IAC-HW-MP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/47286/2014
IA/47251/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 December 2015	**On 29 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

RANJITH GOTTIMUKKALA (FIRST APPELLANT)
MAHESH JADALA (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr C Mannan of Counsel, instructed by Kumar Legal Limited, solicitors
For the Respondent: Mr S Kotas of the Specialist Appeals Team

DECISION AND REASONS

The Appellants

1. The Appellants are citizens of India, born respectively on 9 June 1987 and 17 February 1988. They each entered the United Kingdom with leave as Tier 4 (General) Student Migrants and subsequently obtained leave as Tier 1 (Post-Study Work) Migrants and thereafter made a combined application

as team members for further leave as Tier 1 (Entrepreneur) Migrants under the Points-Based System.

The Respondent's Decisions

2. On 19 November 2014 the Respondent refused each of their applications under paragraph 245DD(h) of the Immigration Rules for Non-Points Scoring reasons, namely that the Respondent did not consider the Appellants had the requisite experience for the day-to-day running of their business or that their business venture was viable.

3. On 14 January 2015 the Appellants lodged Notices of Appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds are needlessly long and save for paragraphs 13(iii), (vi), (vii), (ix) they appear to be entirely generic to Tier 4 (Entrepreneur) appeals.

4. The relevant grounds assert the genuineness and viability of the Appellants' proposed business venture.

The First-tier Tribunal's Decision

5. On 10 June 2015 the appeals were heard by Judge of the First-tier Tribunal Majid. The Respondent was not represented. By a determination promulgated on 12 June 2015 he allowed both the appeals outright and without acknowledging the impact of paragraph 245DD(k); the effect of which is that if an appeal against refusal for Non-Point Scoring reasons is allowed it should be remitted to the Respondent to consider the points scoring aspects of the application.

6. The Respondent sought permission to appeal on the grounds that the Judge had given insufficient reasons for his decision and had failed to make explicit reference to the relevant Immigration Rules or the particular issues of concern identified by the Respondent in the Notices of Decision. The second ground was that the Judge had mis-directed himself on the admissibility of evidence in respect of which the Respondent relied on the exceptions referred to in Section 85A of the 2002 Act and further, the Judge had not taken into account the jurisprudence in *Ahmed and Another (PBS: admissible evidence) [2014] UKUT 00365 (IAC)*.

7. On 26 August 2015 Judge of the First-tier Tribunal Heynes granted the Respondent permission to appeal on the ground it was arguable the Judge had failed to identify or address the issues between the parties, the relevant Immigration Rules or the evidence and had made neither findings nor given reasons for his decision.

The Upper Tribunal Hearing

8. Both Appellants attended the hearing at which they were represented by Mr Mannan who had appeared for them in the First-tier Tribunal.

9. The representatives for both parties agreed that despite the deficiencies in the documentation contained in the Tribunal's files each Appellant was appealing the Judge's decision.

Submissions for the Respondent

10. Mr Kotas relied on the permission grounds and submitted the Judge's decision showed a singular lack of reasoning. He had not identified the issues in contention between the parties or the substance of the appeal. Para.10 of his decision stated his conclusions. At para.10(a) he had stated the "caseworker appears to be happy with the investment required by the Rules". This was factually incorrect. The Respondent was not happy with the proposed investment for the reasons given in each of the two decision.

11. In para.10(b) the Judge had disagreed with the Respondent about the business plan but had given no reasons for his disagreement and had not addressed the reasons for the Respondent's conclusions about the business plan contained in each of the decisions.

12. Para.10(c) referred to the Appellants being "legally obliged to work" part-time in Sainsbury's. This was incorrect. The Appellants were not legally obliged to work and the gravamen of the Respondent's objection was that they were not working in their proposed business venture.

13. Para.10(d) referred to the insurance certificate. The issue was not the insurance arranged by the Appellants but the risks against which they had failed to insure as identified in each decision. The concern was that the policy did not include public indemnity insurance.

14. Mr Kotas referred to those parts of the decisions explaining why the Respondent had refused the applications.

15. The Respondent had identified an inconsistency in the evidence, whether the Appellants were developing a website for Baby Designer or whether they were permitting Baby Designer to sell products on the Appellants' own e-commerce platform. There was no explanation why the Appellants had registered their company's website domain through another company. Their business plan's projected net profits were not based on any previous business operations. This undermined the weight that could be given to the business plan and had led the Respondent to conclude the forecasts were neither viable nor credible.

16. The Appellants had little idea of what insurance cover they had arranged and could not agree on what market research they had carried out. Each of them had failed to demonstrate sufficient business experience which suggested to the Respondent that their business model was not viable.

17. The Judge had failed to address these points or where he had addressed them had missed the point. Looking at the decision, the Respondent as the losing party simply had no idea why the appeals had been allowed.

