



IAC-AH-LEM-V2

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

Appeal Number: IA/48881/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27th January 2016**

**Decision & Reasons Promulgated
On 9th March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR ABDUL SALAM AZIZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Nasim, Counsel
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 21st September 1987. The Appellant first entered the United Kingdom on 6th September 2010 with entry clearance conferring leave to enter until 30th January 2012 as a student. That leave was

extended to 16th February 2014 as a Tier 1 (Post-Study) Migrant. On 14th February 2014 the Appellant made a combined application for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant under the points-based system (PBS), and for a biometric residence permit (BRP). That application was refused by the Secretary of State on 2nd December 2014 on the basis that the Secretary of State was not satisfied on the balance of probabilities that the Appellant genuinely intended and was able to establish, take over or become a director of one or more businesses within the next six months and that the Appellant genuinely intended to invest the money referred to in table 4 of Appendix A in the Immigration Rules in the Appellant's business or businesses. The Notice of Refusal set out the basis upon which doubt was cast on the authenticity of contracts entered into by the Appellant as set out at page 3 of the Notice of Refusal.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal James sitting at Hatton Cross on 16th July 2015. In a decision promulgated on 24th July 2015 the Appellant's appeal was allowed.
3. On 4th August 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. It was contended therein that the judge had made a material error of law in finding that paragraph 245DD(h) and (i) did not apply where the applicant had already set up a business and was relying on access to £50,000 under table 4(d) of Appendix A. Further it was contended that whether the Appellant was applying under the £200,000 or £50,000 category the genuine entrepreneur test would apply and that there had been no consideration of the substantive reasons for refusal and therefore the failure to correctly apply paragraph 245DD(h) was material.
4. On 3rd December 2015 First-tier Tribunal Judge Robertson granted permission to appeal. He noted that it was arguable as submitted in the grounds of application that the provisions of paragraph 245DD(h) in fact applied to all applications and the judge had misdirected himself because he may have misinterpreted the provisions of that paragraph. On 26th January i.e. one day before the hearing by fax the Appellant responded pursuant to Rule 24 of the Upper Tribunal Procedure Rules. The content therein is of considerable relevance as is set out hereinafter.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. Although this is an appeal by the Secretary of State for the purpose of continuity throughout the appeal process Mr Aziz is referred to hereinafter as the Appellant and the Secretary of State as the Respondent. The Appellant appears by his instructed Counsel Mr Nasim. Mr Nasim is extremely familiar with this matter having appeared before the First-tier Tribunal and by also being the author of the Rule 24 response. The Secretary of State appears by her Home Office Presenting Officer Mr Walker.

The Rule 24 Response

6. Mr Nasim takes me through his Rule 24 response pointing out that it was very likely that the author of the Grounds of Appeal did not have access to the bundles of both the Appellant and Respondent at the time of drafting the application for permission

to appeal. He refers me in particular to paragraphs 7 and 8 of the Rule 24 response pointing out that it shows which documents were before the First-tier Tribunal Judge and that the judge was correct in his analysis of the bundle and the fact that the Appellant did have an existing business that was operating and consequently the issue of findings on funding were correct. He points out the claimant had already established the business that he was supplying in the £50,000 category having been granted leave to remain as a Post-Study Work Migrant and relying on category D in table 4 of Appendix A of the Immigration Rules. He points out that the judge does not state that paragraph 245DD(h) does not apply to the claimant as the grounds assert but rather it is the wrong provision of paragraph 245DD that has been considered by the Secretary of State. He submits the judge did look at the claimant's ability to meet the requirements of the Immigration Rules as she was correctly of the view that the basis upon which the application was considered was wrong in law. Further he points out that the Respondent had awarded the claimants all the points under Appendix A, B and C of the Immigration Rules and accepted that the claimant had access to £50,000 and consequently the refusal on that basis was irrational. He points out that the Secretary of State had awarded all the relevant points under Appendix A relating to Attributes in that she was satisfied that: -

- (a) the claimant had continuously engaged in business activity;
- (b) that the claimant was registered as a director of a new business with Companies House;
- (c) that the claimant had continuously been working in an occupation which was above level 4 of NQF;
- (d) the claimant had access to £50,000.

In such circumstances he submits that there were no material errors of law whatsoever and he asked me to dismiss the Secretary of State's appeal.

7. I am very substantially assisted by Mr Walker in this matter. He has given due consideration to the documents that were before the First-tier Tribunal. He acknowledges that the submissions made by Mr Nasim and set out in the Rule 24 response are correct and in such circumstances whilst he has no instruction to withdraw the appeal he does acknowledge that there is merit in what is said on the Appellant's behalf.

The Law

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

10. It is clear from the documents produced which Mr Nasim has carefully taken me through, the submissions set out in the Rule 24 response and the concessions made by Mr Walker that the judge fully and properly considered the evidence and the appropriate Immigration Rule and made findings of fact which she was entitled to. In such circumstances the decision discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal is maintained.

Notice of Decision

The appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge allowing the Appellant's appeal is maintained.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris