



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

Akhter and another (paragraph 245AA: wrong format) [2014] UKUT 00297 (IAC)

THE IMMIGRATION ACTS

**Heard at Field House, London
On 08 April and 13 May 2014**

**Determination Promulgated
On 13th June 2014**

Before

**The President, The Hon. Mr Justice McCloskey
Upper Tribunal Judge Clive Lane**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PARVAIZ AKHTER AND CHANDNI MAQBOOL

Respondents

Representation:

Appellant: Mr P Duffy, Senior Home Office Presenting Officer
Respondents: Mr I MacDonald QC and Mr M Iqbal (of Counsel) instructed by
Farani Javid Taylor Solicitors

A bank letter, which does not specify the postal address, landline telephone number and email address of the account holders is not thereby "in the wrong format" for the purposes of paragraph 245AA of the immigration rules (documents not submitted with applications).

DETERMINATION AND REASONS

1. These two appeals have been conjoined from the outset as they arise out of the same facts and circumstances. They were heard in tandem with two other appeals, namely the cases of Fayyaz and Durrani,¹ as all of these cases raise certain comparable issues relating to the proper construction of those provisions of the Immigration Rules regulating the acquisition of what is known as Tier 1 (Entrepreneur) Migrant Status (described hereinafter as "*entrepreneurial migrant status*"). The relevant provisions of the Immigration Rules are appended hereto.
2. Whereas the Secretary of State for the Home Department ("*the Secretary of State*") is the appealing party, we shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
3. Parvaiz Akhter and Chandni Maqbool (hereinafter "*the Appellants*") are nationals of Pakistan, aged 31 and 33 respectively. They applied, unsuccessfully, to the Secretary of State for entrepreneurial migrant status. Their ensuing appeals to the First-tier Tribunal ("*the FtT*") were allowed. The Secretary of State appeals, with permission, to this Tribunal.
4. From December 2009 and February 2010 the Appellants, in turn, have been lawfully present in the United Kingdom, having the status of Tier 4 (General) Student. On 12 December 2012 they made a combined application to the Secretary of State for Entrepreneurial Migrant Status. They were proposing to operate a business enterprise jointly. Accompanying and forming part of their application were several documents. These included in particular the following:
 - (a) A letter dated 05 December 2012 from the HBL Bank of Lahore, certifying that two named persons had a current account in the bank with a credit balance of a specified amount which was "*available at all times and transferrable anywhere including UK*" on request of the customers. It further confirmed the identity of the relevant authorised state financial institution and enclosed a statement of account.
 - (b) A Declaration (or affidavit) identifying and signed by the two bank customers confirming a credit bank balance of approximately £260,000, describing the Appellants as "*family friends*" and affirming the availability of £200,000 to the Appellants "*to set up business in UK*".
 - (c) An accompanying written confirmation signed by a Lahore lawyer.
5. During the period of the next four months, the UK Border Agency ("*UKBA*") corresponded twice with one of the Appellants. The first letter intimated that

¹ Fayyaz (Entrepreneurs: paragraph 41-SD(a)(i) - "provided to") [2014] UKUT 00296 (IAC) and Durrani (Entrepreneurs: bank letters; evidential flexibility) [2014] UKUT 00295 (IAC)

with effect from 30 January 2013 the Immigration Rules had been revised by the introduction of a genuine entrepreneur test and a requirement for applicants to hold the necessary minimum funds, or invest them in the relevant business, on a continuing basis, applicable to all applications, including those submitted prior to the operative date. The purpose of these revisions was described as to “... ensure that abuse of this route is tackled so that we can continue to attract the brightest and the best”. In the second of the two letters, written approximately one month later, the Appellant Ms Maqbool was requested to attend an interview at a specified time, date and place. This Appellant’s witness statement and the letter combine to confirm that the interview was conducted on 28 May 2013. This Appellant asserts:

“In the interview I submitted a further letter from HBL Bank with a Declaration and letter from Law Associates. I also explained to the interviewer that I was receiving the funds from my father’s friend in Pakistan, who wanted to invest in business in the UK.”

Chronologically, the next material development was the Secretary of State’s refusal decision, contained in a UKBA letter dated 18 June 2013.

