



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/28110/2014

THE IMMIGRATION ACTS

Heard at Field House
On 11th September 2015

Decision & Reasons Promulgated
On 28th September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MISS KOMAL RANA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal, Counsel
For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 4th December 1986. The Appellant first entered the United Kingdom on 2nd September 2010 with conferred leave to enter as a Tier 4 (General) Student until 27th May 2012. That leave was subsequently extended as a Tier 1 (Post-Study) Migrant until 16th June 2014.
2. On 13th June 2014 the Appellant made a combined application for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant under the points-based

system (PBS) and for a biometric residence permit (BRP). That application was refused by the Secretary of State by Notice of Refusal dated 24th June 2014 on the basis that the Appellant did not meet the requirements of Appendix A.

3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Khan sitting at Richmond Magistrates' Court on 4th March 2015. In a determination promulgated on 20th March 2015 the Appellant's appeal was dismissed under the Immigration Rules.
4. The Appellant lodged Grounds of Appeal to the Upper Tribunal on 2nd April 2015. On 18th May 2015 First-tier Tribunal Judge Shimmin granted permission to appeal. Judge Shimmin noted that the First-tier Tribunal Judge had dismissed the appeal on the basis that the Appellant could not rely on new evidence sought to be introduced at the hearing. He noted however that the Appellant claimed that she was not allowed to argue her case at the hearing on the basis of the original document submitted with the application alone and that it was therefore arguable that there was procedural unfairness. No Rule 24 reply appears to have been served by the Secretary of State.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant is represented by her instructed Counsel Mr Iqbal. The Secretary of State appears by her Home Office Presenting Officer Mr Nath.

Submissions/Discussions

6. Mr Iqbal takes me to the Grounds of Appeal. He points out that this is the first hearing at which the Appellant has had legal representation having appeared in person before the First-tier Tribunal and having submitted her own application form back in June 2014. He takes me to the reasons for refusal and points out that there were three documents that the Secretary of State required as evidence of access to the Appellant's start up funds of £50,000 for her marketing business which were not provided with the application. These were firstly letter from the Financial Institution from which the third party, Mr Akbar's, funds are held in order to establish that those funds were accessible to the Appellant as specified under paragraph 41-SD(c)(i) of Appendix A of the Immigration Rules.
7. Secondly bank statements were required. He points out that the bank statements provided were not acceptable to the Secretary of State because they were for an account not in the Appellant's name. Thirdly a declaration, but no declaration from a legal representative had been supplied to establish that the letter of permission supplied was valid as specified under paragraph 41-SD(d)(ii) of Appendix A of the Immigration Rules. He is at pains to emphasise that the Appellant now has all the correct documentation. He acknowledges that the Rules do not allow this documentation to be admitted late.
8. He contends in respect of the letter from the Financial Institution in which Mr Akbar's funds were held that even though a letter was not provided the personal bank statement of Mr Akbar submitted with the application was sufficient to meet

the requirements of paragraph 41-SD(c)(ii) of Appendix A and that this is in fact emphasised even more by the fact that the Appellant was not able to provide the letter with the application only for the reason that UK banks do not provide such letters. He points out that paragraph 245AA of the Immigration Rules does not contain all the specified information of documents to be provided and that there is procedural impropriety in the manner in which the judge rushed to his conclusions. He takes me to paragraph 9 of the decision which states,

"Since the Appellant did not submit the documents which he submitted at the appeal hearing when she made her application, the Tribunal cannot take these documents into consideration."

He submits that the judge ignored the fact that the Appellant clearly expressed that the purpose of submitting new documents was the clarity of the issues raised in the Respondent's refusal letter and that she was aware that it was in the judge's discretion whether he would accept the new evidence or not. He points out that the Appellant declared at the hearing (and she was a litigant in person) that she could defend her original documents submitted with the application regardless of the judge not accepting the new documents but that the judge ignored this. He consequently submits firstly that there is no reference whatsoever within the determination to paragraph 245AA and secondly the decision to dismiss the appeal was consequently irrational and unfair.

9. It is, Mr Iqbal contends, not that documents were missing but information that was missing. The Appellant had a bank letter and the only defect was that the Appellant's name was not inserted and that in respect of the bank statement provided it was not in the applicant's name but rather the third party. Further in respect of the declaration from the legal representative the Appellant had the third party declaration attested by a legal representative containing his signature and company stamp on it with the belief that that would suffice.
10. Finally he submits that going back to the Notice of Refusal at page 4 the reference therein to paragraph 245AA(c) actually reflects a wrong application of paragraph 245AA in that this is not a case of missing documents but a case of missing information.
11. Mr Nath in brief response whilst acknowledging all this points out that there are difficulties with the Appellant's submission and that she has quite simply failed to meet the attributes section of Appendix A. He submits that the Secretary of State has followed quite properly paragraph 41-SD and his submission is that there is no material error of law in the decision of the First-tier Tribunal Judge.

The Law

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

14. The Appellant in this matter has, perhaps ill-advisedly, made an application without the benefit of legal representation. She felt that she had followed the correct procedure but it is clear from the Notice of Refusal that certain required information as set out in the Notice of Refusal was not submitted with the application. It is acknowledged that that missing information is now available but under the Immigration Rules it cannot be admitted in evidence. This is an Appellant who has good educational qualifications and wishes to set up what I am sure she hopes will be a long-standing and successful marketing business but she cannot do so unless or until she acquires the requisite visa. It is therefore of fundamental importance to the Appellant that her visa can be obtained and indeed obtained as soon as possible.
15. It would not be open to the Appellant to submit a further application as her current visa has expired and all that is extant relates to her present appeal. The basis upon which the judge has given his determination only appears to have one flaw in it namely that page 4 of the Notice of Refusal does I acknowledge reflect a wrong application of the interpretation of paragraph 245AA of the Immigration Rules in that it makes specific reference to missing documents which is not the case in this appeal but that of missing information. In an otherwise sound determination the judge has failed to consider this and in particular the general provisions of paragraph 245AA and I am prepared to find that such an error is material.
16. In such circumstances I find that the decision of the First-tier Tribunal is not in accordance with the law and I remit the matter back to the Secretary of State for further consideration. It is acknowledged by both legal representatives that if I take this course of action then it will be open for the new documentation which is available and which should have been with the original application to be provided to the Secretary of State. Obviously any decision taken is for the Secretary of State but this will at least give the Appellant, whose whole future rises and falls on the Secretary of State's decision, one final chance to ensure the proper documentation is before the Secretary of State when considering her application.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside. The finding of the Upper Tribunal is that the initial decision is not in accordance with the law and that the matter is therefore remitted back to the Secretary of State for reconsideration.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge D N Harris