



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/51599/2013

Appeal Numbers:
IA/51603/2013

THE IMMIGRATION ACTS

**Heard at: Field House
On: 30th September 2014**

**Determination Promulgated
On: 27th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

**ZOHAIB HASSAN
ROHIA HASSAN
(NO ANONYMITY DIRECTION)**
Respondents

Representation

**For the Appellant: Ms Holmes, Senior Home Office
Presenting Officer**

For the Respondents: -

DETERMINATION AND REASONS

1. The Respondents are nationals of Pakistan who are a husband and wife. On the 23rd July 2014 their linked appeals against decisions to refuse them further leave to remain as Tier 1

Migrants were allowed by the First-tier Tribunal (Judge Obhi). The Secretary of State now has permission to appeal against that decision.

2. The sole matter in issue was that the Respondents had sought to demonstrate their earnings with reference to accounts prepared by a firm who were not, as the First-tier Tribunal puts it “on the Home Office list”. It was not in dispute that the accounts that had been submitted with the application were defective since they were not prepared by a registered accountant. Judge Obhi noted however that the Respondents had subsequently submitted another set of accounts that were acceptable and on the basis of these, found that the Respondents should have attracted the requisite points under the Points Based System and allowed the appeal. In doing so he makes reference to the SSHD’s “evidential flexibility” policy.
3. The primary ground of appeal is that the First-tier Tribunal erred in allowing the appeal outright. There was no basis for doing so since the Respondents did not meet the requirement of the rule. Section 85A of the Nationality, Immigration and Asylum Act 2002 precludes an applicant from relying on appeal on a document that was submitted post-application. The acceptable set of accounts were, it was agreed, submitted after the applications were lodged. This ground is made out. It was an error of law to allow this appeal, for the reasons set out in the grounds.
4. The second ground relates to ‘evidential flexibility’. It is submitted that if the Tribunal wished to refer to a policy it should have done so in terms, identifying the specific policy which the SSHD is said to have failed to apply. There is also merit in this ground. Although I think it unlikely that the SSHD is unable to understand the reasons for the decision – those are quite plain – in the circumstances it was incumbent upon the Respondents, and Tribunal, to identify which ‘evidential flexibility policy’ might have availed the Respondents.
5. I therefore find the decision contains errors of law and it is set aside.
6. As to remaking, I note that this appeal was unopposed by the Respondents, who in a letter dated the 18th September 2014 informed the Tribunal that they no longer wished to pursue their appeals, since they were instead making fresh applications to the Home Office, no doubt supported by all of the correct documentation. I have treated that letter as a formal notice of withdrawal of the Respondents’ case, a withdrawal to which I give consent pursuant to part 17 (2) of

the Tribunal Procedure (Upper Tribunal) Rules 2008.

Decisions

7. The determination of the First-tier Tribunal contains errors of law and is set aside. I re-make the decision in the appeals by dismissing them.

Deputy Upper Tribunal Judge Bruce
30th September 2014