



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/00665/2015  
IA/00673/2015  
IA/00675/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11 March 2016

Decision & Reasons sent  
on 16 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

KIRAN [Z]

SYED [S]

[S S]

(ANONYMITY DIRECTION NOT MADE)

and

Appellants

THE SECRETARY OF STATE FOR THE HOME  
DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Z Nasim, counsel, Milestone Chambers  
For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision of FTTJ Wyman, promulgated on 30 July 2015.

## Background

2. The first appellant was granted limited leave to enter the United Kingdom as a Tier 4 migrant until 28 June 2012. Her leave was extended as a Tier 1 Post-study Worker until 25 August 2014. The second appellant was granted leave to enter the United Kingdom as a Tier 1 dependent partner until 25 August 2014. The third appellant was born in the United Kingdom on 18 October 2011. The appellants also have another child, [IS], born in the United Kingdom on 4 March 2014. On 21 August 2014 the appellants sought further leave to remain under Tier 1 (Entrepreneur) of the Rules. Their applications were refused on 11 December 2014 because the Secretary of State was not satisfied that the first appellant had genuinely established a business with reference to paragraph 245DD(h); that she intended to invest the money referred to in Table 4 of Appendix A to the Immigration Rules; that the said money was genuinely available to her or that she did not intend to take employment in the United Kingdom other than under the terms of paragraph 245DE of the Rules. Paragraphs 245DD(h)(i),(iii) and (v) were in issue. Essentially, the Secretary of State raised concerns with the evidence submitted with the application; considered that the appellant had not adequately prepared for running a business and questioned the viability and credibility of the appellant's business plans and market research into her chosen business sector.
3. The appellants appealed.

## The hearing before the FTTJ

4. The first appellant, hereinafter referred to as the appellant, gave evidence in English. Evidence was given in relation to the matters referred to in the refusal letter. The FTTJ concluded that she was satisfied as to the provenance of the funds and that the appellant had been working in ASDA since graduating from the University of Wales with an MBA in 2012. The FTTJ found that the appellant had a "*complete lack of business experience following obtaining her qualification*" and concluded that the appellant's business plan was neither viable nor credible and dismissed the appeal under the Rules. Article 8 ECHR was also briefly considered, with the FTTJ finding that the appellants could continue their private and family lives in Pakistan.

## Error of law

5. The renewed grounds of appeal argue, firstly that the FTTJ failed to give weight to the fact that the other requirements of the Rules were met; secondly the grounds disagreed with what were considered to be the FTTJ's adverse finding regarding the delay in the appellant commencing her business; thirdly, it was said that the FTTJ speculated; fourthly, that she failed to consider the evidence before her and fifthly that the Article 8 assessment was fundamentally flawed.
6. Upper Tribunal Judge Goldstein granted permission; being persuaded that the first four grounds were arguable. It was also said that the FTTJ appeared to have made a mistake of fact.

7. The Secretary of State served a Rule 24 response on 27 January 2016. Essentially, the appeal was opposed and it was said that the grounds have no merit and merely disagree with the adverse outcome of the appeal without identifying any arguable, material, error of law.

### The hearing

8. Mr Nasim's submissions did not add materially to the grounds. He emphasised that the FTTJ had failed to have regard to the fact that the appellant was awarded all point under the Rules, which he said was unusual. He argued that the FTTJ failed to take into account that the appellant stopped working at ASDA in August 2013, when she was expecting her youngest child. Furthermore, he argued that there was no reference in the Rules to having to set up a business well in advance of a Tier 1 application. On the last point, he conceded that the FTTJ had made no finding that the appellant had unduly delayed in setting up the business concerned. He argued that it was irrelevant that the appellant's first year of trading netted a profit of £1,500. He said that it was normal for applicants to wait until leave to remain was granted before investing in their business. He further argued that the FTTJ had failed to take into account a number of positive matters, as set out in paragraph 18 of the grounds. I noted that these matters amounted to a repetition of the argument that the appellant had satisfied many aspects of the Rules.
9. Mr Parkinson said that the first ground related to the weight attached by the FTTJ to the evidence before her, which was solely a matter for her. With regard to ground 2, the FTTJ had not taken the delay point against the appellant. In relation to the small profit, this was a relevant issue. He added that the business in question, a management consultancy, did not require huge capital investment. In addition, the FTTJ noted that there was no reference to costs in the contract; the FTTJ was not required to particularise all the evidence before her and she had concluded that the appellant sought to embellish the relevance of her employment with ASDA. In closing, he said that the FTTJ was not wrong in noting a complete lack of business experience and that the appellant's only employment was on the checkout. The appellant had not discharged the burden of establishing a genuine business.
10. Mr Nasim had little to say in response, merely referring to paragraph 16 of the grounds, which attempted to explain why there was no reference to the cost of services in the appellant's business contracts.

### Decision on Error of Law

11. At the end of the hearing, I announced that I could detect no material error of law in the FTTJ's decision. My reasons are as follows.
12. The grounds of appeal amount to no more than disagreement with the FTTJ's findings.
13. The first ground argues that the FTTJ failed to give "*due weight*" to the aspects of the Rules which she could meet. I consider this ground to be lacking in merit. What weight the FTTJ gave to this issue was a matter for her. More importantly, the focus of the appeal was on the requirements of the Rules relating to the genuineness and viability of the business concerned.
14. Ground 2 is misconceived, as accepted by Mr Nasim. The FTTJ did not agree with the Secretary of State's view as to the very late start to this business. At [48] of the decision, the FTTJ recognizes that the "*key reason*" why the appellant started her business so late was that she had given birth to her second son only in March 2014.
15. The FTTJ at [49] noted that the annual profit of between £1,100 and £1,500 made in the first year of operating would not be enough to support a family nor justify investment. Ground 3 argues that it was unfair of the FTTJ to treat these figures as determinative of the "*genuineness*" of the business. This argument misses the point, which is that paragraph 245DD(h)(iii) also refers to the viability of the business. In view of the minimal profit made, I consider the FTTJ did not fall into error in taking this matter into account in terms of the viability of the business. The same ground criticises the FTTJ for having concerns as to the absence of any reference to costs in the contracts submitted with the application. The explanation for this is far from clear and does not appear to have been canvassed before the FTTJ. I conclude that the FTTJ was correct in noting the absence of vital information from the contracts and taking this into consideration in finding that the appellant had not established a genuine business.
16. Ground 4 contains a repetition of the first ground, about which I will say no more. The last ground appears to argue that the FTTJ ought not to have considered Article 8 ECHR, as an application had not been made. At the same time it is said that the FTTJ failed to give due weight to the fact that the appellants met the substantive requirements of the Rules. Mr Nasim did not seek to expand on this ground during the hearing and I note that permission was not expressly granted on this matter. I find there to be no error in the FTTJ's indication that there would be no interference in the private and family lives of the appellants caused by their return to Pakistan.
17. The appeal is dismissed.

**Conclusion**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I uphold the decision of the FTTJ.

No anonymity direction was made by the FTTJ and I am aware of no reasons for making such a direction now.

Signed

Date: 12 March 2016

Deputy Upper Tribunal Judge Kamara