



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

Appeal Number: IA/19807/2014

THE IMMIGRATION ACTS

Heard at Field House

On 13th May 2015

**Determination
Promulgated**

On 1st June 2015

Before

**THE HONOURABLE LORD MATTHEWS
DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

Between

**MR MOHAMMED AHMEDUDDIN FAROOQUI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K S Sreekumar, Solicitor, Kumar Legal Limited

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India who appealed against the decision of the Respondent dated 16th April 2014 to refuse to vary his leave to remain in the United Kingdom and to remove him. He had applied for leave to remain under the Tier 1 (Entrepreneur) Migrant scheme and the Respondent had refused his application under paragraph 245DD of the Immigration Rules. The Appellant's subsequent appeal to First-tier Tribunal Judge Adio was heard on 3rd December 2014 and dismissed under

the Immigration rules and in respect of human rights grounds on 19th December 2014.

2. The judge noted that none of the original documents were attached to the Respondent's bundle and the Appellant had tried to replicate the bundle. Bearing in mind that the Respondent did not submit all the original documents, the judge was willing to give the Appellant the benefit of the doubt that he had submitted documents regarding business activities to the Respondent with his initial application. With regard to the bank statement, it was quite clear that the Appellant was the director of the business in the UK and it was obvious that his name was a missing item on the bank statement. The fact that he had a business in a limited liability company and was sole director and sole signatory of the account meant that he had access to the funds for his business. The judge therefore found that this was a suitable case where paragraph 245AA of the Immigration Rules should have been applied by the Respondent on this part of the application to obtain the right format of the letter from the bank.
3. However the judge found there was one other aspect on which the Appellant's appeal had to fail. If a person is claiming points for being a director of a UK company a print out of the current appointment report from Companies House dated no earlier than three months before the date of application should be provided. The document provided by the Appellant was dated 15th August 2013 and therefore did not comply with the time limit set in the rules. Given that, the Appellant did not satisfy the requirements of paragraph 41-SD(e)(v)(2) of Appendix A of the Rules and the appeal had to be dismissed.
4. Grounds of appeal were lodged. At paragraph 3 it was noted that the judge had effectively dismissed the appeal exclusively on one premise and that was the fact that the Appellant's print out of the current director's appointment report from Companies House was dated 15th August 2013. Paragraph 4 states that the judge made a material mistake as to fact. The print out from Companies House demonstrated that the Appellant became a director on 15th August 2013 and it was that information that was recorded on the printout that the Appellant had obtained from Companies House website, three weeks prior to submission of application. This was the Appellant's evidence and it appears that the judge had accepted that evidence. In that connection it was said that the Appellant clearly satisfied the terms of the Rules. Permission to appeal was granted on the basis of what was said in the grounds.
5. The Respondent had lodged a Rule 24 notice dated 3rd March 2015 stating that the Appellant did not submit a document dated in the correct time period. As such the judge did not err in law.
6. Thus the matter came before us.
7. For the Appellant Mr Sreekumar said that he now had the document from Companies House which had a date on it of 28th March 2014 and it was the

Appellant's case that this document had been submitted with the application. It was accepted that the document was not contained in the Appellant's bundle of 29th December 2014, being a bundle lodged in connection with the appeal to the Upper Tribunal and nor was it contained in the Appellant's bundle dated 13th June 2014, being the bundle which was before Judge Adio. If he were not allowed to rely on that document, Mr Sreekumar submitted that the Secretary of State ought to have exercised her discretion and allowed the error to be rectified. Having heard from Mr Jarvis in response Mr Sreekumar made a further submission, namely that the documents were part of a sequence and if one looked very carefully towards the right hand foot of the documents at 98-100 numbers 2, 3 and 4 emerged and there was no number 1. As such, the Secretary of State should have exercised her discretion on this point under paragraph 245AA as well.

8. For the Respondent Mr Jarvis submitted that the Rule was clear and had different elements to it. The Rule was in terms under 41-SD(2) that if claiming points for being a director of a UK company, a printout from a current report from Companies House, dated no earlier than three months before the date of the application, listing the applicant as a director of the company and confirming the date of his appointment had to be produced. There was no document in front of the judge which indicated that the report was dated no earlier than three months before the date of the application, which was a mandatory requirement. The judge had therefore been entirely correct to dismiss the appeal on this basis and there had been no submission made before him that the failure by the Appellant to produce the necessary document was one which fell under paragraph 245AA.
9. After a brief adjournment we indicated to the parties that we would dismiss this appeal for reasons which we would give in writing.

Conclusions

10. The evidential requirements of paragraph 41-SD provide a range of evidence under which an Appellant has to demonstrate that his application under the Tier 1 (Entrepreneur) Migrant route should be granted. The Rules are demanding and clear. One of the documents which the Appellant had to produce was a printout of his current appointment report from Companies House dated no earlier than three months before the date of application. It seems quite clear to us that this document was not before the judge. We say this because no such document appears in the bundle of evidence placed by the Appellant before the judge. In those circumstances Mr Sreekumar accepted that it was difficult for him to maintain the position that the document had been lodged particularly given that the grounds of appeal say nothing about that or that the documents fell as part of a sequence which should have obliged the Secretary of State to exercise her discretion under Rule 245AA.

11. The focus in the grounds of appeal was that the judge had made a material mistake as to fact, and that the Appellant had in fact obtained a printout from Companies House three weeks prior to submission of the application. However the particular document which might have established this was not placed before Judge Adio and given its absence the judge was quite entitled and indeed bound to conclude that the particular Rule had not been complied with and therefore the appeal had to be dismissed under the Immigration rules. It was too late to produce it now.
12. Mr Sreekumar's further and final point which was raised only after we had heard from Mr Jarvis, namely that there was a sequence of documents, was not an argument that had been made at any point previously. We were not invited to amend the grounds of appeal and do not consider that the point is well made. We would observe that while the numbers are there they are truly minuscule in size and far from obvious to any reader.
13. Furthermore, the problem the Secretary of State had with the claimant's documents is not their format or sequence but rather that the particular document relied on did not contain information which, under the mandatory Rules, the Appellant was obliged to produce.
14. It follows that there is no error in law by the judge and this appeal must be dismissed.

Decision

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
16. We do not set aside the decision.
17. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge J G Macdonald