6. In common with the Appellants in the related appeals and, indeed, every applicant for entrepreneurial migrant status, it was necessary for these Appellants to score 75 points in respect of “attributes”. This is not in dispute. It is also common ground that the minimum funding to which they had to demonstrate access was, in their particular case, £200,000. Further, they had to achieve 10 points in respect of the English language requirement and 10 points in respect of the maintenance (funds) requirement: they did so and nothing turns on this.
7. We turn to examine the Secretary of State’s refusal decision. Having made reference to the three documents which we have highlighted in [4] above, the letter continues:

“However, the bank letter is not acceptable because it does not state your name and the name of your entrepreneurial team partner. Furthermore, no contact details for the third party were given. The bank letter must confirm the third party’s contact details, including their full address including postal code, landline phone number and any email address. In accordance with paragraph 41 of Appendix A of the Immigration Rules, you are therefore not considered to have access to the funds that you have claimed.”

As a result, the Appellants’ claim for 25 points was allocated a score of 0 points. Consequentially, their further claims for 25 points in respect of “funds held in regulated financial institution” and 25 points in respect of “funds disposal in the United Kingdom” were also refused. This was described in argument as the “domino” effect. Thus they scored 0 points instead of the requisite 75.

8. The appeal to and resulting decision of the FtT ensued. As in the related Durrani case, the first ground of appeal advanced was that paragraph 41-SD(a) of the Immigration Rules did not govern the Appellants’ application. Rather, it was

governed only by paragraph 41-SD(b). We pause to observe that on appeal to this Tribunal this argument was no longer pursued. The alternative argument, which was maintained before us, was that if the application was governed by paragraph 41-SD(a)(i), the sixth of the 11 listed requirements could not be satisfied and was, hence, absurd. This alternative, second ground of appeal, was based on certain contentions concerning the relationship of banker and customer.

9. The FtT rejected the first ground of appeal. With regard to the second, alternative ground, the Judge, having made reference to requirements (6) and (9) in paragraph 41-SD(a)(i), stated in [10]:

“Providing the bank has its customer’s authority to do so, then I see no reason why this would be impermissible. Indeed, that is precisely what happened after the date of the decision; the Appellant’s bundle includes a letter from the Manager of Habib Bank dated 28 June 2013”

It was common ground, both at first instance and upon the hearing of this appeal, that the Appellants could not rely on this letter, by virtue of section 85A of the Nationality, Immigration and Asylum Act 2002, as it postdates the impugned decision. However, this Tribunal was invited to take it into account in its consideration of the construction issues. As noted by the FtT, it post dates the Secretary of State’s decision. It is addressed *“for the attention of the UK Border Agency”* and states in material part:

“In regards to the Tier 1 application of [the Appellants]

We have the consent of [Mr S and Mrs G] to share these findings ... We confirm that from 04/12/2012 to 28/06/2013 [Mr S and Mrs G] have £259,740.52 available for investment in a business in the United Kingdom on deposit with this financial institution. We have been informed by our customer that all of these funds are available for investment in the United Kingdom for the above mentioned [Appellants] business

Habib Bank Limited is regulated by the State Bank of Pakistan The sum of £200,000 is freely disposable/transferrable to the United Kingdom at the discretion of our customer.”

This letter also specified the postal address, phone number and email address of the Bank’s customers.

10. Thus the FtT rejected both the primary and alternative grounds of appeal. However, the appeal was allowed. The Judge reasoned that the Secretary of State’s decision was not in accordance with the law having regard to the principle of fairness and a failure to give effect to the *“evidential flexibility”* policy. Permission to appeal to this Tribunal was granted to the Secretary of State on the basis that the FtT had arguably erred in law in thus holding. The Appellants, by the mechanism of a Rule 24 notice (*qua* Respondents), raised before this Tribunal the absurdity argument which had been rejected by the FtT.

