



IAC-FH-AR-V1

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

Appeal Numbers: IA/41027/2014
IA/41031/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23 December 2015**

**Decision & Reasons Promulgated
On 29 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MUHAMMAD WASEEM
SHUJA UL HASSAN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Biggs, Hanson Young Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. These are two linked appeals in respect of a decision reached by First-tier Tribunal Judge Roots and promulgated on 21 May 2015. They are brought pursuant to a grant of permission given by First-tier Tribunal Judge Brunnen on 5 August 2015.

2. The two appellants claimed that they were Tier 1 (Entrepreneur) Migrants. That claim had been rejected by the Secretary of State. It again rejected by the First-tier Tribunal Judge.
3. There were two elements of the hearing before the First-tier Tribunal Judge which were unsatisfactory and for neither of which should the judge himself be responsible. The first was that the appellants elected not to give any oral evidence and in those circumstances the judge merely had the documents to rely on. The second was that those representing the Secretary of State and the appellants encouraged the judge to have particular regard to a statutory provision which, as it now transpires, was arguably misread by both representatives and by the judge himself.
4. Amongst the various requirements that need to be addressed by someone seeking immigration status as a Tier 1 (Entrepreneur) is a section at paragraph 41-SD(e)(iii) and (i). That provision reads as follows:

“(e) If the applicant is applying under the provisions in D in table 4 he must also provide:

[...]

(iii) 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:

(1) advertising or marketing material, including printouts of on line advertising; that has been published locally or nationally showing the applicant's name (and the name of the business if applicable) together with the business activity or, where his business is trading on line, confirmation of his ownership or the domain name of a business's website”
5. Considerable time was taken up in argument before the First-tier Tribunal and in the judge's findings as to evidence of ownership of domain name. There was a dispute between the parties as to whether probative documentation had been submitted by the appellants at the time of the application. The judge found in this instance that no such documentation had been submitted albeit in relation to another category of documentary evidence, the judge took a different view. The judge was troubled by the lack of any oral evidence but came inevitably to the conclusion at paragraph 34:

“I do not find that the material proved to have been before the respondent with this application met the requirements of paragraph 41-SD(e)(iii).”
6. The reason for the grant of permission, and as is very fairly conceded by Mr Tufan, the Home Office Presenting Officer before me today (although I record not when this matter was dealt with in the First-tier Tribunal) is that the particular provision has not been properly read. The matters addressed in (1) are alternatives and the word “or” that appears part-way through that sub-paragraph is clearly used in its disjunctive sense. It

therefore follows that confirmation of ownership of a domain name is only required where a business is trading on line. Here the business in question is an accountancy practice and although it advertises on line, it does not trade on line in the ordinary course of its business.

7. In those circumstances it was unnecessary for the appellants to provide confirmation of ownership of the domain name. The lengthy enquiry embarked upon by the First-tier Tribunal Judge, with the active encouragement of both representatives then appearing was wholly unnecessary. I am told that in a subsequent rewriting of this particular provision the fact that this second clause is disjunctive has been made abundantly plain by a modest editorial change.
8. It therefore follows that through no fault of his own the judge fell into error. It is an error of law which is clearly material because it was on this sole ground that the appeal failed. In relation to all the other matters that were pursued by the appellant the judge determined them in their favour and thus the interpretation of this provision and its application in these particular factual circumstances was crucial to the disposal of the appeal below.
9. It must therefore follow that that decision is set aside.
10. With the concurrence of the representatives of both the appellants and the Secretary of State, it falls to me to remake that decision on the material available today. This is a straightforward task for the reasons I have already indicated. It is the appellants' case, and wholly properly it is not resisted by the Secretary of State, that as the first alternative in relation to advertising and marketing material is adequately discharged and as a matter of statutory construction ownership of the domain name does not need to be proved in this instance,
11. In the circumstances, all the requirements for Tier 1 (Entrepreneur) status are satisfied and the appellants are entitled to such status.

Notice of Decision

Appeal allowed and decision of First-tier Tribunal set aside and, on re-determination, both appellants are entitled to leave to remain as Tier 1 (Entrepreneur) Migrants.

No anonymity direction is made.

Signed *Mark Hill*

Date 27 January 2016

Deputy Upper Tribunal Judge Hill QC