



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/16789/2013

THE IMMIGRATION ACTS

Heard at Field House
On 2nd April 2014

Determination Promulgated
On 07th April 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR MUHAMMAD ADEEL SHAHZAD

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal (instructed by Farani. Javid. Taylor, Solicitors)
For the Respondent: Mr G Saunders (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Respondent appeals to the Upper Tribunal, with permission, against the determination of the First-tier Tribunal (Judge Higgins) promulgated on 6th February 2014 by which it allowed the Appellant's appeal against the Secretary of State's decision to refuse him leave to remain as Tier 1 (Entrepreneur) Migrant.
2. Although the Secretary of State is the Appellant before the Upper Tribunal, I will continue to refer to her as the Respondent and Mr Shahzad as the Appellant for the sake of clarity and continuity.

3. The Appellant had entered the UK on 25th February 2006 as a student and that leave was subsequently extended as a Tier 4 (General) Student Migrant and then as a Tier 1 (Post Study Work) Migrant.
4. He then made application as a Tier 1 (Entrepreneur) Migrant on 29th August 2012. The Immigration Rules changed at the end of 2012 by virtue of HC760. The changes relevant to this Appellant were said to apply to applications made but not yet decided. The changes altered the required documentation to be submitted with the application. The Secretary of State, quite properly wrote to the Appellant pointing out the changes and what was required in addition to what he had already submitted. He sent in various documents and then in a decision dated 26th April 2013 the Secretary of State refused his application.
5. As pointed out by the First-tier Tribunal Judge in paragraph 7 - 11 of his determination the Secretary of State refused the application for four reasons. The first was that he had not produced the requisite documents to show that he was registered as a director of the company on a date within 3 months prior to the application.
6. The second was that his occupation as "Business Consultant" was not a job listed in Appendix J.
7. The third was that the contracts required to show trading did not meet the Rules and finally that the documents that were produced to show the availability of funds did not meet the Rules.
8. In his determination the Judge said that the document with reference to the Appellant's directorship that the Secretary of State said was absent was not required by the Rules. If it was referred to in the Guidance, but that Guidance was not produced. It was not an objection raised in the letter seeking additional information sent by the Secretary of State and if it was inadequate it should have been. There was clear evidence that the Appellant was indeed registered as a director at the required time. That was a finding open to the Judge and not in error.
9. Secondly, the Judge noted that while "Business Consultant" did not appear in Appendix J, "Management Consultant and Business Analysts" did and he found them to be one and the same. Again that is a finding open to him and not an error; it is no more than, for example, finding that a hair stylist and a hairdresser are one and the same or an actress and a stage performer.
10. Thirdly, with regard to the Contract, due to the request from the Secretary of State, the information was contained in two documents rather than one but taken together they met the requirement of the Rules. In those circumstances again the Judge was entitled to find the requirements met.
11. The final objection is the one that is most complex.

12. Mr Iqbal took me through the requirements of the Rules as they were at the date of decision. The Secretary of State objected to the format and contents of the third party sponsor's bank statement and letter from the bank, in particular that it contained no confirmation that the monies were available to the Applicant. That part of the Refusal reads:-

You have stated that you have access to funds in excess of £50,000, which is being made available to you by third party Mr Nabeel Fazal Malik, and you have provided a letter from Barclays Bank dated 17 August 2012 in this respect.

"Paragraph 41-SD of Appendix A of the Immigration Rules states that each letter from a financial institution must:

- Be an original document and not a copy,
- Be on the institution's official headed paper,
- Have been issued by an authorised official of that institution,
- Have been produced within the three months immediately before the date of your application,
- Confirm that the institution is regulated by the appropriate body,
- State the applicant's name and his team partner's name (if applicable),
- State the date of the document,
- Confirm the amount of money available from the applicant's own funds (if applicable) that are held in that institution,
- Confirm the amount of money provided to the applicant from any third party (if applicable), that is held in that institution,
- Confirm the name of each third party and their contact details, including their full address including postal code, landline telephone number and any email address, and
- Confirm that if the money is not in an institution regulated by the FSA, the money can be transferred into the UK.

The letter from Barclays does not:

- State your name
- Confirm the amount of money available to you from your third party that is held in that institution

- Confirm the contact details of your third party, his full address including postal code, landline phone number and any email address”

13. That part of the decision recites paragraph 41-SD(a)(i). However that is not the whole paragraph. Paragraph 41 as a whole reads:-

“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 docs:

(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 the Appendix). Each letter must:

(1) be an original document and not a copy,

(2) be on the institution's 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 the Appendix, where relevant,
- (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, and where available 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 of 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 stationery 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 of 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 if the applicant is applying under the provisions of 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 and, where available, 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 of paragraph 52 of this Appendix),

(2) the date of the declaration,

(3) the applicant's signature and the signature of the third party (and his team partner's name if the applicant is applying under the provisions of 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 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 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

(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 of 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;

13. We are told that the extremely detailed Immigration Rules are to be read literally and with their normal meaning. That would indicate that in accordance with the Rules at the date of decision, in the case of third party funding where the funds have not already been transferred to the applicant the relevant documents to be provided are those referred to in 41-SD(b) and (c) only. The Appellant did meet those.
14. The Rules I find are clear that 41-SD(a) applies only where the Appellant relies either on money of his own or that has already been transferred to him by a third party (paragraph 41-SD(a) (i)(9) refers to the past tense). 41-SD(a)(ii) clearly relates also to the Applicants' own money because it refers to a bank statement in his own name (41-SD-(a)(ii)(4).
15. Paragraph 41-SD (b) is thus the section applicable where there is third party support and absurd though it may appear, there is no requirement to lodge financial documents in a specified format. It is reasonable to expect evidence that the third party actually has the money but the specific details required when it is the Appellant's 'own money are absent. I am fortified in this view by the contents of the application form which clearly differentiates between the requirements for someone who is providing their own funds and some-one relying on third party support.
16. Thus while the Judge erred in suggesting that the Rules should be interpreted purposively, his error was immaterial because the evidence was that the Appellant did meet the requirements of the Rules as they were at the relevant time.
17. Accordingly the First-tier Tribunal did not make a material error of law and the determination shall stand.
18. The appeal to the Upper Tribunal is dismissed.

Signed

Date 4th April 2014

Upper Tribunal Judge Martin