



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/23425/2014  
IA/23456/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19 November 2015

Decision & Reasons Promulgated  
On 4 January 2016

**Before**

**Mr H J E LATTER**  
(Deputy Upper Tribunal Judge)

**Between**

**ANIL KUMAR BALGURI**  
**DANIEL KOTA**  
(ANONYMITY DIRECTION NOT MADE)

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Iqbal, Counsel  
For the Respondent: Mr Norton, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of India born on 10 February 1986 and 15 October 1988 respectively. They appeal against a decision of the First-tier Tribunal, Judge Swaniker issued on 24 February 2015 dismissing their appeals against the respondent's decision made on 29 May 2014 refusing them further leave to remain as Tier 1 (Entrepreneur) Migrants under the points-based system under the provisions

of both para 245DD of the rules and para 322(1A) on the basis that false representations had been made in relation to the application.

2. At the hearing before me the second appellant was represented by Mr Iqbal but there was no appearance by or on behalf of the first appellant. I am satisfied that notice of hearing was properly served on him. The second appellant said that he believed the first appellant had returned to India because his father had been taken ill but the respondent is not at this stage able to confirm whether that is in fact the case. In any event, I am satisfied that the proper course is to proceed with the hearing in his absence.

### Background

3. The brief background to this appeal is that both appellants have previously had leave to enter and remain in the United Kingdom as students and then as Tier 1 (Post-Study Work) Migrants. On 14 February 2014 they made a joint application for leave to remain as Tier 1 (Entrepreneur) Migrants. In order to meet the requirements of Appendix A they had to show that they had access to funds as required by the rules, namely access to not less than £50,000 from one or more registered venture capital firms regulated by the Financial Conduct Authority (FCA). In support of their application they produced a letter from Future Venture Capital, which was claimed to be a fund set up through Future Capital Partners, a solicitor's letter from Ramsay Employment Law and an accountant's letter from Active Corporate, all documents dated 11 February 2014. The respondent was satisfied that the claim to have access to funds from a registered venture capital firm regulated by the FCA was false in that a check of the FCA register had revealed no connection between Future Venture Capital and Future Capital Partners.

### The Hearing before the First-tier Tribunal Judge.

4. At the hearing before the First-tier Tribunal both appellants gave oral evidence and the judge set out her findings of credibility and fact in [14]-[20]. She found that the appellants had failed to provide any credible evidence to show that either Future Venture Capital or Future Capital Partners were registered with the FCA as required. She noted that they had claimed in their evidence that they had conducted an internet search to find a compatible company operating in the IT sector to act as their backers. They had made enquiries about Future Venture Capital because it supported energy resources and the IT sector and they had found the company registered with the FCA when they checked. The judge took into account the letter dated 11 February 2014 in which Future Venture Capital clearly and unequivocally represented itself as a fund set up through Future Capital Partners. She found that those claims contradicted a subsequent letter of 2 June 2014 produced in evidence describing it as deliberately opaque and not directly addressing the key issue in the respondent's decision letter that neither Future Venture Capital nor Future Capital Partners were registered with the FCA.

5. The judge found it devoid of credibility that Future Venture Capital would hold itself out as being a fund established by a regulated organisation without being assured of its registration and adherence to any regulatory requirements. She found that the appellants were not reliable witnesses whose word could be relied on: they claimed to have made their own enquiries and to have checked the registration of the organisations with the FCA. She therefore found that the appellants could not meet the requirements of the rules. She noted that a further letter of 11 June 2014 and the offer of funding letter from new proposed funders sought to present the offers as having been in place at the time of the application. She found that this was extraordinary and indicative of the overall lack of transparency of the application and that the attempt made to date the offer as available from the time of application to be little more than the blatant attempt to misrepresent the position. For these reasons the judge dismissed the appeal both under para 322(1A) and 245DD and Appendix A.