11. In common with the other, related appeals, the centrepiece of the arguments developed before this Tribunal was that the Secretary of State's decision was not in accordance with the law as it was based on a literal construction of certain aspects of paragraph 41-SD(a)(i) of the Rules which generates absurd results. As in the other cases, the Appellants' arguments focused on requirements (6), (9) and (10). The absurdity arguments are rehearsed in our determinations in the other two appeals and we do not repeat them here.
12. In this appeal, the focus of attention is the Habib Bank letter of 05 December 2012. Juxtaposing this letter with the table of requirements in paragraph 41-SD(a)(i) of the Rules, we consider that this letter suffered from two defects. First, it did not state the names of the Appellants. Second, it did not specify the postal address, landline phone number and any email address of the account holders. Thus the letter was non-compliant with requirements (6) and (10). Our analysis is that it was compliant with all of the other nine requirements. This analysis is duly reflected in the Secretary of State's refusal decision.
13. We consider that the two failures which we have identified cannot be attributed to any absurdity or anomaly in the requirements of the Rules under scrutiny. We reject the Appellants' arguments that in order to avoid absurdity, it is necessary (a) to substitute the words "*account holder's*" for "*applicant's*" in requirement (6), deleting the remaining words and (b) to substitute "*account holder*" for "*third party*" in requirement (10). We have set out in our decision in the Durrani appeal our reasons for thus concluding. We would add that, in our judgement, this appeal raises no further issue in relation to the words "*provided to*" in requirement (9) since the bank later (as noted above) stated unequivocally that the necessary funds were "*available at all times and transferable anywhere including UK on his [ie the customer's] request.*" We would, in any event, repeat the construction of "*provided to*" which we have espoused in Fayyaz: see [28]. This disposes of the issues raised in the Rule 24 Notice of the Appellants (*qua* Respondents).
14. We turn to address the issue raised in the Secretary of State's appeal, which is whether the FtT erred in law in allowing the Appellants' appeals on the ground noted in [10] above. As the FtT recognised in [18] and [19] of its determination, the effect of this finding was that the Secretary of State had not made a lawful decision and was, in consequence, under a duty to do so. In [14], the Judge noted, correctly, that paragraph 245AA of the Immigration Rules had been introduced with effect from 06 September 2012. The determination of the Appellants' application postdated this, on 18 June 2013. It is common ground that paragraph 245AA applied to this application. Paragraph 245AA was at that time in the following terms:

"245AA. Documents not submitted with applications

(a) Where Part 6A or any appendices referred to in Part 6A state that specified documents must be provided, the UK Border Agency will only consider documents that have been submitted with the application, and will only consider documents submitted after the application where they are submitted in accordance with subparagraph (b).

(b) If the applicant has submitted:

(i) A sequence of documents and some of the documents in the sequence have been omitted (for example, if one bank statement from a series is missing);

(ii) A document in the wrong format; or

(iii) A document that is a copy and not an original document,

the UK Border Agency may contact the applicant or his representative in writing, and request the correct documents. The requested documents must be received by the UK Border Agency at the address specified in the request within 7 working days of the date of the request.

(c) The UK Border Agency will not request documents where a specified document has not been submitted (for example an English language certificate is missing), or where the UK Border Agency does not anticipate that addressing the omission or error referred to in subparagraph (b) will lead to a grant because the application will be refused for other reasons.

(d) If the applicant has submitted a specified document:

(i) in the wrong format, or

(ii) that is a copy and not an original document,

the application may be granted exceptionally, providing the UK Border Agency is satisfied that the specified documents are genuine and the applicant meets all the other requirements. The UK Border Agency reserves the right to request the specified original documents in the correct format in all cases where (b) applies, and to refuse applications if these documents are not provided as set out in (b)."

The next step in the Judge's analysis was to refer to two documents appended to the decision of the Upper Tribunal in Rodriguez (Flexibility Policy) [2013] UKUT 00042 (IAC). These are the "Evidential Flexibility Instruction" and the UKBA letter of 19 May 2011. The Judge stated in [15]:

"It is arguable that paragraph 245AA needs to be read in conjunction with the Evidential Flexibility instructions and the UKBA's letter of 19 May 2011....."

There is no explicit indication that the policy has been withdrawn and it is perfectly possible for policy and rules to co-exist"

[Our emphasis]

It is evident that the “policy” to which the Judge was referring was a combination of the two specified documents.

