



IAC-FH-CK-V1

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

Appeal Numbers: IA/09352/2014
IA/09354/2014
IA/09356/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29th July, 2015**

**Determination Promulgated
On 18th August, 2015**

Before

**Upper Tribunal Judge Chalkley
Upper Tribunal Judge Ward**

Between

**FARZANA AFTAB AWAN
AFTAB KHAN AWAN
DAUD AFTAB AWAN
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr G Davison, Counsel instructed by Morgan Mark Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the determination of us both. The first-named appellant is a citizen of Pakistan who was born on 15th March, 1977 and who entered the United

Kingdom last on 5th September, 2006 accompanied by her husband and her son, the second and third-named appellants.

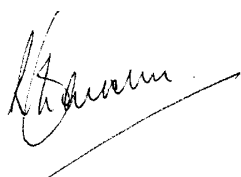
2. She entered with a valid student visa which was renewed until 23rd February, 2011 when she was granted a Tier 1 (Post-Study Work) Migrant visa until 23rd February, 2013. On 15th January, 2013 the applicant made application for leave to remain as a Tier 1 (Entrepreneur) Migrant under the points-based system, which application was refused on 10th February, 2014.
3. The first-named appellant appeared to the First-tier Tribunal and her appeal was heard on 22nd September, 2014 by First-tier Tribunal Judge N M Paul, who dismissed her appeal.
4. The first-named appellant obtained leave to appeal to the Upper Tribunal on the basis that the First-tier Tribunal Judge had failed to give any or adequate reasons for his findings in paragraphs 18 and 19 of his determination and failed properly to apply *Ahmed (PBS: admissible evidence)* [2014] UKUT 365 (IAC).
5. At the hearing before First-tier Tribunal Judge Chalkley on 1st April, 2014, having heard submissions from Mr Davison on behalf of the appellant and Ms Kenny, a Senior Home Office Presenting Officer, on behalf of the respondent, he concluded that the First-tier Tribunal Judge, insofar as he gives any reasons at all, had given inadequate reasons for his findings at paragraphs 18 and 19 of the determination. He adjourned the hearing to a later date in order that all evidence could be heard. A copy of his reasons for finding an error of law are set out in the Appendix to this determination.
6. When the matter came for hearing before us on 29th July Mr Davison quite properly suggested that he would like to establish whether everybody had all the documentation before them. He referred to the interview recorded conducted with the applicant by the Home Office before the respondent's decision to refuse was issued. He explained that he had not seen a copy and that there was no copy in the bundle relied on by the appellant.
7. Mr Walker confirmed that he did not have a copy either. Fortunately there were sufficient copies within the file for the Tribunal to provide each representative with a copy.
8. The appellant was called and confirmed her full names, date of birth and address. Mr Davison referred her to a witness statement which appeared at pages 9 to 15 of her bundle of documents. She told the Tribunal that everything in that witness statement was true and accurate save one small amendment on page 14 and she confirmed that she wished to adopt it.

9. For reasons which will become apparent below, we have not set out the contents of that statement. Mr Davison had no questions for the appellant and Mr Walker said that he would not cross-examine.
10. In making his submissions to us Mr Walker confirmed that the appellant's statement as adopted by her addresses those concerns of the Secretary of State which led to the respondent to refuse the application.
11. The Tribunal asked Mr Walker if he was conceding the appeal on behalf of the respondent and he told us that he was not. He merely wished to confirm that from what has been provided now by the applicant all the concerns of the Secretary of State had been answered. The mixture of the appellant's business being 80% consultancy and 20% shop retail would, he told us, meet the requirements of the Rules and the fact that the appellant had purchased a shop did not mean that she did not qualify under the Rules because she was opening a consultancy business within the shop premises.
12. Mr Walker having declined to cross-examine the appellant or challenge her oral evidence and in the light of his submission, the Tribunal have been left with no choice, but to allow the appeal.

Notice of Decision

The determination of the First-tier Tribunal did contain a material error of law. We set that decision aside and for the reasons we have given this appeal is allowed.

No anonymity order made.



Upper Tribunal Judge Chalkley

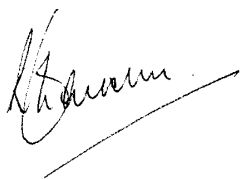
The appendix above referred to

REASONS FOR FINDING THAT TRIBUNAL MADE AN ERROR OF LAW, SUCH THAT ITS DECISION FALLS TO BE SET ASIDE

1. The first named appellant is a citizen of Pakistan who was born on 15th March, 1977 and who entered the United Kingdom last on 5th September, 2006, accompanied by her husband and son, the second and third named appellants. She entered with a valid student visa which was renewed until 23 February, 2011 when she was granted a Tier 1 (Post study work) migrant visa until 23 February 2013. On 15th January, 2013 she made application for a Tier 1 (Entrepreneur) migrant under the Points Based system which application was refused on 10th February 2014.
2. The first named appellant appealed to the First Tier Tribunal and the appeal was heard on 22 September, 2014 by First Tier Tribunal Judge NM Paul who dismissed her appeal.
3. The appellant obtained leave to appeal to the Upper Tribunal on the basis that the First Tier Tribunal Judge failed to give any or adequate reasons for his findings in paragraph 18 and 19 of his determination and failed to properly apply *Ahmed (PBS Admissible evidence)* [2014] UKUT 365 (IAC).
4. Mr Davidson relied on the grounds. Ms Kenny suggested that the First Tier Tribunal Judge had given reasons which were adequate at paragraphs 18 and 19. Ahmed was properly decided, he told me.
5. I am satisfied that the reasons for the judge's findings, insofar as he gives any, are inadequate. I need to hear oral evidence. The matter is adjourned until 4th February 2015 at 10.00 when I shall hear the appeal afresh.

TO THE RESPONDENT FEE AWARD

As we have allowed the appeal and because a fee has been paid or is payable, we have considered making a fee award and have decided to make no fee award, given the extent to which it was necessary for the appellant to clarify her application in a statement comprising seven pages.



Upper Tribunal Judge Chalkley