



IAC-FH-NL-V1

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

Appeal Numbers: IA/38832/2014
IA/38836/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 September 2015**

**Decision & Reasons Promulgated
On 18 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**TANVIR AHMED
HUSNINE CHOWDHURY
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr. M. B. Hussain, instructed by Zahra & Co Solicitors

For the Respondent: Mr. C. Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellants against a decision of First-tier Tribunal Judge McClure promulgated on 20 February 2015 in which he dismissed their appeal against the Respondent's refusal to grant leave to remain as Tier 1 (Entrepreneurs) under paragraph 245DD of the immigration rules.
2. The Appellants appeal on two grounds. First, that the judge erred in his consideration of the contracts provided and misconstrued the immigration

rules in finding that the contracts did not show duration. Secondly, that the judge erred in law by failing to find that the decision was not in accordance with the law given the failure of the Respondent to contact the Appellants under paragraph 245AA of the immigration rules.

3. At the hearing before me it was confirmed that the appeal in relation to paragraph 245AA related to the contracts and did not relate to the Barclays Bank letter provided at the First-tier Tribunal hearing.

The First Ground

4. It is the Appellants' position that the supplier's quotations provided with the application formed part of the contracts. The quotations set out the date on which the event for which the Appellants had contracted was due to take place. It is the Appellants' case that the duration of the contracts is limited to services provided on that date, and therefore that the contracts indicate duration as the supplier's quotations are part of the contracts (paragraph [10] of the grounds of appeal). It was therefore submitted on behalf of the Appellants that the contracts meet the requirements of the immigration rules.
5. The requirement of the immigration rules under paragraph 41-SD(e)(iv) is that an applicant must provide:
 - '(iv) one or more of the following documents showing trading, which must cover (either together or individually) a continuous period commencing before 11 July 2014 or 6 April 2015 (as applicable), up to no earlier than three months before the date of his application:
 - (1) one or more contracts for service. If a contract is not an original the applicant must sign each page. Each contract must show:
 - (a) the applicant's name and the name of the business;
 - (b) the service provided by the applicant's business;
 - (c) the name of the other party or parties involved in the contract and their contact details, including their full address, postal code and, where available, landline phone number and any email address; and
 - (d) the duration of the contract;'
6. In the Reasons for Refusal Letter the Respondent stated that the evidence submitted in relation to trading was not acceptable. The documents specified did not meet the requirements in relation to duration as they did not specify the termination dates of the contracts. Further, the Reasons for Refusal Letter goes on to state that the quotations do not satisfy the duration requirement as they are supplementary to the contracts provided and only serve to show that "you are providing the services as outlined in your contracts". It was submitted on behalf of the Respondent that the contracts had not been accepted as they did not specify a termination

date and the Respondent did not know if any existed. The quotations covered only two days and served to show that services were provided as outlined in the contracts.

7. The judge did not make a finding as to whether or not the quotations provided formed part of the contracts. He found that the quotations were “merely evidence that at specific times specific items have been provided” [16]. “The fact that they did provide services and then put quotations in for specific events does not show how long the contract was to run for. In that event the contract does not show its duration” [20].
8. The judge referred to the case of Shebl (Entrepreneur: proof of contracts) [2014] UKUT 216 (IAC) (paragraph [7]) which held that contracts need not necessarily exist in a single document. Clause 3 of the contract quoted by the judge in paragraph [11] states “the quantity and description of the services shall be as set out in the supplier’s quotation.” There is no reference to the duration of the contract being set out in the quotation. However, even if the duration of the contract can be inferred from the quotations, this does not assist the Appellants.
9. It was accepted by the Appellants’ representative at the hearing that he had no choice but to agree that the documents provided with the application must show trading covering a three month period, as set out in paragraph 41-SD(e)(iv). The Appellants’ representative confirmed at the hearing that only two contracts had been provided with the application. The Tribunal is only able to consider evidence provided with the application (section 85A of the 2002 Act).
10. The two quotations provided refer to events taking place on 19 July 2014 and 30 July 2014. They cover two days some eleven days apart and fall far short of covering a period of three months. Therefore, even if the judge had considered that the quotations formed part of the contracts, he did not have evidence showing trading covering a continuous period of three months.
11. It was submitted by the Appellants’ representative that applicants were not required to provide “loads and loads” of contracts covering a three month period. He submitted that the immigration rules only required “one or more contracts”. I do not find that there is any merit in this. The contracts must show trading over a continuous period of three months as set out in paragraph 41-SD(e)(iv)(1). An applicant might only have to provide one contract to show this, but he might have to provide many more, and the rules state that he may provide “more contracts”. If, owing to the nature of his business, an applicant needed to provide separate contracts covering every day for a three month period, the immigration rules provide that he can do so. The rules also provide for an alternative, which is the provision of bank statements to show trading (paragraph 41-SD(e)(iv)(2)).

12. I therefore find that the first ground has not been made out. While the judge did not make a finding as to the nature of the relationship between the quotations and the contracts, the Appellants had failed to provide evidence to show trading over a continuous period of three months. I therefore find that there is no material error of law in the judge's decision capable of affecting the outcome of the appeals.

The Second Ground

13. The judge set out the requirements of paragraph 245AA (paragraph [21]) before finding at paragraph [23]:

“However if one examines the refusal letter on page 4 it is clear that consideration was given to whether or not a request should made (sic) for specified documents. A decision was taken not to request additional documents, and it was not anticipated that addressing the omission would lead to a grant. In the circumstances the discretion was considered by the respondent. In the circumstances I do not find that the respondent has failed to comply with the requirements of paragraph 245AA.”

14. Paragraph 245AA is a discretionary power. The Respondent is not under any obligation to contact the Appellants. It was submitted by the Respondent's representative there was no indication in the documents provided that the Appellants had contracts to cover the three month period and therefore it would have been speculative for the Respondent to have requested these documents under paragraph 245AA. Only two contracts and two quotations covering two days had been provided, whereas evidence covering trading for a period of three months is required.
15. I find that there is no error of law in the judge's finding that the Respondent had not failed to comply with paragraph 245AA given the evidence before him, consisting of only two contracts and two quotations provided with the application.

Notice of Decision

There is no error of law in the decision capable of affecting the outcome of the appeals. The decision dismissing the Appellants' appeals stands.

No anonymity direction is made.

Signed

Date 17 September 2015

Deputy Upper Tribunal Judge Chamberlain