15. We consider that the Judge erred in law in assuming that this “policy” remained in existence following the introduction of paragraph 245AA and, hence, applied to the Appellants’ application. The question of whether a policy exists, in any given context, is a question of fact. There was no concession to this effect. Absent a concession, an evidential foundation for this finding was necessary. There was none. The contrary was not argued before this Tribunal. Furthermore, the additional evidence brought to the attention of the Court of Appeal in the Rodriguez case suggests that the documents in question had no enduring force or effect when paragraph 245AA of the Rules was introduced: see Secretary of State for the Home Department – v – Rodriguez and Others [2014] EWCA Civ 2, [47] and [65]. The information contained in these passages, though not formally admitted in evidence by the Court of Appeal, was not challenged by the Appellants before this Tribunal. Finally, and in any event, the Court of Appeal reversed the Upper Tribunal’s finding that the documents under scrutiny constituted a new policy: see [87].
16. The conclusion that the FtT erred in law in allowing the appeals follows inexorably. Its decision must be set aside accordingly.
17. We proceed to re-make the decision of the FtT. The sole question is whether the Secretary of State’s refusal decision was not in accordance with the law by reference to paragraph 245AA of the Immigration Rules, which applied at the time when the Appellants’ joint application was determined. We have reproduced paragraph 245AA in [14] above. It provides that UKBA “may” request the applicant to supply “*the correct documents*” in any of three cases, that is to say where –
 - (a) A document has been (or documents have been) omitted from a sequence of documents; or
 - (b) A document is in the wrong format; or
 - (c) A copy, rather than original, document has been furnished.

See sub-paragraph (b).

18. The exercise of this discretionary power, or choice, is informed by sub-paragraph (c). We refer to our finding in [12] above that the material defects in the Appellant’s application were that the bank letter did not state the names of the Appellants and did not specify the postal address, landline phone number and any email address of the account holders. We are of the opinion that paragraph

245AA(b), accorded its ordinary and natural meaning, is not engaged in these circumstances. We consider that an application suffering from these shortcomings does not fall within any of the three categories. Accordingly, the Appellants cannot invoke paragraph 245 AA in support of a contention that they should have been given an opportunity to rectify the deficiencies in their application. It follows that the Secretary of State did not err in law in not offering this facility to them. Thus the decision of the FtT cannot survive.

DECISION

18. We set aside the decision of the FtT and re-make same by dismissing the Appellants' appeals. Thus we allow the Secretary of State's appeal to this Tribunal.

Seamus McCloskey.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 24th May 2014

Appendix

Relevant provisions of Immigration Rules [HC 395, as amended]

Part 6A - Points-based system

Tier 1 (Entrepreneur) Migrants

245D. Purpose of this route and meaning of business

- (a) This route is for migrants who wish to establish, join or take over one or more businesses in the UK.
- (b) For the purpose of paragraphs 245D to 245DF and paragraphs 35 to 53 of Appendix A 'business' means an enterprise as:
- (i) a sole trader,
 - (ii) a partnership, or
 - (iii) a company registered in the UK.

245DA. Entry to the UK

All migrants arriving in the UK and wishing to enter as a Tier 1 (Entrepreneur) Migrant must have a valid entry clearance for entry under this route. If they do not have a valid entry clearance, entry will be refused.

245DB. Requirements for entry clearance

To qualify for entry clearance as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below. If the applicant meets those requirements, entry clearance will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal.
- (b) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.
- (c) The applicant must have a minimum of 10 points under paragraph 1 to 15 of Appendix B.
- (d) The applicant must have a minimum of 10 points under **paragraph 1 to 2 of** Appendix C.
- (e) An applicant who has, or was last granted, leave as a Student or a Postgraduate Doctor or Dentist, a Student Nurse, a Student Writing-Up a Thesis, a Student Re-Sitting an Examination or as a Tier 4 Migrant and:
- (i) is currently being sponsored by a government or international scholarship agency, or
 - (ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,
- must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents as set out in paragraph 245A above, to show that this requirement has been met.
- (f) Except where the applicant has had entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator in the 12 months immediately before the date of

application and is being assessed under Table 5 of Appendix A, the Entry Clearance Officer must be satisfied that:

- (i) the applicant genuinely intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months;
- (ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);
- (iii) that the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent by his business or businesses. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A;

(iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DC;

(g) In making the assessment in (f), the Entry Clearance Officer will assess the balance of probabilities. The Entry Clearance Officer may take into account the following factors:

- (i) the evidence the applicant has submitted;
- (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
- (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;
- (iv) the applicant's previous educational and business experience (or lack thereof); (v) the applicant's immigration history and previous activity in the UK; and
- (vi) any other relevant information.

(h) The Entry Clearance Officer reserves the right to request additional information and evidence to support the assessment in (f), and to refuse the application if the information or evidence is not provided. Any requested documents must be received by the UK Border Agency at the address specified in the request within 28 working days of the date of the request.

(i) If the Entry Clearance Officer is not satisfied with the genuineness of the application in relation to a points-scoring requirement in Appendix A, those points will not be awarded.

(j) The Entry Clearance Officer will not carry out the assessment in (f) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.

245DC. Period and conditions of grant

(a) Entry clearance will be granted for a period of 3 years and four months and will be subject to the following conditions:

- (i) no recourse to public funds,
- (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
- (iii) no employment other than working for the business(es) the applicant has established, joined or taken over, and
- (iv) no employment as a professional sportsperson (including as a sports coach).

245DD. Requirements for leave to remain

To qualify for leave to remain as a Tier 1 (Entrepreneur) Migrant under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

(a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.

(b) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.

(c) The applicant must have a minimum of 10 points under paragraphs 1 to 15 of Appendix B.

(d) The applicant must have a minimum of 10 points under paragraphs 1 to 2 of Appendix C.

(e) The applicant who is applying for leave to remain must have, or have last been granted, entry clearance, leave to enter or remain:

- (i) as a Highly Skilled Migrant,
- (ii) as a Tier 1 (General) Migrant,
- (iii) as a Tier 1 (Entrepreneur) Migrant,
- (iv) as a Tier 1 (Investor) Migrant,
- (v) as a Tier 1 (Graduate Entrepreneur) Migrant
- (vi) as a Tier 1 (Post-Study Work) Migrant,
- (vii) as a Businessperson,
- (viii) as an Innovator,
- (ix) as an Investor,
- (x) as a Participant in the Fresh Talent: Working in Scotland Scheme,
- (xi) as a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme),
- (xii) as a Postgraduate Doctor or Dentist,
- (xiii) as a Self-employed Lawyer,
- (xiv) as a Student,
- (xv) as a Student Nurse,
- (xvi) as a Student Re-sitting an Examination,
- (xvii) as a Student Writing Up a Thesis,
- (xviii) as a Work Permit Holder,
- (xix) as a Writer, Composer or Artist,
- (xx) as a Tier 2 Migrant
- (xxi) as a Tier 4 Migrant, or
- (xxii) as a Prospective Entrepreneur

(f) An applicant who has, or was last granted, leave as a Student or a Postgraduate Doctor or Dentist, Student Nurse, Student Re-Sitting an Examination, a Student Writing-Up a Thesis or as a Tier 4 Migrant and:

- (i) is currently being sponsored by a government or international scholarship agency, or
- (ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,

must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents as set out in paragraph 245A above, to show that this requirement has been met.

(g) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.

(h) Except where the applicant has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator and is being assessed under Table 5 of Appendix A, the UK Border Agency must be satisfied that:

(i) the applicant genuinely:

- (1) intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months, or
- (2) has established, taken over or become a director of one or more businesses in the UK and continues to operate that business or businesses; and

(ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);

(iii) that the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent by his business or businesses. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A;

(iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DE.

(i) In making the assessment in (h), the UK Border Agency will assess the balance of probabilities. The UK Border Agency may take into account the following factors:

- (i) the evidence the applicant has submitted;
- (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
- (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;
- (iv) the applicant's previous educational and business experience (or lack thereof);
- (v) the applicant's immigration history and previous activity in the UK;
- (vi) where the applicant has already registered in the UK as self-employed or as the director of a business, and the nature of the business requires mandatory accreditation, registration and/or insurance, whether that accreditation, registration and/or insurance has been obtained; and
- (vii) any other relevant information.