### The Grounds of Appeal and Submissions

6. Permission to appeal was granted by the First-tier Tribunal for the following reasons:
  - “ ...
  - (a). The respondent in refusing the applications under paragraph 245DD of the Immigration Rules, also asserted that false representations had been made under para 322(1A).
  - (b) It is arguable at paragraph 19 of the decision on finding that the appellants were not entitled to the requisite points in respect of funds, the judge has wrongly conflated para 245DD and para 322(1A). Rather than make a separate finding on whether or not false representations had been made.”
7. In his submissions Mr Iqbal made it clear that he was not seeking to challenge the decision under para 245DD but only the decision under para 322(1A). He referred to the decision of the Court of Appeal in A v Secretary of State [2010] EWCA Civ 733 that “false” did not simply mean incorrect but dishonest. He conceded that the judge had been entitled to reach her conclusions on whether the requirements at para 245DD were met but argued that the judge not given proper consideration on whether dishonesty had been established within para 322(1A). It was his argument that, having carefully considered the requirements of para 245DD, the judge appeared to have assumed that the provisions of para 322(1A) were established when in fact she had not made any specific findings on the issue of dishonesty. The appellants could not, so he submitted, have a finding made against them under para 322(1A) unless they were aware of the falsity of the representation. It had not been established that they had made anything other than an innocent mistake. He also referred to the judge’s summary of the burden and standard of proof in [7]-[8] and the fact that she had made no reference to the burden of establishing falsity being on the respondent.
8. Mr Norton submitted that the judge had not erred in law. She had carefully examined the evidence and reached a conclusion properly open to her. Her findings

made it clear that the appellants had been aware that they had submitted a document which was false and had tried to maintain the deception at the hearing.

Assessment of whether there is an Error of Law.

9. The issue for me is whether the First-tier Tribunal erred in law such that its decision should be set aside. I am not satisfied that there is any such error. The respondent refused the application for further leave as a Tier 1 (Entrepreneur) Migrant because the evidence submitted by the appellants with their applications did not meet the criteria specified under Appendix A because neither Future Venture Capital nor Future Capital Partners were independent venture capital firms directly regulated by the FCA, no trace was found to confirm that Future Venture Capital or Future Capital Partners had permission to operate as a venture capital firm by the FCA and a check with the FCA revealed no connection between Future Venture Capital and Future Capital Partners Ltd.
10. In their evidence the appellants asserted that they had made enquiries about Future Venture Capital and had found the company registered with the FCA when they checked. The judge found that there was no objective or reliable evidence to support the assertion that was put forward as to whether either were registered with the FCA as required. She noted that in the letter dated 11 February 2014 Future Venture Capital held itself out as a fund set up through Future Capital Partners authorised and regulated by the FCA. The assertions were supported by the letter dated 11 February 2014 from Active Corporate. The judge found that these letters could not be relied on.
11. At the hearing before her further documents were produced dated 2 June 2014, 11 June 2014, 13 and 16 June 2014 purporting to show that the appellants did have access to the capital sum required but the judge clearly did not regard them as reliable commenting on the fact the letter from Future Venture Capital dated 2 June 2014 said that they had secured a promise of funds from three separate sources at the time of the appellants' application and had made an offer in association with Future Capital Partners but it had now come to their attention that Future Capital Partners had not registered them as the appointed representatives acting on behalf of the funds and that the situation was outside their control but the offer to the appellants facilitated through themselves would have to be withdrawn and replaced reassuring the appellants that the other two sponsors were regulated for investments with the FCA. The judge also said at [17] that the letter dated 11 June 2014 from Philpot Venture Capital Fund seeking to present the offers having been in place at the time of the application was indicative of the overall lack of transparency with the application.
12. When the judge's reasons are read as whole it is clear that she was satisfied that the applicants were aware that a false representation had been made. In the light of that finding and applying the law as set out in A v Secretary of State, it was clearly open to the judge to find that the appellants had knowingly put forward an application which they knew to be false. I am not satisfied that the judge did not properly

consider the position under para 322(1A). It is correct the judge did not set out in her self-direction in [7]-[8] that the onus was on the respondent to establish dishonesty but there is nothing in the judge's analysis of the evidence or in the way she set out her conclusions to indicate that she was under any misapprehension as to either the burden or standard of proof.

13. In summary, I am satisfied that the judge's findings and conclusions were properly open to her for the reasons she gave and that she did not err in law.

#### Decision

14. The First-tier Tribunal did not err in law and its decision stands. This appeal is dismissed.

Signed

Date: 17 December 2015

H J E Latter  
Deputy Upper Tribunal Judge