18. Mr Kotas turned to the second ground of appeal and referred to paras.5 and 6 of the determination in *Ahmed and Another (PBS: admissible evidence) [2014] UKUT 365 (IAC)*. The Judge had at para.8 referred to a consideration of all documents but Mr Kotas submitted some of those documents were not admissible by reason of Section 85A of the 2002 Act and in particular pages 83-99 of the Appellants' bundle, being correspondence and management accounts both dated 15 July 2014 prepared by the Appellants' accountants.

19. He also submitted that s.85A of the 2002 Act effectively made any oral evidence at the hearing before the Judge inadmissible. In answer to a question from myself it appeared that the Appellants had been interviewed after their applications but not given any chance to comment on the interview records before the decision had been made. Mr Kotas concluded the SSHD's appeal should be allowed.

Submissions for the Applicants

20. Mr Mannan first addressed the SSHD's second ground for appeal. He submitted the determination in *Ahmed* was about new evidence and in fact the Appellants had not submitted any new evidence. The documents referred to by Mr Kotas were in fact in the Respondent's own bundle. I noted that the accountants had submitted their letter and accounts on 15 July 2014 and the Applicants' claims were sent on the same day to the SSHD although the accounts were not listed as an enclosed document in the application forms.

21. Mr Mannan referred to the record of the interview with Mr Jadala in which the interviewing officer had concluded he was credible. Credibility is an important element in any immigration appeal but it is not a sufficient condition to entitle an applicant to the grant of the requested leave or success in any appeal against refusal of that leave. An applicant may well be credible but simply fail to establish that he or she satisfies the requirements of the Immigration Rules. It is the meeting of these requirements which enables an applicant to claim entitlement to the grant of leave.

22. Mr Mannan continued that the Appellants had not been given an opportunity to respond to the interview records and in the case of Mr Jadala he referred me to the finding of the interviewing officer that Mr Jadala was credible. There was no new evidence before the Judge and the witness statements of the Appellants contained no new evidence. Consequently the SSHD's second ground for appeal must fail.

23. Mr Mannan then turned to the first ground for appeal. He pointed out it was clear the Judge had considered all the evidence before him because he had said so. He had considered all the relevant jurisprudence, again because he had explicitly said so. There was no explanation why the Judge had also said at para.3 that he was taking into account the changes in the Immigration Rules which came into force on 9 July 2012 affecting

the application of Article 8 of the European Convention. There was no claim under Article 8 and the Judge did not deal with any claim under Article 8.

24. He referred to para.10(a) of the decision and noted the SSHD had not commented on the source of funds available to the Appellants but could have done so. I pointed out there was no obligation on the SSHD to do so, particularly because whether the Appellants met the requirements of Appendix A had been deferred in the decision because the SSHD had refused the applications for Non-Points Scoring reasons. Mr Mannan said that in any event the Appellants had not submitted any fresh documents.

SSHD's Response

25. Mr Kotas submitted that the failure of the Respondent to be represented at the hearing was irrelevant and he compared the situation to a case where an Appellant had asked for an appeal to be determined without a hearing on the basis of the papers in the Tribunal file. In all events, the parties were entitled to know from the decision the reasons for the conclusions reached by the Judge. In these appeals the Judge had failed to address the reasons detailed in the SSHD's decisions and consequently the SSHD did not know why the appeals had been allowed. This amounted to a material error of law.

Findings and Consideration

26. It is insufficient for a Judge to state in a decision that he has noted the relevant law and read all the documents in the file and taken them into account as the sole reason for his conclusions. It is with regret that just as the grounds for appeal were generic, so indeed is the Judge's decision. A Judge must not only do justice but must be seen to do justice which means that he must give adequate reasons to justify his decision. Failure so to do is a material error of law and does not demonstrate the transparency of justice which the parties rightly expect from the Tribunal and to which the Tribunal is committed.

27. Adopting this criterion, the Judge has failed to address the lengthy reasons given in the decision notices under appeal why the SSHD considered the Applicants' business plan to be neither genuine nor viable.

28. I would mention in passing that it is of note that there was no indication either at the end of the interview or subsequently that Mr Jadala accepted it was a true and accurate reflection of what had happened.

29. The Respondent claimed the Judge took account of inadmissible evidence. I have already dealt with this to the extent that I have found that there was no subsequently filed evidence. I do not have to decide the apparent inconsistency of the dates in the management accounts prepared for the period ending June 2015 but dated July 2014.

30. The effect of the generic nature of the Judge's decision is that it is a material error of law such that it must be set aside in its entirety and the appeals heard afresh.

31. Having regard to the nature of the error of law and the absence of any relevant findings and the likely extent of the fact finding exercise, the provisions of s.12(2) Tribunals, Courts and Enforcement Act 2007 and the President's Practice Statement 7.2(b) I conclude the decision should be remitted to the First-tier Tribunal to decide afresh.

Anonymity

32. There was no request for an anonymity direction and having considered the appeals I find that none is warranted.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained a material error of law such that it must be set aside in its entirety and the matter is remitted to the First-tier Tribunal for hearing afresh by a Judge other than Judge Majid.

Signed/Official Crest Date: 14. xii. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal