



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/23160/2013  
IA/23161/2013  
IA/23164/2013  
IA/23169/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 30<sup>th</sup> January, 2014

Determination Promulgated  
On 20<sup>th</sup> February, 2014

Before

Upper Tribunal Judge Chalkley

Between

**MUHAMMAD SAEED UR REHMAN  
FARKHANDA SAEED  
LAAIBA SAEED  
MARYAM SAEED**

Appellants

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Ashfaq Ahmed, a person registered by OISC at level 3 instructed by Western Law Chambers.  
For the Respondent: Mr G Jack, Home Office Presenting Officer .

**DETERMINATION AND REASONS**

1. All appellants are all nationals of Pakistan. The first named appellant applied for leave to remain in the United Kingdom as a Tier 1 (General) Migrant, under the points-based system. His wife, the second named appellant, and his two children, the third and fourth named appellants, claimed as the first named appellant's dependants.

2. The first named appellant arrived in the United Kingdom in August, 2005, as a student and leave in that capacity was extended until 31<sup>st</sup> October, 2010. On 24<sup>th</sup> October, 2011, he was granted leave to remain in the United Kingdom as a Tier 1 (General) Migrant until March, 2013.
3. On 6<sup>th</sup> March, 2013, the first named appellant made a combined application for leave to remain in the United Kingdom as a Tier 1 (General) Migrant, under the points-based system and for a biometric residence permit. The second, third and fourth appellants made applications as his dependants. On 4<sup>th</sup> June, 2013 the respondent refused the first named appellant's application, because under Appendix A: attributes, the appellant had claimed 45 points for earnings of £81,374.42 but, the respondent claimed, the documentation he submitted as evidence of his previous earnings from Ample Financial Services in the form of an accountant's letter and tax documents, did not corroborate each other as specified under Appendix A of the Immigration Rules, because the tax documents do not specifically state the amount of earnings received during the period claimed, 1<sup>st</sup> January, 2012 to 30<sup>th</sup> June, 2012. As a result, no points were awarded for previous earnings and the Secretary of State concluded, therefore, that the first named appellant had failed to meet the requirement in paragraph 245CA(c) of Statement of Changes in Immigration Rules, HC 395, as amended ("the Immigration Rules") and under Appendix A of the Immigration Rules. The Secretary of State for the Home Department refused the first named appellant's application and those of his wife and children which were dependant on it.
4. The appellants appealed that decision and his appeal was heard by First-tier Tribunal Judge Ferguson in Birmingham who, in a determination promulgated on 22<sup>nd</sup> November, 2013, found that in respect of the business, Ample Financial Solutions, the evidence required to show a calculation of income for the first named appellant during the relevant period had not been submitted.
5. The appellant sent with his application a copy of a Return to the Federal Board of Revenue, but this was a document completed by him or on his behalf, showing his total income for the year to 30<sup>th</sup> June, 2012 of Rs.17,196,500. It was not a document received from the Federal Board of Revenue. An accountant's letter of 18<sup>th</sup> February, 2013, showed the first named appellant's half year earnings for the period 1<sup>st</sup> January, 2012, to 30<sup>th</sup> June, 2012, being Rs.9,630,056, and a net taxable income of Rs.9,381,433. There was, however, no evidence submitted in respect of that second half year earnings from the Federal Board of Revenue. The judge noted that the specified documents required by paragraph 19-SD were:-
  - (iv) Official tax document produced by the relevant tax authority or employer, showing earnings on which tax has been paid or will be paid in a full tax year" and
  - (v) if the appellant is claiming points for self-employed earnings, a letter from his accountant on headed paper confirming that the appellant received the exact amount he is claiming or the net amount to which he is entitled. This is a letter from the appellant's accountants on headed paper confirming the gross and net pay for the period claimed. The letter should give a breakdown of salary, dividends, profit, tax credits and dates of payments earned. If the appellant's earnings are a share of net profit of the company, the letter should also explain this."
6. The judge noted that the respondent refused the application, because the two pieces of evidence submitted by the first named appellant did not corroborate each other. This was because the Federal Board of Revenue documents did not specifically state the amount of earnings the appellant received for the period claimed. The judge dismissed the appeal. The grounds suggested that the judge had misunderstood the income calculation and failed to take into account the true income of the appellant for the period 1<sup>st</sup> January, 2012, to 30<sup>th</sup> June, 2012. The

grounds also suggested that the judge had failed to consider the appellant's private and family life under Article 8 of the ECHR.

7. The day prior to the commencement of the hearing the respondent had contacted the Upper Tribunal requesting permission to withdraw its decision. The respondent was advised that permission was not granted.
8. At the hearing a gentleman from Western Legal Chambers, who told me his name was Ahmed, explained that the appellants were not present, because he had told them the day before that they need not attend the hearing. He asked that the appeal be adjourned because he had also told Counsel not to attend the hearing.
9. I adjourned the hearing until 2:00pm.
10. At 2:00pm the appellants were represented by Mr Ashfaq Ahmed. He referred me to the appellants' bundle and in particular to page 30, which was a copy of the letter from the appellant's accountant dated 13<sup>th</sup> April, 2013. He reminded me that the receipts for the full year ended 30<sup>th</sup> June, 2012 were shown there as being Rs.19,176,528. That, he submitted, was reflected by the revenue document at pages 41 and 42 which showed a similar figure.
11. I pointed out to him that the documents at pages 41 and 42 of the bundle were not from the Federal Board of Revenue, but were returns of income made by the appellant for the full year ended 30<sup>th</sup> June, 2012 and represented what the first named appellant claimed he had earned. They were not independently produced and had not been agreed with the Federal Board of Revenue.
12. I explained to him that in his application, the first named appellant was relying on income during the period 1<sup>st</sup> January, 2012 to 30<sup>th</sup> June, 2012, which he said was in excess of Rs.9,381,000. Mr Mahmood told me that the accountant had calculated the half year figures simply by dividing by two the figure for the full year.
13. Mr Jack pointed out that the accountant's earlier letter at page 31 of the appellant's bundle dated 18<sup>th</sup> February, 2013, does actually show half year receipts of Rs.9,630,000 and that this figure appeared to be the actual earnings earned during that half year period. It was the actual earnings earned during that half year period that was relevant, and the appellant needed to demonstrate evidence that complied with the Rules showing this earning to achieve the 45 points he needed. The accounts do not, as has been suggested, simply take the full year figure and divide by two. They are on the face of it actual half year earnings which is the evidence that the Secretary of State requires. However, in order to meet the requirements of the Immigration Rules the appellant needed to demonstrate a second source of evidence of his half year earnings for the period 1<sup>st</sup> January, 2012 to 30<sup>th</sup> June, 2012. Mr Jack pointed out that the appellant now has submitted a letter from the regional tax office, Faisalabad, dated 30<sup>th</sup> October, 2013. Unfortunately this was the actual evidence that was required to be submitted with the appellant's application. The document at page 39 was not submitted with the application and is not therefore admissible for the purposes of the appellants' appeal.
14. Mr Ahmed suggested that it was almost impossible for the appellant to have filed the required evidence, because in Pakistan tax returns are made yearly. The Immigration Judge simply failed to consider the evidence before him. So far as Article 8 is concerned, the judge did refer in paragraph 12 to private life, but was wrong in what he said because he did not properly apply *Razgar v Secretary of State for the Home Department* [2004] UKHL 27. He invited me to allow the appeal.

15. Paragraph 245CA of the Immigration Rules provides as follows:

**“245CA. Requirements for leave to remain**

To qualify for leave to remain as a Tier 1 (General) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

**Requirements:**

- (a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.
- (b) if the applicant has, or has had, leave as a Highly Skilled Migrant, as a Writer, Composer or Artist, Self-Employed Lawyer, or as a Tier 1 (General) Migrant under the Rules in place before 19 July 2010, and has not been granted leave in any categories other than these under the Rules in place since 19 July 2010, the applicant must have 75 points under paragraphs 7 to 34 of Appendix A.
- (c) in all cases other than those referred to in (b) above, the applicant must have 80 points under paragraphs 7 to 34 of Appendix A.
- (d) The applicant must have 10 points under paragraphs 1 to 15 of Appendix B.
- (e) The applicant must have 10 points under paragraphs 1 to 3 of appendix C.
- (f) The applicant must have, or have last been granted, entry clearance, leave to enter or remain:
  - (i) as a Tier 1 (General) Migrant,
  - (ii) as a Highly Skilled Migrant,
  - (iii) as a Writer, Composer or Artist, or
  - (iv) as a self-employed lawyer.
- (g) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.”

16. Paragraph 19 of Appendix A provides as follows:-

“19. (a) In all cases, the applicant must provide at least two different types of the specified documents in paragraph 19-SD(a) from two or more separate sources as evidence for each source of previous earnings.

(b) If the applicant is claiming points for self-employed earnings made in the UK, he must also provide the specified documents in paragraph 19-SD(b) to show that:

- (i) he is registered as self-employed,
- (ii) he was registered as self-employed during the period(s) of self-employment used to claim points, and
- (iii) he was paying Class 2 National Insurance contributions during the period(s) of self-employment used to claim points.

(c) Each piece of supporting evidence must support all the other evidence and, where appropriate, be accompanied by any information or explanation of the documents submitted, including further documents such as a letter of explanation from the applicant's accountant, so that together the documents clearly prove the earnings claimed.

(d) Full contact details must be provided for each supporting document for verification purposes.

(e) Where an applicant is providing bank statements as evidence, the bank statements provided must:

(i) be on official bank stationery, and must show each of the payments that the applicant is claiming, or

(ii) electronic bank statements, which either:

(1) are accompanied by a supporting letter from the bank on company headed paper confirming that the documents are authentic, or

(2) bear the official stamp of the issuing bank on every page of the statement.

(f) Where an applicant is providing official tax documents as evidence, the documents must be:

(i) a document produced by a tax authority that shows details of declarable taxable income on which tax has been paid or will be paid in a tax year (for example a tax refund letter or tax demand),

(ii) a document produced by an employer as an official return to a tax authority, showing details of earnings on which tax has been paid in a tax year (for example a P60 in the United Kingdom), or

(iii) a document produced by a person, business, or company as an official return to a tax authority, showing details of earnings on which tax has been paid or will be paid in a tax year, and which has been approved, registered, or stamped by the tax authority.

(g) (i) Where an applicant is providing evidence from an accountant or accountancy firm, the accountant must be either a fully qualified chartered accountant or a certified accountant who is a member of a registered body.

(ii) If the earnings were for work done while the applicant was in the UK, such evidence must come from an accountant or accountancy firm in the UK who is a member of one of the following recognised supervisory bodies:

(1) The Institute of Chartered Accountants in England and Wales (ICAEW),

(2) The Institute of Chartered Accountants in Scotland (ICAS),

(3) The Institute of Chartered Accountants in Ireland (ICAI),

(4) The Association of Chartered Certified Accountants (ACCA),

(5) The Chartered Institute of Public Finance and Accountancy (CIPFA),

(6) The Institute of Financial Accountants (IFA), or

(7) The Chartered Institute of Management Accountants (CIMA).

(iii) If the earnings were made while the applicant was not in the UK, the evidence must come from an accountant or accountancy firm which meets the requirements in (ii) or appears on the list of full members given on the website of the International Federation of Accountants.

(h) If the applicant has exchanged some of his UK employment rights for shares as an employee-owner, the value of those shares will not be included when calculating the applicant's previous earnings.

(i) The Secretary of State must be satisfied that the earnings are from genuine employment. If the Secretary of State is not satisfied, points for those earnings will not be awarded.

(j) In making the assessment in paragraph 19(i), the Secretary of State will assess on the balance of probabilities and may take into account the following factors:

- (i) the evidence the applicant has submitted;
- (ii) whether the money appears to have been earned through genuine employment, rather than being borrowed, gifted, or otherwise shown in the applicant's financial transactions or records without being earned;
- (iii) whether the business from which the earnings are claimed can be shown to exist and be lawfully and genuinely trading;
- (iv) verification of previous earnings claims with declarations made in respect of the applicant to other Government Departments, including declarations made in respect of earnings claimed by the applicant in previous applications;
- (v) the applicant's previous educational and business experience (or lack thereof) in relation to the claimed business activity;
- (vi) the applicant's immigration history and previous activity in the UK;
- (vii) where the nature of the applicant's employment or business requires him to have mandatory accreditation, registration or insurance, whether that accreditation, registration or insurance has been obtained;
- (viii) any payments made by the applicant to other parties; and
- (ix) any other relevant information.

(k) To support the assessment in paragraph 19(i), the Secretary of State may:

- (i) request additional information and evidence, and refuse the application if the information or evidence is not provided. Any requested documents must be received by the Secretary of State at the address specified in the request within 28 working days of the date the request is sent, and
- (ii) request the applicant attends an interview, and refuse the application if the applicant fails to comply with any such request without providing a reasonable explanation.

(l) The Secretary of State may decide not to carry out the assessment in paragraph 19(i) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.

