Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/41956/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 7 December 2015	**On 2 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ARCHER

Between

MR RITESHKUMAR PRAVANKUMAR SONI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Emma Daykin, Counsel, instructed by Farani Javid Taylor Sols.
For the Respondent: Ms N Willcocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.

2. The appellant appeals against the decision of the First-tier Tribunal (Judge Head-Rapson) dismissing the appellant's appeal against a decision taken on 10 October to

refuse the appellant's application for further leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant and to remove the appellant to India.

Introduction

3. The appellant is a citizen of India born in 1987. He was granted leave to enter the UK as a Tier 4 (General) Student from 18 December 2009 until 25 March 2012. He was then granted further leave to remain in the UK as a Tier 1 (Post-study Work) Migrant from 22 August 2012 until 22 August 2014. The current application was made on 15 August 2014.

4. The Secretary of State accepted that the appellant had £42,775.93 in his HSBC bank account as of 31 July 2014 but he had previously transferred £10,000 into the Barclays Bank account for his business, Soni (UK) Ltd. Paragraph 45 of Appendix A of the Immigration Rules states that where an applicant is relying upon funds which have already been invested, the specified documents listed under paragraph 46-SD must be submitted. The appellant had not met the requirements of paragraph 46-SD(c)(iii) because there were no unaudited accounts and an accounts compilation report to confirm that at least part of the appellant's funds had been invested in the business. The documents submitted did not demonstrate that the appellant had access to at least £50,000 in personal funds as required by paragraph 41-SD(c)(ii).

5. Furthermore, the appellant had not met the requirements at paragraph 41-SD(e)(vi) and paragraph 46-SD(c)(iii) because he had not provided evidence from HMRC to confirm that his business had been registered for corporation tax.

The Appeal

6. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 13 March 2015. He was represented by Mr R Pennington-Benton, Counsel. The First-tier Tribunal found that the appellant had failed to prove that he had submitted the HMRC document with his application and that the £10,000 deposit made by the appellant was excluded when assessing what a relevant investment was for the purpose of the Rules. The appellant had divested himself of £10,000 into a business bank account which of itself did not count towards available funds for the purpose of the application.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law. Money deposited into a bank account, even if it is a UK business bank account is not counted as an investment in business. The judge further erred in finding that there was insufficient evidence that the appellant had submitted his registration with HMRC at the required time, particularly given the fact that HMRC registration predated the date of application.

8. Permission to appeal was granted by First-tier Tribunal Judge Simpson on 19 August 2015 on the basis that it was arguable that the judge erred in treating the £10,000 as an investment. Although the appellant had not indicated on the application form that

he has documentation from HMRC that was not sufficient to show that it had not been submitted, particularly as the document showed that it had been issued in July 2014.

9. Thus, the appeal came before me

Discussion

10. Ms Daykin submitted that the issues are narrow. The respondent's bundle clearly does not include all of the documents submitted with the application. At page 164 of the appellant's bundle, the letter proves registration with HMRC in July 2014. The information clearly comes from Companies House. The document was clearly submitted with the application and there is no evidence otherwise from the respondent. The money was available to the business.

11. Ms Willcocks-Briscoe submitted that the policy guidance states that the £10,000 is not considered to be invested. However, the refusal letter also relies upon paragraph 41-SD (c)(ii). In addition, the fact that the HMRC document was available in July 2014 does not mean that it was submitted with the application. There is insufficient evidence to show that it was submitted.

12. Ms Daykin submitted in reply that the judge did not make a finding on paragraph 41-SD(c)(ii) – the money is available to the business and is evidenced as required.

13. It is common ground that the judge erred in treating the £10,000 in the Barclays account as an investment and therefore subject to paragraph 46-SD(a)(ii). The policy guidance at A21 is clear, money deposited in a bank account, even if it is in a UK business bank account is not counted as investment in business. I also find that the judge erred at paragraph 35 by stating in relation to the HMRC document that, "*The fact is that the Home Office did not receive it with the documents to be considered at the date of decision*". There was no direct evidence before the judge that the respondent did not receive the HMRC document. The issue for the judge was whether on balance of probabilities the appellant had proved that the HMRC document was submitted with the application. Reaching a conclusion before considering the evidence is not a permissible approach and is a further material error of law.

14. The judge did not consider paragraph 41-SD(c)(ii). There may be merit in that ground for refusal but it has not been tested by the First-tier Tribunal. There are substantial issues of fact that remain to be resolved.

15. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal under the Rules involved the making of an error of law and its decision cannot stand.

Decision

16. Ms Daykin invited me to remake the decision and to allow the appeal. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that not to be an appropriate course of action. There are substantial issues of fact to be resolved

and a re-hearing is required. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.

17. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined de novo by a judge other than the previous First-tier judge.

Signed Date 30 January 2016

Judge Archer
Deputy Judge of the Upper Tribunal