



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

Appeal Numbers: IA/27643/2013
IA/27651/2013
IA/27657/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 2 February 2015**

**Decision & Reasons Promulgated
On 2 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**SANJEEV KUMAR THAPA
SARMILLA PACHHAI THAPA
SAJAL SINGH THAPA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Malik, Counsel, instructed by Mark Law Chambers Solicitors
For the Respondent: Miss A Holmes, Home Office Presenting Officer

DECISION AND REASONS

The Appellants

1. The appellants are citizens of Nepal born on 27 February 1975, 12 November 1982 and 3 July 2010 and they appealed against the respondent's decision to refuse the

first appellant's application for leave to remain as a Tier 1 (Entrepreneur) Migrant and the second and third appellants applications for leave to remain as the partner and child of a Tier 1 Migrant. They also appealed the decision to remove them from the United Kingdom under Section 47 of the Immigration Nationality and Asylum Act 2006.

2. First-tier Tribunal Judge Norton-Taylor dismissed the appeals and an application for permission to appeal was refused by the First-tier Tribunal. Permission to appeal to the Upper Tribunal was also refused by Upper Tribunal Judge Kebede on 29th April 2014 however an application for judicial review was granted by Mr Justice McGowan. On 10th December 2014 Vice President of the Upper Tribunal Ockleton granted permission to appeal. The matter was listed before me in the Upper Tribunal.
3. The Secretary of State's refusal dated from 20th June 2013. The appellant's application was dismissed because the appellant could not fulfil the Rules in relation to Appendix A for 25 points under provision D of Table 4 of Appendix A of the Immigration Rules. Under that provision he had supplied sufficient evidence to demonstrate he had access to at least £50,000 but it was also a requirement to demonstrate that he met the following additional criteria:

“(iv) are engaged in business activity other than the work necessary to administer his business in an occupation which appears on the listed skills to national qualifications framework level 4 or above as stated in Codes of Practice and Appendix J **and provides the specified evidence in paragraph 41-SD.**”
4. The advertisement produced by the appellant did not contain his name and therefore did not meet the requirements as specified in paragraph 41-SD(C)(iii) of Appendix A. As a result he had not demonstrated that he had met the requirements of the Rules to be awarded the points under provision D of Table 4 of Appendix A.
5. Application for permission to appeal was made essentially on three grounds as outlined by Mr Malik. First, that the current version of paragraph 245AA would have assisted the appellant but the Immigration Rules which were current at the time of the hearing would have applied. Mr Malik conceded that the duties in respect of paragraph 245AA were in respect of the Secretary of State rather than duties on the First-tier Tribunal and he had to accept that those duties were not in existence as at the date of decision which was the relevant date. I also find that the judge carefully explored this issue [57 -58] of the determination and there is no error of law in that respect.
6. In relation to ground 3, and the lawfulness of the Section 47 decision, Mr Malik wished to reserve his position in relation to **Castro (Removal of Section 47 as amended) [2014] UKUT 00234 (IAC)**. He conceded that he was obliged to follow **Castro** wished to note that there was an application for permission to appeal pending in the higher courts. As present I find I am obliged to follow **Castro** and I find no error of law in this regard either.