**19-SD.** (a) The specified documents in paragraph 19(a) are:

- (i) Payslips covering the whole period claimed, which must be either:
  - (1) original formal payslips issued by the employer and showing the employer's name, or
  - (2) accompanied by a letter from the applicant's employer, on the employer's headed paper and signed by a senior official, confirming the payslips are authentic;
- (ii) Personal bank statements showing the payments made to the applicant;
- (iii) A letter from the applicant's employer(s) during the period claimed (or in the case of winnings, the relevant awarding body), on company headed paper, which:

(1) is dated after the period for which earnings are being claimed, and

(2) clearly confirms the applicant's gross and net earnings during the period claimed, and the date and amount of each payment;

(iv) Official tax document produced by the relevant tax authority or employer, showing earnings on which tax has been paid or will be paid in a tax year;

(v) Dividend vouchers which show the amount of money paid by the company to the applicant, normally from its profits, and which confirm both the gross and net dividend paid. The applicant must provide a separate dividend voucher or payment advice slip for each dividend payment, to cover the whole period claimed;

(vi) If the applicant is claiming points for self-employed earnings, a letter from his accountant on headed paper, confirming that the applicant received the exact amount he is claiming, or the net profit to which he is entitled. This is a letter from the applicant's accountant on headed paper confirming the gross and net pay for the period claimed. The letter should give a breakdown of salary, dividends, profits, tax credits and dates of net payments earned. If the applicant's earnings are a share of the net profit of the company, the letter should also explain this;

(vii) Invoice explanations or payment summaries from the applicant's accountant, which include a breakdown of the gross salary, tax deductions and dividend payments made to the applicant, and which enable the UK Border Agency to check that the total gross salary and dividend payments correspond with the net payments into the applicant's personal bank account.

(viii) Company or business accounts that meet statutory requirements and clearly show:

(1) the net profit of the company or business made over the earnings period to be assessed,

(2) both a profit and loss account (or income and expenditure account if the organisation is not trading for profit), and

(3) a balance sheet signed by a director;

(ix) Business bank statements showing the payments made to the applicant;

(x) If the applicant provides a combination of bank statements and a letter or invoice summary from his accountant, he must also provide any invoices generated during the period for which earnings are being claimed.

(b) The specified documents in paragraph 19(b) are:

(i) If the applicant's National Insurance is paid by bill, the original bill from the billing period immediately before the application.

(ii) If the applicant's National Insurance is paid by direct debit, the most recent bank statement issued before the application, showing the direct debit payment of National Insurance to HM Revenue & Customs.

(iii) If the applicant has low earnings, an original small earnings exception certificate issued by HM Revenue & Customs for the most recent return date.

(iv) If the applicant has not yet received the documents in (i) to (iii), the original, dated welcome letter from HM Revenue & Customs containing the applicant's unique taxpayer reference number.”.

17. The first named appellant has, as the judge identified, provided evidence as to the net profits for the year to 30<sup>th</sup> June, 2012 for Ample Financial Services and the letter of 18<sup>th</sup> February, 2013 sets out those earnings during the second half of that year, 1<sup>st</sup> January, 2012 to 30<sup>th</sup> June, 2012. Unfortunately he did not provide the document which he has subsequently provided, namely evidence from the Regional Tax Officer of income during the period 1<sup>st</sup> January, 2012 to 30<sup>th</sup> June, 2012 with his application.
18. I do not accept the suggestion made on behalf of the appellant that that information could not have been submitted with the application, because, of course it has now been provided. Unfortunately, the evidence that has now been provided may not be considered, because it postdates the appellant's application, having been dated 7<sup>th</sup> October, 2013.
19. I find that the judge did not misunderstand the evidence before him; it is clear to me that he perfectly well understood the evidence, but that evidence was lacking. The appellants did not meet the requirements of the Immigration Rules.
20. So far as Article 8 is concerned, the appellants did not, of course, raise any human rights appeal in their Grounds of Appeal. The judge did, however, consider Article 8 in paragraph 12 of his determination. What he said is this:-

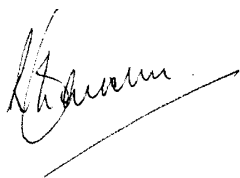
“The family has resided in the United Kingdom for some years now and so there will be some breach of their private life if they are removed. There is no evidence about their circumstances to determine whether or not this would be a disproportionate breach and since the burden is on them to establish this, it has not been discharged on the evidence available.”

21. It was suggested that this was inadequate, because, the judge had not applied *Razgar v Secretary of State for the Home Department* [2004] UKHL 27. However, there was no evidence before the judge in support of an Article 8 appeal. The only thing the judge knew was that the family had been in the United Kingdom for some years, the first named appellant having entered the United Kingdom in August 2005. However, no other evidence in support of the appellants' Article 8 claim had been submitted on their behalf. I find that the judge did not err. There was simply insufficient evidence for him to make any finding other than the one he did.
22. I am satisfied that the First-tier Tribunal Judge **did not err in law in the making of his determination which I uphold**. The appeal of the first named appellant is dismissed and those of the second, third and fourth appellants are dismissed in line with it.

### **Decision**

The appellants' immigration appeals are dismissed.

The appellants' human rights appeals are dismissed.



Upper Tribunal Judge Chalkley