



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/38297/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 17 June 2015

Determination Promulgated  
On 23 June 2015

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr SAQIB HAIDER  
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Iqbal, Counsel (instructed by Britain Solicitors)  
For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Lambert on 31 March 2015 against the determination of First-tier Tribunal Judge McIntosh who had dismissed the Appellant's appeal against the Secretary of State's decision dated 30 September 2014 in a determination promulgated on 2 February 2015. The Appellant is a national of Pakistan, who had applied for further leave to remain in Tier 1 as an Entrepreneur

Migrant. This was refused and removal directions were made under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. Judge McIntosh found that that the Appellant had not demonstrated that the required funds of £50,000 were available to him and dismissed the appeal on that basis. The judge also found that the Respondent had not applied the Immigration Rules in force as at the date of the application.
3. Judge Lambert considered it arguable that Judge McIntosh had erred in his approach in that the reasons for refusal letter had stated in terms that the Appellant had provided sufficient evidence of having access to £50,000. It was reasonable to have inferred that the relevant supporting documents had been before the decision maker although the judge had not recognised that.
4. The Respondent opposed the onwards appeal, by notice under rule 24 in the form of a letter to the Upper Tribunal dated 10 April 2015.
5. Mr Iqbal for the Appellant submitted that Judge McIntosh had indeed fallen into legal error. Important documents had not been included in the Respondent's bundle, such as the Appellant's solicitors' covering letter, bank statements and the bank's covering letter. It was obvious such materials must have existed and that they had not been copied because the reasons for refusal letter had accepted that funds were available, not only for investment but also for maintenance. 10 points had been awarded for maintenance. The relevant rules were very complex and it was easy to go wrong.
6. The judge had set out at [16] and [17] of his determination what he considered were the competing versions of the Immigration Rules. He had followed the version set out at [16] at [21] and [22] of his determination, but had then fallen into error as to what was in issue before the First-tier Tribunal. He had not been helped by the Respondent's failure to follow rule 24 of the 2014 Tribunal Procedure Rules, by neglecting to serve documents.
7. Mr Avery for the Respondent accepted that the judge had fallen into legal error, although not on the grounds argued by Mr Iqbal. The determination was frankly baffling. This was at least in part due to the misleading submissions made on the Appellant's behalf at the first instance hearing. The contention that the Respondent had applied the wrong Immigration Rules when reaching her

decision on 30 September 2014 was plainly wrong. To illustrate his point, Mr Avery produced an archive edition of the Immigration Rules in force at the date of the application (6 August 2014), and also referred to the application form in the Respondent's bundle. This showed (see page 35 of the application form, Q.G26) that the relevant date of before 11 July 2014 was to be applied. It was also noteworthy that Q.G27 of the application form had been left blank, which was an admission that the Appellant had not submitted all of the specified documents. The basis of refusal was thus correct. The appeal had indeed gone wrong but the result was right because the appeal could never have succeeded.

8. Mr Iqbal in reply submitted that with reference to the Appellant's advertising flyer, which was in the Respondent's bundle, all that was missing was the date. The printer's invoice had been supplied by the Appellant, which gave a date of 13 May 2014, i.e., prior to 11 July 2014. Hence there was reason to believe that the paragraph 41-SD of the Immigration Rules had or might have been met. Thus paragraph 245AA of the Immigration Rules ought to have been applied and the appeal should have been allowed by the judge to that extent. The same point applied to the contract relied on by the Appellant, which was open ended. That was still a valid contract in English law and the Immigration Rules ought to be interpreted to reflect the wider legal position.
9. As Mr Iqbal had made fresh submissions in his reply, effectively on the basis that the determination could not stand, it was appropriate to allow Mr Avery to respond. He submitted that the Immigration Rules were specific and that the contract was not compliant with paragraph 41-SD(e)(iv)(1)(d). Thus paragraph 245AA could not assist the Appellant.
10. The tribunal reserved its determination which now follows. It was accepted by both parties that the judge had fallen into material error of law. The Tier 1 (Entrepreneur) Migrant rules are not only complex but have also been changed a number of times. Although the judge quite reasonably looked for assistance to the parties' representatives who appeared before him, Mr Avery demonstrated beyond doubt that the Appellant's representative (not Mr Iqbal) had produced an incorrect set of archived Immigration Rules at the first instance hearing. The judge can hardly be blamed for that. It is inevitable that the judge erred as a result.

11. The second error of law was that the judge reached a finding which was contrary to the reasons for refusal letter. While that may be possible in strict legal theory under certain circumstances, here there had been a reasoned acceptance by the Respondent that the required funds were available. Hence the Respondent had not copied the evidence of funds into the Respondent's bundle, since there was no issue on the point as the reasons for refusal letter made clear. It was not open to the judge to reach the contrary finding he made, which was against the accepted facts and which was unfair to the Appellant who had not been prepared to produce evidence which was not in dispute.
12. It follows that the decision and reasons cannot stand and is hereby set aside.
13. Both representatives made submissions enabling the tribunal to remake the decision on the basis of the existing evidence. The Immigration Rules in force are those in the Home Office archive for the period 1 August to 20 October 2014, the Immigration Rules correctly applied as at the date of the decision on the Appellant's application made on 6 August 2014. (That was the version which should have been supplied by both parties to Judge McIntosh but which regrettably was not.)
14. As Mr Avery submitted, the application form in the Respondent's bundle shows that the Appellant failed to provide the specified evidence: *inter alia* Q.G27 was left blank. The application was defective.
15. Moreover, the contract relied on by the Appellant failed to comply with paragraph 41-SD(e)(iv)(1)(d). Even if the contract in fact produced as found in the Respondent's bundle was the contract intended to be referred to at Q.G27 and the box had not been ticked in error, the contract's duration was not stated. There was no scope for paragraph 245AA to be applied, notwithstanding Mr Iqbal's submission in relating to the advertising material [paragraph 41-SD(e)(iii)(1)] which was well founded. But that covered only part of the specified documents. Mr Iqbal's submission that the contract was valid in English law despite the failure to state its duration was, of course, right in terms of its potential for enforcement *inter partes*, but compliance with the Immigration Rules is a different matter, where different public policy considerations apply. The Appellant had to meet the specific requirements approved by parliament.

16. The tribunal finds that the Appellant has failed to meet the requirements of paragraph 41-SD, as stated in the reasons for refusal letter. The appeal must accordingly be dismissed.

**DECISION**

The making of the previous decision involved the making of an error on a point of law. The Appellant's appeal is dismissed.

The following decision is substituted:

The Appellant's appeal is dismissed

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**

**TO THE RESPONDENT**  
**FEE AWARD**

The appeal was dismissed so there can be no fee award

**Signed**

**Dated**

**Deputy Upper Tribunal Judge Manuell**