



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

Appeal Numbers: IA/16383/2013
IA/16384/2013
IA/16385/2013
IA/16386/2013
IA/15501/2013
IA/16506/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 21 March 2014**

**Determination Promulgated
On 10 April 2014**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

**MR MONZOUR AHAMED
MR AL AMIN AHAMED
MRS REBEKA SULTANA
MASTER RABBANI GOLAM
MR ABDULLAH AL MAMUN
MRS SHARMIN HAQUE**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr R Solomon, of Counsel instructed by Messrs Jein Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Bangladesh, Mr Monzour Ahamed and Mr Abdullah Al Mamun being the principal appellants and the other appellants are their dependants. The principal appellants had applied for leave to remain as Tier 1 Entrepreneurs. Their applications were refused and their appeals, and therefore the appeals of the other appellants as their dependants were dismissed by Judge of the First-tier Tribunal N M K Lawrence in a determination promulgated on 31 December 2013.

2. Mr Ahamed had entered Britain as a Tier 4 Student on 19 September 2009 and had then been granted leave to remain as a Tier 1 (Post-Study Work) Migrant until 21 September 2012. Mr Al Mamun had been granted leave to enter and remain initially as a student and then had leave as a Tier 1 (Post-Study Work) Migrant until 21 January 2013. He then applied with Mr Ahamed as the entrepreneurial team. They appeared to rely on the same evidence. The refusal of Mr Ahamed is dated 25 April 2013. Under Appendix A "Attributes" he was awarded no points. The refusal stated as follows:-

"You have stated that you have invested, or had invested on your behalf, at least £18,191.28 into one or more businesses in the United Kingdom. The evidence you have supplied in the form of a Barclays and Lloyds TSB Bank statement shows that your investment combined with current funds available in the UK has a value of less than £50,000, which is unacceptable, as stated in under [sic] Appendix A of the Immigration Rules. Your representative's letter has claimed you have invested £18,191.28 into the business, however the evidence you have provided to show this claim is insufficient, this is because figures of funds have only been highlighted, it does not state where or what it has been invested in. In order for you to prove investment you need to provide evidence from an accountant confirming the amounts and what the amounts were invested in. Please refer to 46-SD the Immigration Rules:

- (a) The applicant must provide all the appropriate specified documents needed to establish the amount of money he has invested from the following list:
 - (i) If the applicant's business is a registered company that is required to produce audited accounts, the audited accounts must be provided;
 - (ii) If the applicant's business is not required to produce audited accounts, unaudited accounts and an accountant's certificate of confirmation, from an accountant who is a member of a UK Recognised Supervisory Body (as defined in the Companies Act 2006), must be provided;
 - (iii) If the applicant has made the investment in the form of a director's loan, it must be shown in the relevant set of accounts provided, and the applicant

must also provide a legal agreement between the applicant (in the name that appears on his application) and the company.

....

(c) The applicant must provide the following specified document to show that he has established a UK business:

(i) Evidence that the business has business premises in the UK:

- (1) If the applicant is self employed his registration with HM Revenue and Customs to show that the business is based in the UK, or
- (2) If the applicant is a director, printout of a Companies House document showing the address of the registered office in the UK or head office in the United Kingdom if it has no registered office, and the applicant's name, as it appears on the application form, as a director,

and

(ii) Evidence that the business has a UK bank account:

- (1) If the applicant is self employed, a personal bank statement showing transactions for his business, or a business bank statement, or a letter from a UK bank confirming that he has a business and acts through that bank, or
- (2) If the applicant is a director, a company bank statement showing that the company has a UK account, or a letter from a UK bank confirming that the company has a bank account ,

and

(iii) Evidence that the business is subject to UK taxation:

...

(e) If some of the money has been invested into a business in the UK, the balance of funds must be held in a regulated financial institution and disposable in the UK.

...

As you have provided evidence in the form of a Halifax statement, stating you have £25,024.16 on 16 January 2013. This still does not meet the requirement of £50,000. We have therefore been unable to award points for attributes."

3. Mr Ahamed was awarded no points for funds held in regulated financial institutions or those that are disposable in the United Kingdom although he was awarded points for English language and maintenance.

4. I note that the Tier 1 application form claimed that he had £11,416.10 in a Barclays Bank account at G10 although it was stated that he would be investing £15,048 in the business. The amount invested in the business was claimed to be £18,191.28.
5. He also claimed to be a marketing and sales manager and that that job title appeared on the graduate level occupation list under number 1132.
6. Mr Al Mamun's application was also refused in identical terms. He had claimed on the application form that he had had £22,492.79 in a Halifax Bank account but that he had £3,151 invested in the business. He stated that his job title was as an advertising and public relations manager (1134).
7. The grounds of appeal asserted that the Secretary of State should have awarded points for funds in that there had been adequate evidence of the sum of £18,191 of money already invested in the business.
8. Judge Lawrence set out the background to the appeal in paragraphs 2 onwards of the determination. He noted the claim that £18,191.28 had been invested in the business and stated that that sum added to the £25,024.16 held in the Halifax account did not amount to £50,000. It was claimed before him by the appellant's representatives that funds were also held in the Sonali Bank or the National Bank of Bangladesh but the judge stated that there was no evidence before him that those banks satisfied the provisions of Appendix P of the Rules. He said that he was not satisfied that Mr Ahamed had submitted any bank statements from Sonali Bank to the respondent. In respect of Mr Al Mamun he stated there was a reference to the National Bank but it did not appear to feature in the respondent's decision. He pointed out that Mr Al Mamun had the burden of proving that the balance in the National Bank of Bangladesh met the requirements of Appendix P.
9. It was his conclusion that the appellants had not shown that they had the relevant sum of £50,000 to be invested in the enterprise. With regard to the sums amounting to the £18191.28 claimed to have been invested in the business the judge wrote in paragraph 12 :

