



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/23611/2013
IA/23606/2013

THE IMMIGRATION ACTS

Heard at Field House
On 30th January 2014

Determination Promulgated
On 14th February 2014
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Before

UPPER TRIBUNAL JUDGE JORDAN
UPPER TRIBUNAL JUDGE REEDS

Between

(1) MUHAMMAD MOHSIN SHAZAD
(2) HAFIZIA AAMRA MOHSIN

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Nasim, Counsel instructed by Rana Solicitors
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are citizens of Pakistan born on 2nd March 1985 and 27th September 1985 respectively. On 5th December 2007 the first appellant was granted leave to enter the United Kingdom as a student, which was later extended to 31st January

2011 and his leave was further extended when he was granted leave to remain until 27th January 2013 as a Tier 1 (Post Study Work) Migrant. The second Appellant, his wife, entered the UK on 28th November 2011 as a dependant of her husband. On 27th January 2013, he made a combined application for leave to remain as a Tier 1 (Entrepreneur) Migrant under the Points Based System and for a Biometric Residence Permit.

2. Those applications were refused by the Secretary of State on 29th May 2013. There were two points raised; firstly in respect of access to funds as required under paragraph 245DD(b) and Appendix A of the Immigration Rules, the Respondent was not satisfied that the Appellant met the requirements under Appendix A having claimed points on the basis that he had registered as the director of a new company. It was stated that to claim those points, he needed to provide a current appointment report from Companies House dated within three months before the date of application showing the Appellant as a director of a business that is actively trading. The second point raised by the Respondent stated that the Appellant was required to show that he was engaged in business activity, other than work necessary to administer the business, in an occupation which appeared on a list of occupation skills to National Qualifications Framework level 4, as stated in the Codes of Practice for Tier 2 Sponsors published by the UK Border Agency (under Appendix J) of the Immigration Rules. The Appellant provided a number of business advertisements, however the Respondent did not consider that that evidence met the requirements specified under Appendix A of the Immigration Rules and further noted that it was not acceptable because it did not support his claim that he was engaged in business that is skilled to NQF level 4.
3. Mrs Mohsin's application for leave to remain, and now this appeal, has been dependent upon his.
4. They appealed to the First-tier Tribunal (Tribunal Judge M.A. Khan), who dismissed their appeals in a determination promulgated on 15th November 2013. At paragraph 24 of the determination the judge noted the history of the Appellant's business but found that he had no business activity in January 2013 and had not produced any evidence such as income for the business to show that it was up and running. He therefore reached the conclusion that the Appellant had no business operating. He further stated that the Appellant had not provided a current appointment report with the application. Whilst he made reference to a document exhibited at page 17 of the Appellant's bundle, that document does not appear to relate to a current appointment report.
5. Permission to appeal that decision was granted on 6th December 2013.
6. Thus the appeal came before the Upper Tribunal. At the hearing we invited the parties to take us through the legislative provisions relevant to this appeal, having provided both parties with a copy of the Rules for the relevant period.

7. Paragraph 245DD of the Immigration Rules (HC 395) sets out the requirements an applicant must satisfy to qualify for leave to remain as a Tier 1 (Entrepreneur) Migrant. That paragraph provides that:

“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.”

8. For this appeal, the relevant requirement is found in paragraph 245DD(b):

“The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.”

9. Paragraph 36 of Appendix A provides that the available points are set out in Table 4. The Appellant sought to satisfy the requirements of (d) of that table, namely:

“(d) The applicant:

- (i) is applying for leave to remain,
- (ii) has, or was last granted, leave as a Tier 1 (Post-Study Work) Migrant,
- (iii) was, on a date falling within the three months immediately prior to the date of application,
 - (1) registered with HM Revenue and Customs as self-employed, or
 - (2) registered as a new business in which he is a director, or
 - (3) registered as a director of an existing business,
- (iv) is working in an occupation which appears on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the Codes of Practice in Appendix J, and provides the specified evidence in paragraph 41-SD. ‘Working’ in this context means that the core service his business provides to its customers or clients involves the business delivering a service in an occupation at this level. It excludes any work involved in administration, marketing or website functions for the business, and
- (v) has access to not less than £50,000.”

10. In respect of the requirement of Table 4(d)(iii)(2) Mr Nasim referred us to the evidence provided by the Appellant which included a certificate of incorporation dated 22nd January 2013 which certified that Bright Vision Consultants Limited had

been incorporated as a private company and secondly, his business plan (see page 36; A's bundle). This document sets out with some particularity the nature of the business and the Appellant's role within it. There is specific reference to him in that document as the named director of Bright Visions Consultants Ltd and appears at several points within the document. Mr Nasim submitted before us that there was no requirement for a current appointment report in the Immigration Rules and that the evidence in the form of the two documents taken together was capable of satisfying the requirements to demonstrate that the Appellant at the material time was a director of a new business that had been registered.

11. Paragraph 41-SD of Appendix A to the Immigration Rules provides that the evidence referred to in Table 4(d) – which the applicant must provide with his application – was, at the relevant time, as follows:

- “(i) his job title,
- (ii) the Standard Occupational Classification (“SOC”) code of the occupation that the applicant is working in, which must appear on the list of occupations skilled to [NQF] level 4 or above, as stated in the Codes of Practice in Appendix J,
- (iii) one or more of the following specified documents:
 - (1) advertising or marketing material, including printouts of online 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 online, confirmation of his ownership of the domain name of the business's website,
 - (2) article(s) or online links to article(s) in a newspaper or other publication showing the applicant's name (and the name of the business if applicable) together with the business activity,
 - (3) information from a trade fair, at which the applicant has had a stand or given a presentation to market his business, showing the applicant's name (and the name of the business if applicable) together with the business activity, or
 - (4) personal registration with a UK trade body linked to the applicant's occupation; and
- (iv) one or more of contracts showing trading. If a contract is not an original the applicant must sign each page. The contract must show:
 - (a) the applicant's name and the name of the business,

- (b) the service provided by the applicant's business; and
- (c) the name of the other party or parties involved in the contract and their contact details, including their full address, postal code and, where available, landline phone number and any email address."

