



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/46438/2014**

Appeal Numbers:

IA/46454/2014

THE IMMIGRATION ACTS

Heard at Newport

On 10 February 2016

**Decision & Reasons
Promulgated
On 4 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR SARFARAJ HASAN (FIRST APPELLANT)
MS SAKHINA AKHTAR PRIA (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: None

For the Respondent: Mr I Richards, Senior Presenting Officer

DECISION AND REASONS

1. The first Appellant a national of Bangladesh, date of birth 11 February 1983 and the second Appellant a national of Bangladesh, date of birth 16 October 1993, appealed against the Respondent's decisions, dated 30 October 2014, to refuse the first Appellant leave to remain in the United

Kingdom as a Tier 1 (Entrepreneur) Migrant with reference to paragraph 245DD of the Immigration Rules HC 395 as amended. In particular the Appellant was refused with reference to the requirement of paragraph 41-SD(e)(iv) of the Immigration Rules in that he had failed to provide the required evidence that he had been advertising his business on the continuous basis required under the Rules. The second Appellant, the partner/wife of the first Appellant was refused leave to remain on the basis of the first Appellant's application having been refused.

2. The appeal came before First-tier Tribunal Judge Clemes (the judge) who dismissed the appeals both under the Rules and with reference to human rights grounds.
3. The grounds of appeal sought to argue that the judge's view was fundamentally flawed because of what was said to be a failure to apply evidential flexibility in relation to the advertising or marketing material submitted by the Appellants. The judge analysed the issue of the advertising requirements in an extensive decision dated 21 May 2015 and referred to, although it was perhaps unnecessary to do so, the issue of evidential flexibility and the extent to which there was a discretion in relation to mandatory requirements for the specified documents.
4. Permission to appeal was granted by Upper Tribunal Judge Canavan on 30 September 2015 in the following terms:

"The grounds argue that the First-tier Tribunal Judge erred in concluding that evidence the appellant produced to show he had advertised his business did not meet the requirements of paragraph 41-SD(e)(iii) of Appendix A of the immigration rules. While the wording of the rule does appear to suggest that the advertising must be for 'a continuous period' commencing before 11 July 2014 it is at least arguable that the rule does not then go on to specify how long the continuous period must be. The rule only states that the period

must commence before 11 July 2014 (in this particular case) 'up to no earlier than three months before the date of his application'. The grounds would benefit from more detailed argument at a hearing."

5. In fact what the judge did was to analyse what advertising had taken place as claimed by the first Appellant. The judge decided on the evidence before him that there had been one advert submitted in an original newspaper Bangla Sanglap and paid for and that whilst it was contended other advertising had taken place by way of leaflets which had been distributed it was by no means clear on the evidence provided to the judge that such advertising as had taken place could be regarded as continuous: Even if 'continuous' on a weekly or biweekly basis might be continuous in the same publication rather than intermittent as it might otherwise be characterised.
6. Ultimately the application of the word continuous was a matter of fact for the judge. At the hearing before me there was no appearance by the Appellants. There was no appearance by their nominated representative Londonium Solicitors. There was no application for an adjournment. There was no explanation given for the absence of the second Appellant let alone the first Appellant.
7. I note from the file that on or about 5 February 2016 the first Appellant sought an adjournment of both appeals through Londonium Solicitors arguing that he had a bad back. A medical note of the "standard fitness to work form" used for social security or statutory sick pay simply said the first Appellant has 'low back pain and is not fit to work'. That certificate was said to run from 5 February 2016 to 21 February 2016 and was signed by someone at the Whalebridge Practice on 5 February 2015. There was also a copy of a prescription for Co-codamol, a painkiller, signed by Dr R C Carter. The application was refused by Upper Tribunal Judge Jordon and notice of that refusal was given by letter dated 8 February 2016. The letter pointed out to experienced solicitors that it is wholly inadequate to support such an application on the basis of not fit to work

because the issue was whether the person was unable to attend a hearing or give evidence. Nor was there any attempt to explain why low back pain prevented the first Appellant's attendance nor why it meant the second Appellant could not attend. Given the absence of Londonium Solicitors I arranged for the court administration service to telephone the representatives but no reply was forthcoming from their identified phone number.

8. In the circumstances I was satisfied that having regard to the overriding objective that fairness was not compromised by proceeding in the absence of the Appellants, there being no reason given, and that the timely disposal of Tribunal business meant that it was appropriate to proceed in their absence. No prejudice was advanced by the Appellants in my doing so. In those circumstances, having considered the brief submissions made by Mr Richards on behalf of the Secretary of State I was satisfied that the evidence did not disclose that there was any failure by the judge to properly consider the matter. The grounds disclose no arguable error of law.
9. The original Tribunal decision stands.
10. The appeals of the Appellants are dismissed.

No anonymity direction is made.

Signed

Date 27 February 2016

Deputy Upper Tribunal Judge Davey