(j) The UK Border Agency reserves the right to request additional information and evidence to support the assessment in (h), and to refuse the application if the information or evidence is not provided. Any requested documents must be received by the UK Border Agency at the address specified in the request within 28 working days of the date of the request.

(k) If the UK Border Agency is not satisfied with the genuineness of the application in relation to a points-scoring requirement in Appendix A, those points will not be awarded.

(l) The UK Border Agency will not carry out the assessment in (h) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.

245DE. Period, conditions and curtailment of grant

(a) Leave to remain will be granted:

- (i) for a period of 2 years, to an applicant who has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant,
- (ii) for a period of 3 years, to any other applicant.

(b) Leave to remain under this route will be subject to the following conditions:

- (i) no recourse to public funds,
- (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
- (iii) no employment, other than working for the business or businesses which he has established, joined or taken over, and
- (iv) no employment as a professional sportsperson (including as a sports coach).

(c) Without prejudice to the grounds for curtailment in paragraph 323 of these Rules, leave to enter or remain granted to a Tier 1 (Entrepreneur) Migrant may be curtailed if:

(i) within 6 months of the date specified in paragraph (d), the applicant has not done one or more of the following things:

- (1) registered with HM Revenue and Customs as self-employed,
- (2) registered a new business in which he is a director, or
- (3) registered as a director of an existing business, or

(ii) the funds referred to in the relevant sections of Appendix A cease to be available to him, except where they have been spent in the establishment or running of his business or businesses. 'Spent' excludes spending on the applicant's own remuneration. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A.

(d) The date referred to in paragraph (c) is:

- (i) the date of the applicant's entry to the UK, in the case of an applicant granted entry clearance as a Tier 1 (Entrepreneur) Migrant where there is evidence to establish the applicant's date of entry to the UK,
- (ii) the date of the grant of entry clearance to the applicant, in the case of an applicant granted entry clearance as a Tier 1 (Entrepreneur) Migrant where there is no evidence to establish the applicant's date of entry to the UK, or
- (iii) the date of the grant of leave to remain to the applicant, in any other case.

(e) Paragraph 245DE(c) does not apply where the applicant's last grant of leave prior to the grant of the leave that he currently has was as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator.

245DF. Requirements for indefinite leave to remain

To qualify for indefinite leave to remain as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, indefinite leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

(a) DELETED

(b) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.

(c) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.

(d) The applicant must have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with paragraph 33BA, unless the applicant is under the age of 18 or aged 65 or over at the date the application is made.

(e) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.

Appendix A

Attributes for Tier 1 (Entrepreneur) Migrants

35. An applicant applying for entry clearance, leave to remain or indefinite leave to remain as a Tier 1 (Entrepreneur) Migrant must score 75 points for attributes.

36. Subject to paragraph 37, available points for applications for entry clearance or leave to remain are shown in Table 4.

36A. An applicant who is applying for leave to remain and has, or was last granted, entry clearance, leave to enter or leave to remain as:

- (i) a Tier 4 Migrant,
- (ii) a Student,
- (iii) a Student Nurse,
- (iv) a Student Re-sitting an Examination, or
- (v) a Student Writing Up a Thesis,

will only be awarded points under the provisions in (b) in Table 4.

37. Available points are shown in Table 5 for an applicant who:

(a) has had entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator in the 12 months immediately before the date of application, or

(b) is applying for leave to remain and has, or was last granted, entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator.

38. Available points for applications for indefinite leave to remain are shown in Table 6.

39. (a) Notes to accompany Table 4 appear below Table 4.

(b) Notes to accompany Tables 4, 5 and 6 appear below Table 6.

