



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

**APPEAL NUMBER: IA/01553/2015
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THE IMMIGRATION ACTS

**Heard at Birmingham
On 4 February 2016**

**Decision and Reasons Promulgated
On 1 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MR NELSON OBATARHE
MRS CHARITY OBATARHE
NO ANONYMITY DIRECTION MADE**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: Mr I. Khan, solicitor, Ikon Law Ltd

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of Nigeria and are husband and wife. The second appellant is the dependant of her husband, whom I shall refer to as "the appellant."
2. The appellant entered the UK in February 2011 as a student. His wife entered with him as his dependant.
3. On 21 August 2012 he was granted further leave remain as a post student migrant. On 28 August 2014, their applications for further leave to remain as a Tier 1

(Entrepreneur) were refused on 18 December 2014. The appellants appealed those decisions.

4. The First-tier Tribunal Judge dismissed their appeals under the Rules.
5. On 16 October 2015, Upper Tribunal Judge Reeds granted the appellants permission to appeal against that decision. The Judge arguably did not consider the evidence relating to the domain/website which met the requirements of paragraph 41-SD of the Rules.
6. At the outset of the hearing, Mr Mills contended that “a number of people have missed the point in this case.” The only issue raised was that there needed to be evidence that the appellant's business was trading prior to 11 July 2014.
7. He referred to the relevant rules as applied at the date of decision. The relevant requirement is set out at 41-SD at paragraph e-iii, which requires that an applicant must also provide one or more of the following specified documents covering (either together or individually) a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application: that included advertising or marketing material, articles or online links to articles in the newspaper or other publications showing the applicant's name or information from a trade fair which the appellant has had a stand, or personal registration with a UK trade body linked to the applicant's occupation.
8. Mr Mills accepted that the appellant had sent in advertisements from Gumtree. That was discounted because it was not dated until August 2014. He also provided personal registration with a UK trade body but that was also not before July 2014.
9. Mr Mills referred to paragraph (e)(iii)(1) requiring that he provide one of the specified documents set out in that sub paragraph. Where his business is trading online, confirmation of his ownership of the domain name of the business's website is sufficient to satisfy provisions under the paragraph. The document must additionally cover a continuous period commencing before 11 July 2014 up to no earlier than three months before the date of his application.
10. Mr Mills very fairly accepted that the appellant had produced that evidence.
11. He referred to [14] of the First-tier Tribunal's determination where the Judge had regard to an argument in relation to the domain name, that it is in the name of a business which is owned by the appellant “in that he is the sole director of the business.” The Judge found that the fact that he is a sole director of the company is “to a large extent irrelevant.” The company can be sold to another individual and it would retain the same identity although ownership would have passed.
12. However, the document relied on by the appellant was provided to the First-tier Tribunal at p.14 of his bundle. The domain name is set out. The registrant is Ebens Consulting Services Ltd. The registrant's address is set out. The date of registration was 12 June 2014 which complies with the requirement under the rule.
13. Mr Mills further noted that other evidence had already been accepted. It was not disputed that the appellant owned Ebens Consulting Services Ltd.

14. In the circumstances Mr Mills very fairly and properly conceded that there had in the circumstances been an error of law. He also accepted that in the circumstances, the appellants' appeals should have been upheld.
15. I am satisfied for the reasons given that the concession was correctly made. I accordingly find that the decision of the First-tier tribunal involved the making of a material error of law. I accordingly set it aside and remake it.
16. Having regard to the foregoing I find that the appellants have shown that the relevant specified evidence required had been provided at the date of application entitling them to be awarded the relevant points under Appendixes A.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. I re-make it and substitute for that decision, a decision allowing the appellants' appeals.

No anonymity direction is made.

Signed

Date 24/2/2015

Deputy Upper Tribunal Judge Mailer