoring grounds was wrong in substance, and she has failed to discharge this burden. As to an alternative claim under Article 8 ECHR, the judge has given adequate reasons for rejecting such a claim. Article 8 ECHR does not give an applicant a right to work in the country of his or her choice, and the old authority of **CDS (Brazil)** is of no assistance to her, particularly after the coming into force of s117B of the 2002 Act.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and the decision stands. This appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Monson