



IAC-FH-AR-V1

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

Appeal Number: IA/46484/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28th August 2015**

**Decision & Reasons Promulgated
On 10th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**MUHAMMAD MUJAHID
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Patel, Hiren Patel Solicitors, Pinner, Middlesex

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan whose date of birth is recorded as 21st April 1956. On 3rd September 2014 he made a combined application for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant under the points-based system and for a biometric residence permit. On 3rd November 2014 a decision was made to refuse the application and to remove him from the United Kingdom pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006. He appealed requesting that the appeal be dealt with "on the papers". Accordingly on

13th February 2015 the matter was placed before Judge of the First-tier Tribunal Juss who having considered the evidence that was before him dismissed the appeal. The Statement of Reasons is very brief.

2. Not content with the decision of Judge Juss, by Notice dated 16th March 2015 the Appellant made application for permission to appeal to the Upper Tribunal which on 4th May 2015 was granted by Judge of the First Tier Tribunal McDade who suggested that the Judge Juss may not have given the anxious scrutiny to the appeal that it required. Thus the matter comes before me.
3. At the outset Mr Wilding maintained, in reliance upon the Respondent's 'Rule 24 Notice' that the decision of Judge Juss was sustainable. However, I am very grateful to Mr Patel for the very careful manner in which he took both Mr Wilding and me through the various documents which clearly had been submitted with the application and which it would seem had, in some measure, been overlooked by the caseworker.
4. The basis upon which the application was refused was that having regard to Appendix A of the Immigration Rules, paragraph 41-SD requires certain documents to be supplied with the application. The Secretary of State was not satisfied that the required documents had in fact been submitted. In relation to 41-SD(e)(iii), being the first of the sub-Rules under Appendix A of which it was said the evidence was deficient, the Appellant was to provide, "one or more of the following specified documents covering (either together or individually) a continuous period commencing before 11th July 2014 up to no earlier than three month before the date of the application:
 - (i) Advertising or marketing material, including printouts of online advertising that has been published locally or nationally, showing the applicant's name (and the names of the business if applicable) together with the business activity or, where his business is trading online, confirmation of his ownership of the domain name of the business's website,
 - (ii) Article(s) or online links to article(s) any newspapers or other publication showing the applicant's name (and the name of the business if applicable) together with the business activity,
 - (iii) Information from a trade fair, which the applicant has had a stand or given a presentation to market his business, showing the applicant's name (and the name of the business if applicable) together with the business activity, or
 - (iv) Personal registration with a UK trade body linked to the applicant's occupation."
5. I deal with this aspect of the case first because that is the way in which Mr Patel presented the appeal. At pages 28 to 54 of the Appellant's bundle there was documentation which was capable of satisfying the advertising and marketing

material requirement but it is conceded by Mr Patel, quite properly, that what was lacking was evidence that that material covered a continuous period commencing before 11th July 2014. In those circumstances the Secretary of State in considering that evidence was quite right in refusing the application but what was required was only one or more of the specified documents; it was not that the Appellant was to provide one of each of 1 to 4.

6. At page 60 of the Appellant's bundle was a certificate awarded to the Appellant by the Chartered Management Institute as well as other documents following to page 62. Those meets the requirements of the personal registration with a UK trade body linked to the applicant's occupation. Mr Wilding accepted that that was the case and so insofar as the Secretary of State in the first instance had refused the application because 41-SD(e)(iii) had not been met she was wrong to do so.
7. Moving on then, to 41-SD(e)(iv) the Appellant was required to provide "one or more of the following documents showing trading, which must cover (either together or individually) a continuous period commencing before 11th July 2014 up to no earlier than three months before the date of his application:
 - (i) 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; or
 - (ii) One or more original letters from UK regulated financial institutions with which the applicant has a business bank account, and the institution's headed paper, confirming the dates the business was trading during the period referred to at (iv) above. ..."
8. As with (d) these are alternatives; clearly so because the word "or" appears after the penultimate requirement.
9. Mr Patel took me to the agreements which are to be found at page 63 of the bundle and 68. There is also a bank letter from the Trustee Savings Bank dated 2nd September 2014 together with the statement which followed. Mr Patel sought to persuade me that the bank letter read together with the application form at page 33 was sufficient because the application form did not suggest that it was necessary to state the date the business was trading during the period referred to. Although I am against him on that point, because it seems to me that the application form must be read together with the Immigration Rules, that is not material in this case because the Appellant was only required to provide one or more of the documents and in this case he had provided the contact. It would seem that the Secretary of State had overlooked the relevant documents and so too the Judge Juss.

10. It follows that Judge Juss made a material error of law because the various documents were supplied with the application; there is no issue about this. In the circumstances the requirements of the Rules were met and the appeal ought to have allowed.
11. In these circumstances I set aside the decision of the First-tier Tribunal and remake it, finding as I do that there was sufficient evidence provided with the application by the Appellant to meet each of the requirements with which the Secretary of State took issue therefore in remaking the decision of the First-tier Tribunal the appeal is allowed.

Decision

The Appellant's appeal to the Upper Tribunal is allowed. The decision of the First tier Tribunal is set aside and remade such that the appeal in the First tier Tribunal is allowed.

Fee Award

The Appellant invited the Tribunal to deal with the matter on the papers. He had supplied the correct documentation with the application and the various documents were also before the judge. He had done all that was required of him and in those circumstances it seems to me right and proper that a full fee award in the sum of £80 should be made in this case.

Signed

Date

Deputy Upper Tribunal Judge Zucker