Table 4: Applications for entry clearance or leave to remain referred to in paragraph 36

Investment and business activity	Points
(a) The applicant has access to not less than £200,000, or	25
(b) The applicant has access to not less than £50,000 from:	

<p>(i) one or more registered venture capitalist firms regulated by the Financial Services Authority,</p> <p>(ii) one or more UK Entrepreneurial seed funding competitions which is listed as endorsed on the UK Trade & Investment website, or</p> <p>(iii) one or more UK Government Departments, or Devolved Government Departments in Scotland, Wales or Northern Ireland, and made available by the Department(s) for the specific purpose of establishing or expanding a UK business, or</p> <p>(c) The applicant:</p> <p>(i) is applying for leave to remain,</p> <p>(ii) has, or was last granted, leave as a Tier 1 (Graduate Entrepreneur) Migrant, and</p> <p>(iii) has access to not less than £50,000, or</p> <p>(d) The applicant:</p> <p>(i) is applying for leave to remain,</p> <p>(ii) has, or was last granted, leave as a Tier 1 (Post-Study Work) Migrant,</p> <p>(iii) was, on a date falling within the three months immediately prior to the date of application,</p> <p>(1) registered with HM Revenue and Customs as self-employed, or</p> <p>(2) registered as a new business in which he is a director, or</p> <p>(3) registered as a director of an existing business,</p> <p>(iv) is working in an occupation which appears on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the Codes of Practice in Appendix J, and provides the specified evidence in paragraph 41-SD. "Working" in this context means that the core service his business provides to its customers or clients involves the business delivering a service in an occupation at this level. It excludes any work involved in administration, marketing or website functions for the business, and</p> <p>(v) has access to not less than £50,000</p>	
The money is held in one or more regulated financial institutions	25
The money is disposable in the UK	25

Investment: notes

40. DELETED.

41. An applicant will only be considered to have access to funds if:

(a) The specified documents in paragraph 41-SD are provided to show cash money to the amount required (this must not be in the form of assets);

(b) The specified documents in paragraph 41-SD are provided to show that the applicant has permission to use the money to invest in a business in the UK;

(c) The money is either held in a UK regulated financial institution or is transferable to the UK; and

(d) The money will remain available to the applicant until such time as it is spent in the establishment or running of the applicant's business or businesses. 'Spent' excludes spending on the applicant's own remuneration. The UK Border Agency reserves the right to request further evidence or otherwise verify that the money will remain available, and to refuse the application if this evidence is not provided or it is unable to satisfactorily verify. 'Available to him' means that the funds are:

- (1) in his own possession,
- (2) in the financial accounts of a UK incorporated business of which he is the director, or
- (3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A.

41-SD. The specified documents in Table 4 and paragraph 41 are as follows:

(a) The specified documents to show evidence of the money available to invest are one or more of the following specified documents:

(i) A letter from each financial institution holding the funds, to confirm the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). Each letter must:

- (1) be an original document and not a copy,
- (2) be on the institution's official headed paper,
- (3) have been issued by an authorised official of that institution,
- (4) have been produced within the three months immediately before the date of your application,
- (5) confirm that the institution is regulated by the appropriate body,
- (6) state the applicant's name, and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix, (7) state the date of the document, (8) confirm the amount of money available from the applicant's own funds (if applicable) that are held in that institution,
- (9) confirm the amount of money provided to the applicant from any third party (if applicable) that is held in that institution,
- (10) confirm the name of each third party and their contact details, including their full address including postal code, landline phone number and any email address, and
- (11) confirm that if the money is not in an institution regulated by the FSA, the money can be transferred into the UK;

or

(ii) For money held in the UK only, a recent personal bank or building society statement from each UK financial institution holding the funds, which confirms the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). The statements must satisfy the following requirements:

- (1) The statements must be original documents and not copies;
- (2) The bank or building society holding the money must be based in the UK and regulated by the Financial Services Authority;
- (3) The money must be in cash in the account, not Individual Savings Accounts or assets such as stocks and shares;
- (4) The account must be in the applicant's own name only (or both names for an entrepreneurial team), not in the name of a business or third party;
- (5) Each bank or building society statement must be on the institution's official stationary and confirm the applicant's name and, where relevant, the applicant's entrepreneurial team partner's name, the account number, the date of the statement, and the financial institution's name and logo;
- (6) The bank or building society statement must have been issued by an authorised official of that institution and produced within the three months immediately before the date of the application; and

(7) If the statements are printouts of electronic statements from an online account, they must either be accompanied by a supporting letter from the bank, on company headed paper, confirming the authenticity of the statements, or bear the official stamp of the bank in question on each page of the statement;

or

(iii) For £50,000 from a Venture Capital firm, Seed Funding Competition or UK Government Department only, a recent letter from an accountant, who is a member of a recognised UK supervisory body, confirming the amount of money made available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). Each letter must:

