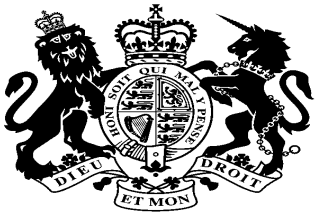

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/36944/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 September 2015	**On 01 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

MUHAMMAD TAHSEEN
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. Khalid, Lords Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mr Muhammad Tahseen against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his application for leave to remain in the UK as an entrepreneur under the Points Based System and to remove him from the UK by way of directions pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I do not make an anonymity order. No order was made by the First-tier Tribunal and there were no issues before me that might require such an order.

Background

3. The appellant is a citizen of Pakistan born on 3 December 1982. The respondent's refusal letter dated 8 September 2014 refused the application on the grounds that under paragraph 41SD(e)(iv) to show that the business was trading the appellant was required to provide, amongst other things, a contract that showed its duration. The respondent did not accept either of the two contracts provided as it was not accepted that they showed the duration of the contracts as required.

4. The appeal came before First-tier Tribunal Judge Parkes on 4 December 2014 who upheld the respondent's conclusions that the appellant had failed to provide appropriate contracts in the specified form relating to the appellant's business.

5. Permission to appeal to the Upper Tribunal was granted on all grounds: ground (1) being that the case of Shebl (Entrepreneur: proof of contracts) [2014] UKUT 216, was not properly applied in deciding this issue as scope should have been given as to how the 'duration' of the contract was established depending on the type of business; and ground (2) that as an alternative to contracts the Rules at paragraph 41-SD(e)(iv)(2) allows for the submission of letters from UK regulated financial institutions, alternatively to the provisions of contracts, and that evidence which fulfilled that requirement had not been considered.

Ground 1

6. The judge made findings in relation to both contracts submitted by the appellant. At paragraph 7 the judge noted that the Swiis contract termination clause on page 3 sets out that 'either party shall have the right at any time to terminate this contract by giving formal agreement after meeting with the supervisor/Client. Termination should be confirmed in writing by both parties' and that the Core contract termination clauses were found at pages 9 and 10. Judge Parkes states that so far as the appellant's obligations are concerned there is no time specified for giving notice of termination and each assessment and report to be provided is a separate contract. Judge Parkes went on to find that:

   'the contracts do not state that there is any duration to the main contract and there is no mechanism within the terms to state what notice period is required'.

7. Mr Khalid argued that the parties had discussed duration in the contracts including commencement and termination.

8. The ordinary meaning of the word 'duration' is 'the length of time for which something continues'. The duration of both contracts is not fixed but it is clear from the Swiis contract that both commencement and termination were discussed

by the parties. The Swiis contract allows termination to be 'confirmed in writing by both parties' and that the client has additional rights in relation to terminating the contract in the event of certain actions by the contractor.

9. The Core contract contains the termination clauses at paragraph 6 and 7 (and not 9 and 10 as indicated by the First-tier Tribunal). The contract refers also to 'case contracts' which is defined as a 'relevant Case Contract to be entered into between the parties'. In relation to payment it is indicated that the agreed fee is the 'consultancy fee (1700) which 'means the fee agreed between the company and the ISW (independent social worker) for each Case Contact as appropriate. The contract goes on to state that the due date for payment is 'the date referred to in the Case Contract which will be issued with each case accepted'.

10. Although therefore the Core contract deals with termination, there is again reference to not accepting 'further contracts' and the completion of 'all existing Case Contracts'. In relation to the duration of the Core contract it is clear that it is not possible to determine this without reference to separate 'Case Contracts' with the fee and due date for payment and therefore implicitly the end point for each Case Contract, being set out in each Case Contract. The judge was therefore correct to find, in relation to the Core Contract that the Core Contract does not meet the relevant requirements. Although Mr Khalid relied on Shebl (above) I am of the view that Shebl does not assist the appellant, in this regard.

11. The headnote of Shebl states as follows:

> 'the requirement to prove the existence of 'contracts' in paragraph 41-SD of Appendix A of the immigration rules does not itself require the contracts in question to the contained in document. There is however, a need for such contracts to be evidenced in documentary form.'

And at paragraph 5:

> '…The intention behind the Rules is that the claimant be able to show that he is genuinely trading. It strikes us as inconceivable that the entrepreneur route was to be confined to the types of trading in which contracts are made by single documents. Paragraph 41-SD very properly specifies that there must be documentary evidence sufficient to show genuine contracts, and containing sufficient documentary information to enable the Secretary of State to check the matter with the other parties for the contracts if she chooses to do so.'

12. Although therefore as Mr Khalid emphasised at the hearing, the contract does not need to be in one document, it was made equally clear in Shebl that 'there is a need for such contracts to be evidenced in documentary form'. It is clear that although read with the Case Contracts it may be possible to determine the duration of the contracts in the case of the Core contract, these do not appear to have been produced and the judge therefore was correct in his findings.

13. In relation to the Swiis contract however the contract is more specific, with specific reference to commencement date and there is no reference to any separate contracts. It is stated that the contractor will be paid £200 a day for training and £1500 for representation to panel. The contract also indicates that 'in the event that there are periods when there are no Services for the Contractor to perform, the Contractor shall not be paid a retainer for these periods'. The contact has therefore addressed what will happen during the lifetime of the contract including periods where no services and therefore no fee is payable. In relation to termination as noted above either party has the right to terminate the contract. The fact that there is no notice period stated for that termination does not invalidate the fact that termination has been specifically addressed.

14. Mr Clarke did not point to any legal requirements that might indicate that duration could not be open-ended in the way envisaged in the Swiis contract and the immigration rules do not prescribe that the contract must set out specific start and end dates.

15. I do therefore find that the judge made an error of law in relation to the Swiis contract. Although there was no error in relation to the Core contact for the reasons set out above, as paragraph 41-SD requires only 'one or more' of a contract for service, therefore the error is material and the appellant's appeal can succeed on this basis alone.

Ground 2

16. I need not consider ground 2, as the appellant succeeds on ground 1. However if it did not I consider these grounds to be less than persuasive. It is clear that in the alternative to one or more contract for service the applicant has the option of providing evidence from their bank. Although Mr Khalid relied on a bank statement, paragraph 41-SD(e)(iv)(2) provides as follows:

    41-SD(e)(iv)(2)
    'one or more original letters from UK-regulated financial institutions with which the applicant has a business bank account, on the institution's headed paper, confirming the dates the business was trading during the period referred to at (iv) above'.

17. This was the period from before 11 July 2014 'up to no earlier than there months before the date of his application.' Although there was no letter provided, Mr Khalid relied on a bank statement for 10 June to 18 July 2014. There were just two receipts to the account, one for £500 which is a 'transfer from Tahseen M' and one a 'direct credit from Jay Fostering Ltd Ref: Panel' for £127.25. The two payments are a road toll payment and a card payment at motorway services. Although Mr Khalid relied on this as evidence that the appellant was trading in the relevant period and relied on the Shebl principle as discussed above, the relevant rule has other requirements for bank statements and I am satisfied that there is force in the

argument that the requirement specifically for a letter from the bank, is additional. Even if it weren't I am not satisfied that the bank statement in question confirms 'the dates the business was trading' during the relevant periods. The fact that there are a limited number of transactions shown does not in itself confirm that the business was trading. Although there is one receipt from a fostering company none of these details match any in the contracts provided. I am not satisfied therefore that paragraph 41-SD(e)(iv)(2) is satisfied. Therefore there was no material error of law in this regard.

18. However, for the reasons set out above the appellant's appeal succeeds on ground 1.

Decision:

19. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and is set aside in its entirety. I remake the decision allowing the appellant's appeal for the reasons set out above, as he meets the terms of the immigration rules including specifically, paragraph 41-SD(e)(iv)(1)(d) of Appendix A.

Signed: Dated: 25 September 2015

Deputy Upper Tribunal Judge Hutchinson