7. The crux of the matter related to ground 2. It was argued that the failure of the appellant to provide his name in the advertisement as required by paragraph 41-SD(C)(iii) of Appendix A of the Immigration Rules was de minimis (the law is not concerned with small things). MD (Jamaica) v Secretary of State for the Home Department [2010] EWCA Civ 213 and Miah v Secretary of State for the Home Department [2012] EWCA Civ 261 were cited.
8. Mr Malik drew my attention to page 14 of the appellant's bundle before the First-tier Tribunal. What was missing in relation to the advertisement, was the appellant's name. Mr Malik submitted that the name of the business had been submitted. This was sufficient. The rules should be construed in a sensible way and read as a whole. The applicant was a director of the company as set out. In the circumstances it would be irrational and not sensible to insist that his name be included.
9. The Rules 24 response from the respondent accepted that the order of Mr Justice McGowan stated 'It is reasonably arguable that the fact that the initials SKT appear in the advertisement is enough in law to satisfy the requirements that the applicant's name appear'. However, it was submitted that, the rule was clear that a name was required and initials were not a name. This could not possibly be construed as a de minimis failure.
10. Mr Malik submitted that in the context of the material presented to the judge the matter was de minimis. The Rule was directed towards those who were self-employed whereby putting the name was sufficient. If there was a non-compliance it was so inconsequential that it did equate to a de minimis non compliance.
11. I agree that the Immigration Rules must be construed in a sensible manner but I cannot agree that it would be irrational to insist on the naming of the appellant within the advertisement. As Miss Holmes pointed out, there is nothing in the determination of the First-tier Tribunal Judge to indicate that he had made an error. The judge had considered the matter with considerable care and had noted the stringent nature of the Rules at paragraph 37 of the decision. He had noted that it may be pedantic but it was mandatory and there was a need to ensure the connection between the applicant and the business and was not a de minimis issue. This conclusion by the judge was open to him on the fact before him.
12. I cannot accept Mr Malik's submissions that because the appellant is a director of the company or his initials are present this is sufficient. The Rule is clear as set out at paragraph 42 of the judge's determination that the advertising or marketing material relied on must show the applicant's name (and the name of the business if applicable).
13. The rule at paragraph 41-SD(C)(3) of Appendix A and applicable at the date of the respondent's decision stated as follows:
 - (c) if the applicant is applying under the provisions in (d) in Table 4 he must provide

...

(iii) one or more of the following specified documents:-

- (1) Advertising or marketing material, including printouts of online advertising that has been published locally or nationally, showing the applicant name (and the name of the business if applicable) together with the business activity
- (2) Article(s) or online links to Articles(s) in a newspaper or other publication showing the applicant's name (and the name of the business if applicable together with the business activity,
- (3) Information from a trade fair (s) at which the applicant has had a stand or given a presentation to market his business, showing the applicant's name (and the name of the business if applicable) together with the business activity , or
- (4)
- (5) Personal registration with a trade's body linked to the applicant's occupation

14. There was no indication that the appellant had complied with the other alternative limbs of the rule. On the application form the appellant had ticked G22 to show that he was relying on advertising or marketing material. The first requirement under (1) above was that the applicant's name should be shown and the name of the business was a secondary requirement and indeed place in brackets. Clearly the identity of the appellant is a key factor in the application and he must be linked to the business itself. I do not accept that this is a de minimis requirement. That the appellant is linked personally to the business is a fundamental requirement. A sensible reading of the rules would indicate that the identity of the appellant is critical in any such application.
15. Nor do I accept that the mere initials of the appellant which are the same as the company name can link the appellant to that company. As pointed out the company will have a separate legal identity hence the importance of specifying the appellant's name in the advertising or marketing material. The judge stated that the rule maybe pedantic, which I do not agree, but this is not a material error. It is a clear rule and was applicable at the date of the respondent's decision.
16. **MD** Jamaica was cited where the court held that there was

'nothing absurd in giving the rule its plain and ordinary meaning. The principle de minimis non curat lex (the law is not concerned with very small things).'

That case however addressed a temporal issue as the application was one day late and differed in nature and quality from the consideration here which was one of identity. Nor is this even a 'near miss'. The name of the applicant was simply omitted from the marketing material and this was not just a requirement but a fundamental requirement particularly as a company has, as I say, its own legal

identity. As stated in **Miah** a rule is a rule and if a departure from a rule is truly de minimis the rule is considered to have been complied with and that is not the case here.

17. I find that there is no error of law in the judge's determination and that determination shall stand.

Signed

Date 27th February 2015

Deputy Upper Tribunal Judge Rimington