- (1) be an original document and not a copy,
- (2) be on the institution's official headed paper,
- (3) have been issued by an accountant engaged by the Venture Capital firm, Seed funding competition or UK Government Department to provide the information,
- (4) have been produced within the three months immediately before the date of the application,
- (5) state the applicant's name, and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix,
- (6) state the date of the document,
- (7) confirm the amount of money available to the applicant or the applicant's business from the Venture Capital firm, Seed funding competition or UK Government Department, and
- (8) confirm the name of the Venture Capital firm, Seed funding competition or UK Government Department and the contact details of an official of that organisation, including their full address, postal code, landline phone number and any email address,

(b) If the applicant is applying using money from a third party, he must provide all of the following specified documents:

(i) An original declaration from every third party that they have made the money available for the applicant to invest in a business in the United Kingdom, containing:

- (1) the names of the third party and the applicant (and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix),
- (2) the date of the declaration;
- (3) the applicant's signature and the signature of the third party (and the signature of the applicant's team partner if the applicant is applying under the provisions in paragraph 52 of this Appendix),
- (4) the amount of money available to the applicant from the third party in pounds sterling,
- (5) the relationship(s) of the third party to the applicant,
- (6) if the third party is a venture capitalist firm, confirmation of whether this body is an Financial Services Authority-registered venture capital firm, in the form of a document confirming the award and the amount of money, and including the Financial Services Authority registration number that the firm's permission to operate as a Venture Capital firm is listed as permitted under,
- (7) if the third party is a UK entrepreneurial seed funding competition, a document confirming that the applicant has been awarded money and that the competition is listed as endorsed on the UK Trade & Investment website, together with the amount of the award and naming the applicant as a winner,
- (8) if the third party is a UK Government Department, a document confirming that it has made money available to the applicant for the specific purpose of establishing or expanding a UK business, and the amount, and
- (9) confirmation that the money will remain available to the applicant until such time as it is transferred to the applicant or the applicant's business.

and

(ii) A letter from a legal representative confirming the validity of signatures on each third-party declaration provided, which confirms that the declaration(s) from the third party/parties contains the signatures of the people stated. It can be a single letter covering all third-party permissions, or several letters from several legal representatives. It must be an original letter and not a copy, and it must be from a legal representative permitted to practise in the country where the third party or the money is. The letter must clearly show the following:

- (1) the name of the legal representative confirming the details,
- (2) the registration or authority of the legal representative to practise legally in the country in which the permission or permissions was/were given,
- (3) the date of the confirmation letter,
- (4) the applicant's name (and the name of the applicant's team partner if the applicant is applying under the provisions in paragraph 52 of this Appendix),
- (5) the third party's name,
- (6) that the declaration from the third party is signed and valid, and
- (7) if the third party is not a venture capitalist firm, seed funding competition or UK Government Department, the number of the third party's identity document (such as a passport or national identity card), the place of issue and dates of issue and expiry.

(c) If the applicant is applying under the provisions in (d) in Table 4, he must provide:

- (i) his job title,
- (ii) the Standard Occupational Classification (SOC) code of the occupation that the applicant is working in, which must appear on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the Codes of Practice in Appendix J,
- (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's name (and the name of the business if applicable) together with the business activity,
- (2) Article(s) or online links to article(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) Personal registration with a trade's body linked to the applicant's occupation.

and

(iv) one or more contracts showing trading. If a contract is not an original the applicant must sign each page of the contract. The contract must show:

- (1) the applicant's name and the name of the business,
- (2) the service provided by the applicant's business; and
- (3) the name of the other party or parties involved in the contract and their contact details, including their full address, postal code, landline phone number and any email address.

42. Points will only be awarded to an applicant to whom Table 4, paragraph (b) applies if the total sum of those funds derives from one or more of the sources listed in (b)(i) to (iii) in Table 4.

43. A regulated financial institution is one, which is regulated by the appropriate regulatory body for the country in which the financial institution operates.