"In the course of examination Mr Ahamed asserted that he provided invoices with his application. However, Mr Hurley put A52 of the respondent's bundle to him and Mr Ahamed accepted that it did not record any invoices being sent with the application form. Mr Al Mamun accepted that the advertisement was sent after the application form had been submitted. He accepted that the invoices were also not sent with the application form."
10. Lengthy grounds of appeal were submitted. They asserted that £15,040 had been invested by Mr Ahamed in the business - they referred to a letter from his accountant and it was stated that the accountant's letter was in the appellant's

bundle. It was also stated that £11,000 had been held in Mr Monzour Ahamed's Barclays account which was in the respondent's bundle at page C11 and that therefore the sums of £15,040 invested together with £11,000 available in the Barclays' account gave an overall total of £26,000. It was argued therefore that the total amount for the business amounted to £26,000 in respect of Mr Monzour Ahamed and £25,000 in respect of Mr Al Mamun giving an overall total of £51,000.

11. It was claimed therefore that the appellants met the requirements of the Rules.
12. Judge Brunnen granted permission to appeal noting that it was argued that the judge had failed to consider relevant evidence when finding that the relevant £50,000 had not been taken into account.
13. At the beginning of the appeal before me I endeavoured to ascertain from Mr Solomon what evidence had been submitted with the applications or indeed at any other time prior to the decision by the appellants or by their representatives. He had no copy of any covering letter sent in with the application forms let alone any appropriately paginated bundles of enclosures with the original applications. He referred to evidence from a Barclays Bank account which was in the respondent's bundle and claimed that a letter from the appellants' accountants showed sums totalling £18,191 invested in the business. He also referred to a sum of £22, 492.79 in Mr Al Mamun's Halifax account at C9 of the bundle. He argued that those three amounts amounted to £52,117 and that this was not disputed. He accepted that certain sums had to be retained for maintenance but stated that that was evident from the documentation before me. He stated that there was evidence of money in the Somali Bank and the National Bank of Bangladesh and at the date of submission there had been no list of appropriate financial institutions in which money had been invested.
14. In reply Mr Whitwell stated that it was clear from the determination that it is accepted by the appellants that the invoices to evidence the sum of £18,191 supposedly invested in the business had not been submitted with the application. He referred to the fact that Mr Al Mamun accepted the advertisement was sent after the application form had been submitted. He accepted that the invoices were also not sent with the application form.
15. It was Mr Whitwell's argument that in any event the invoices appeared to indicate double accounting. He referred me to the grounds of appeal and stated that the sums to which reference was made therein in paragraphs 8, 9, 10 and 11 of the grounds totalled £47,231.52. He also referred to discrepancies relating to the second appellant's claim that he had £22,492 in his Halifax account - he referred to the fact that there was a discrepancy in the numbers relating to the Halifax account. In any event he pointed out the Halifax account appeared to be a joint account.

16. He therefore asked me to find that there was no material error of law in the determination of the judge.
17. In reply Mr Solomon indicated that there was an error of law in that the judge had not considered the Article 8 rights of the appellants and furthermore that there had been a Section 47 decision which had not been withdrawn.

Discussion

18. With regard to the Section 47 decision I allow the appeal with regard to that decision. With regard to the Article 8 rights of the appellants I accept that these were not considered by the judge but these were not raised in the grounds of nor was that issue raised at the hearing and certainly there was nothing put before me to indicate that the removal of the appellants would be disproportionate – they had both come here relatively recently as students and then been granted leave to remain as Tier 1 Migrants for a limited period.
19. With regard to the substance of the appeal the reality is that as the judge stated the burden of proof is on the appellants. It is extraordinary that the appellants' representatives were unable to put before me a copy of the initial application together with the supporting documents which were sent to the respondent when the applications were made. The appellants' bundles of documents did not include a copy of a covering letter and there really is no indication as to what documents were sent to the respondent, other than those to which the refusals referred, and when they were sent. The reality is that the grounds of appeal before the First-tier Judge and those to the Upper Tribunal and indeed Mr Solomon's submissions to me contained assertions that certain funds were available and that evidence of those funds had been sent to the Home Office but there little to back up those assertions. The burden of proof lies on the appellants. That burden of proof has not been discharged. It is, of course, correct that in a points-based system case it is the documents which are produced at the date of application which are relevant. Given that there is nothing to show what documents were actually submitted with the application other than those to which reference is made in the notices of refusal, I cannot accept that all relevant documents were submitted to the Secretary of State with the application. Indeed, in any event, it was accepted that the invoices substantiating the sums which it was claimed had been invested to make up the £18,191 to which reference was made in the accountant's letter, were not submitted with the accountant's letter which indeed itself was dated after the application. I would add that I am not satisfied that there has not been double accounting of the funds claimed - it is impossible to ascertain what money was available and when it was available for the enterprise. I am also concerned that, before the Judge reference was made to both partners having relevant funds which were available from Bangladesh and therefore, presumably required for the business, but that that issue was not pursued before me.

20. I therefore find that the judge reached conclusions which were open to him on the evidence and that therefore there is no material error of law in the determination of the judge and although I have allowed the appeals against the Section 47 decision I dismiss the substantive appeals.

Decision.

I allow the appeals against the decision to remove under Section 47 of the Immigration Asylum and Nationality Act 2006.

I dismiss appeals on Immigration grounds.

Signed

Date

Upper Tribunal Judge McGeachy