
**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/19033/2014

**THE IMMIGRATION ACTS**

| **Heard at Columbus House, Newport** | **Decision and Reasons Promulgated** |
|---|---|
| **On 14 May 2015** | **On 4 August 2015** |

**Before**

**The President, The Hon. Mr Justice McCloskey**
**and Upper Tribunal Judge Grubb**

**Between**

**MUHAMMAD AIZAZ HUSSAIN**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
Appellant: Mr O Skinner, (of Counsel) instructed by ATM Law
Respondent: Mr I Richards, Senior Home Office Presenting Officer

**DECISION**

1. The origins of this appeal lie in a decision made on behalf of the Respondent, the Secretary of State for the Home Department (the "*Secretary of State*"), dated 11 April 2014, whereby the application of the Appellant, a national of Pakistan aged 31 years, for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant was refused. The essence of the refusal decision was that the Appellant's business proposal was not viable and credible. His ensuing appeal to the First-tier Tribunal (the "*FtT*") was dismissed.

2. At the conclusion of the hearing, in an *ex tempore* judgment, we allowed the appeal on the following grounds. First, the Secretary of State's decision making process was unfair. It was not disputed that the principles of procedural fairness were of application in this particular context. These have been expounded by this Tribunal in Miah (Interviewer's Comments: Disclosure: Fairness) [2014] UKUT 515 (IAC) and, more recently, in R (on the application of Mushtaq) v Entry Clearance Officer of Islamabad, Pakistan (ECO – procedural fairness) IJR [2015] UKUT 00224 (IAC). It was common case that, in submitting his application, the Appellant had provided all of the documents required by the Immigration Rules. Furthermore, it was agreed by Mr Richards, representing the Respondent, that the purpose of the interview was to probe and air the Respondent's doubts and concerns relating to the viability of the proposed business enterprise. In the decision letter, the Respondent highlighted a series of specific reservations relating to the credibility and viability of the Appellant's business proposal. It was not disputed that these had not been ventilated during the pre-decision interview. The conclusion that the decision making process was procedurally unfair follows inexorably. In turn, the decision of the FtT cannot be sustained, in view of the Judge's failure to conclude accordingly.

3. Our second ground for allowing the appeal is that the Judge, in our estimation, misunderstood the relevance of section 85A of the Nationality, Immigration and Asylum Act 2002 in the context of the appeal. Section 85A had no application whatsoever to the pre-decision interview. We make clear our view that there would have been no prohibition on the Appellant producing relevant documents in response to specific doubts and concerns raised by the interviewer, to be contrasted with documents which must compulsorily be provided with the application proper and documents which are excluded from the ambit of the FtT hearing by statutory prohibition. Furthermore, section 85A had no application to the appeal, since the Appellant was not seeking to adduce new evidence at that stage. The Judge's approach to this issue cannot be sustained.

4. Thirdly, and finally, we accede to the free standing ground of appeal that the determination of the FtT is vitiated on the further ground of the intrusion of certain immaterial considerations. These relate essentially to the question of whether the Appellant had submitted the requisite documents with his application. As noted above, this is not in dispute. Furthermore, we agree with the criticism that the Judge wrongly took into account the date upon which the Appellant's business had begun (to his detriment) and incorrectly construed the purpose for which certain contracts were included in the Appellant's appeal bundle. These discrete errors may also be characterised as aspects of procedural unfairness, illustrating the intrinsic versatility of some of the well established public law misdemeanours. Finally, we agree with the contention that the Judge wrongly took into account the Appellant's lack of previous employment activity, having regard to the prohibitions and limitations enshrined in the Immigration Rules.

**DECISION**

5. We decide thus:

(a) the determination of the FtT is set aside;

(b) the appeal is allowed; and

(c) it will now be incumbent on the Secretary of State to make a fresh decision, duly guided and enlightened by this judgment.

**THE HON. MR JUSTICE MCCLOSKEY**
**PRESIDENT OF THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

**Date: 14 May 2015**