



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/02699/2015

THE IMMIGRATION ACTS

Heard at: Field House
On 11 February 2016

Decision and Reasons Promulgated
On 17 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MR WAJAHAT HUSSAIN
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Mr P Richardson, counsel (instructed by Morgan Mark Solicitors)

DECISION AND REASONS

1. I shall refer to the appellant as “the secretary of state” and to the respondent as “the claimant.”
2. The claimant is a national of Pakistan, born on 15 October 1985. His appeal against the decision of the secretary of state refusing his application dated 24 July 2014 to remain in the UK as a Tier 1(Entrepreneur) Migrant was allowed by First-tier Tribunal Judge D Ross in a decision promulgated on 14 August 2015.
3. In particular, the Judge stated that so far as advertising is concerned, the claimant has produced an I Yell advertisement for Essex [11]. He noted that the claimant's partner's application had succeeded. He found that the appellant had proved that

the company is genuine and that he does intend to invest £50,000 in the company [12].

4. On 16 December 2015 First-tier Tribunal Judge Frankish granted the secretary of state permission to appeal. He noted that the application for permission asserted that the Judge had allowed the claimant to rely on a Yell advertisement which is inadmissible under s.85A of the 2002 Act. This arguably amounted to “admitting the inadmissible”.
5. Mr Bramble relied on the grounds of appeal. He referred to the reasons for refusal dated 6 January 2015. With regard to “Advertising” the secretary of state stated at page 4 that the appellant had provided a copy of an advert for his company on Gumtree.com which was printed from the Internet on 22 July 2014. However, a search on Gumtree for this advert undertaken on 21 October 2014 has shown no results for the company. This casts doubt on the credibility of the advertising.
6. Mr Bramble submitted that the Yell advertisement for Essex referred to by the Judge at [11] had not been provided to the secretary of state with the claimant's application. None of the s.85A(4)(a-d) exceptions apply. The Judge erred in relying on evidence he was not entitled to. Accordingly, “the entire findings on the credibility of the business have been infected.”
7. He submitted that during the claimant's interview, which took place prior to the date of decision, the appellant was asked where he is advertising his business. The answer recorded is “there is 3-4 Essex online marketing - Isex, Thomas Local, Gum Tree, Linked in. There is also Yellow Pages going to be printed in the next paper version, it's on the website at the moment.”
8. Accordingly, the claimant indicated that it was not something that was produced together with the application. That was the reason for the refusal and the appeal should have been dismissed. The Judge has relied solely on this advertisement.
9. On behalf of the claimant, Mr Richardson submitted that “context is all in this appeal”. Permission has not been granted on the ground that the Judge failed to make a finding about a Gumtree advert. This was not a ground of appeal raised by the secretary of state. The only ground raised was an objection pursuant to s.85(A) of the 2002 Act.
10. The Judge had regard to advertising material not before the secretary of state, namely the production of an I Yell advertisement for Essex. Mr Richardson referred to page 19 of the claimant's bundle. This contained a small iEssex advertisement in relation to Blogsoft Ltd, setting out the business information and products. He set out other local companies.
11. At page 21 of the claimant's bundle, there is the Yell advert containing online advertising. He accepted that this had not been submitted together with the application. It was printed out on 22 July 2015.

12. He submitted that the reasons for refusal did not suggest that no advertising material was submitted. All that the secretary of state stated at page 4 of the refusal was that a search on Gumtree for the advert undertaken on 21 October 2014 showed no results for the claimant's company, which cast doubt on the credibility of his advertising.
13. He contended that leaving aside that advertising cannot be "a question of credibility," how can an advert result or undermine the credibility of the application?
14. He submitted that the point has no merit and that any error is not material. The claimant made the application on 21 July 2014; he was interviewed subsequently on 13 October 2014.
15. He was asked a number of questions at the "credibility" interview as set out at F1 of the secretary of state's bundle. He was asked (question 19) where he was advertising his business. The claimant answered "there is 3-4 Essex Online Marketing - i.sex -Thomas Local, Gumtree, Linked In. There is also Yellow Pages going to be printed in the next paper version, it's on the website at the moment." He then identified "his own website".
16. He was not asked whether the Gumtree advert was still live. Nor was it contended that they doubted his credibility as a businessman.
17. He accepted that the Judge may not have dealt "satisfactorily" at [11] regarding the issue raised in the reasons for refusal at page 4. However, in the context of the overall findings as to the genuineness of the claimant's business, he has given other reasons at [9-12].
18. Only one of the reasons is picked up in the grounds for permission. This constitutes a minor point and is in any event not relevant or material to the findings relating to genuineness. Accordingly from the answer given by the claimant at interview, there was already evidence before the decision maker of a Yell.com advert which appears to be what the Judge was referring to at [11].
19. There was a reference in the interview to the rest of the methods of advertising. This remained unchallenged. Nor is there any issue that the appellant was advertising on Yell.com or iEssex. The fact that the Judge considered a document that he should not have, is consequently not a material error in the circumstances. The fact that documents were produced regarding what was referred to in the interview was accordingly not material.
20. Mr Richardson also referred to the fact that the claimant's partner's appeal had been allowed by First-tier Tribunal Judge Lester. He now has permission to remain until 2018. That has not been challenged on appeal.