12. With regard to Table 4(d)(iv), Appendix J to the Rules sets out relevant skill levels, in the form of Standard Occupational Classification (SOC) codes which are based on the comprehensive SOC scheme designed for the Office of National Statistics. Paragraphs 2 and 3 of the Introduction to the Appendix J indicate that, where in the Rules a job or occupation is relevant, the most appropriate match for that job within the SOC scheme, as set out in the tables in the appendix, based on the job description, i.e., on what the job in fact involves. The various jobs in the scheme are defined by reference to "Example job tasks", "Related job titles", and "Salary rates" for both "New entrant" and "Experienced". Having categorised all jobs thus, the scheme allocates them to levels within a hierarchy known as National Qualifications Framework ("NQF").

13. In his application, the Appellant maintained that he was self-employed in a business which provided marketing services to educational institutions and a consultancy service to students; such business having started in or about April/May 2013. He described his occupation or role as "Marketing & Sales Manager", with SOC code 1132 (which falls into NQF level 6). The "Example job tasks" for that occupation are as follows:

"Example job tasks:

- Liaises with other senior staff to determine the range of goods and services to be sold;
- Discusses employer's and clients' requirements, plans and monitors surveys and analyses customers' reaction to products;
- Controls the recruitment and training of staff;
- Produces and/or assesses reports and recommendations concerning marketing and sales strategies."

14. The Respondent did not accept that the documentary evidence demonstrated that the Appellant was engaged in business activity in an occupation which appeared on the list of occupations. The reasons given by the Respondent is as follows: "The evidence does not meet the requirements specified under Appendix A of the Immigration Rules and is not acceptable because it does not support your claim that you are engaged in business skilled to NQF level 4." However the decision letter does not make any reference to the evidence provided by the Appellant nor why it did not meet the requirements of Appendix A. The documentary evidence submitted with the application is set out in the form itself at page 48. It is plain from reading the determination that this point was not dealt with by the judge in his

findings at paragraphs 23 or 24 of the determination where he appeared to rely upon the lack of evidence relating to income.

15. Mr Nasim referred us to the documentary evidence which included the advertising and marketing material and also the contract between Bright Vision Consultants Limited and Queensbury College which he submitted met the requirement of Table 4(d)(iii) and (iv). The Respondent had a copy of the contract at the time of the application but had not made any reference to it in the decision letter when considering the requirements of Appendix A and 41-SD. Mr Nasim then took us through the financial documentation provided with the application including the bank statement from the Allied Bank plc that had the sterling equivalent of £62,000 in it, he demonstrated that there were no restrictions on that money and that it was held in a registered financial institution and was disposable in the UK.
16. Having taken the parties through the legislation and the decision letter, we reached the conclusion that the Immigration Judge had made an error of law in his conclusions which were set out at paragraphs 23 and 24 of the determination. The decision letter was based on specific issues raised in respect of the evidence, including the issue concerning the registration of the company. Mr Bramble could not demonstrate before us that there was any requirement for a current appointment report in the Rules. As for the second issue concerning business activity, we find that the provisions anticipate “New entrants” and the nature of entrepreneurship means his business may be only at the “start up” stage when the application is made. We further consider that in those circumstances the Appellant will be able to satisfy Table 4(d)(iv) by showing business plans and strategies for growth. An application for a business of this type is required to have a minimum investment of £50,000 available and therefore such evidence as to how the investment will be made and how the business will be run is likely to be required. The Rule specifies that one way to demonstrate this evidential requirement is to provide one contract; a document which we are satisfied the Appellant produced. The bald assertion in the refusal letter that the documents provided did not meet the criteria does not in our judgment take into account the evidence provided by the Appellant. When looking at the judge’s decision, we consider that he did not set out the Rule with any particularity nor did he seek to analyse the evidence by reference to the Rule but sought to rely on the absence of evidence concerning income and the Appellant’s credibility, which we are satisfied was the wrong approach. For those reasons, we find the First-tier Tribunal (Judge M.A. Khan) erred in law and therefore we set aside that decision.
17. We sought the views of the parties concerning the remaking of the decision. Mr Bramble submitted that during the course of the hearing he had the opportunity to consider further the documents in the context of the Rules but having considered the evidence in the round, was satisfied that the Appellant had demonstrated that he could meet the requirements of the Immigration Rules and that there was sufficient evidence to demonstrate that he was a director of a new business and that that business was registered. Both parties therefore invited us to allow the appeal. As the

first Appellant succeeds, it must follow that the second Appellant who is dependent on his application also succeeds in her appeal.

18. However, for those reasons, we consider the Immigration Judge erred in law; and his decision is set aside. It is remade as follows: the appeal is allowed. As we have indicated, his wife's appeal is dependent upon his and succeeds for the same reasons and with the same consequences.

Decision:

The making of the decision of the First-tier Tribunal involved an error on a point of law and the decision has accordingly been set aside. We remake the decision by allowing the appeals.

Signed

Date

Upper Tribunal Judge Reeds