Assessment

21. Judge Ross has referred to the reasons for refusal in some detail at [3]. Those included assertions that the claimant did not genuinely intend to establish or take over a business within the next six months or that he intended to invest £50,000 in the business or that the money was available to him. It was also contended that the claimant had agreed a contract with another company which did not make any sense. Further, the agreement did not detail the fee which would be paid for the services. It was accordingly not considered that this was a genuine contract. It was also noticed that the company website contained an error on the careers page with an unfinished sentence.
22. The Judge then referred to the issue raised relating to the advertising, stating that a copy of an advert on Gumtree was produced but that a search on the website had produced no results for the company.
23. There were other matters raised concerning the relevant experience of the claimant in this field of business, and that he had used his post work visa to gain any relevant experience [3].
24. The Judge had before him a bundle containing 74 pages. This included a statement from the claimant which is set out and summarised at [5].
25. Moreover, the claimant gave evidence at the hearing, noting that Judge Lester had allowed his partner's appeal. The issue in that case was whether the business was fully in place by 11 July 2014. The Judge found that it was. It was not the case that the Judge determined that it was not a genuine business [6]. The Judge considered the documents produced including a company newsletter. There were also Companies House documents and some advertising materials [9].
26. The Judge dealt with the "criticisms" raised in the refusal which are set out at [11]. With regard to advertising, he noted that the claimant has produced an I Yell advertisement for Essex. He went on to find that it is clear that the claimant and his partner are a team. The claimant provides the management expertise and his partner the technical [11].
27. Although at [12] the Judge had concerns about the business, he found on balance, having regard to the fact that the partner's application has already succeeded and that he also claimed to be running Softblogs, that the claimant has proved the company is genuine and that he does intend to invest £50,000 in it.
28. The single ground relied on by the secretary of state was the sole ground upon which permission to appeal was granted.
29. There is no ground raised against the propriety of the Judge's findings regarding the reasons raised in the refusal letter or his conclusion that the claimant's application was genuine.
30. The complaint is that the Judge had regard to a Yell advertisement for Essex which he was not permitted to refer to, having regard to s.85A of the 2002 Act. It is said that the advertisement was not before the decision maker. It is contended that a

reference to that advertisement affects the whole of the findings relating to the genuineness of the application.

31. I have had regard to question 19 of the claimant's interview and his answer, which I have already set out. He stated with regard to where he is advertising his business, that "there is 3-4 Essex Online Marketing - i.sex -Thomas Local, Gumtree, Linked in. There is also Yellow Pages going to be printed in the next paper version, it's on the website at the moment."
32. It appears from the documentation in the claimant's bundle that the website for Yellow Pages is Yell.com. Accordingly, as submitted by Mr Richardson, there was already evidence before the decision was taken of a Yell.com advert.
33. It is contended that the Judge's regard to such an advertisement either did not offend s.85A at all or offended the section in a "wholly immaterial manner."
34. There was accordingly other advertising referred to at the interview. This has never been disputed in any way by the secretary of state. Moreover, in the reasons for refusal, it was noted that the claimant did provide a copy of an advert for his company on Gumtree.com which was printed from the Internet on 22 July 2014.
35. It is not disputed that that advert had appeared on Gumtree on 22 July 2014. The claimant had confirmed that during his interview. The secretary of state's contention that a search on Gumtree for the advert which was undertaken on 21 October 2014 showed no results for the company, casting doubt "on the credibility of your advertising" ignores the fact that there was other advertising referred to in the interview. Moreover it has never been disputed that a copy of an advert for his company on Gumtree.com printed on 22 July 2014 had been supplied. There is no contention that the printed out advert produced, was in any way suspect or bogus. The fact that a search some three months later showed no results for his company did not in the circumstances cast doubt on the credibility of his advertising.
36. In the circumstances, any error relating to the reference by the Judge to the I yell advertisement could not have infected his overall findings relating to genuineness.

Notice of Decision

The decision of the First-tier Tribunal Judge did not involve the making of any material error on a point of law. It shall accordingly stand.

No anonymity direction is made.

Signed

Date 9 March 2016

Deputy Upper Tribunal Judge Mailer