Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: IA / 27267 / 2013

THE IMMIGRATION ACTS

Heard at:	Field House	Determination promulgated
On	22 May 2014	On **09TH JULY 2014**

Before

Lord Bannatyne, sitting as a Judge of the Upper Tribunal
Upper Tribunal Judge Gill

Between

Mr. Amanjit Singh **Appellant**
(ANONYMITY ORDER NOT MADE)

And

The Secretary of State for the Home Department **Respondent**

Representation:

For the Appellant: Mr. V. Makol, of Maalik & Co.
For the Respondent: Mr. E. Tufan, Senior Home Office Presenting Officer.

DETERMINATION

1. The appellant is a national of India. He appeals to the Upper Tribunal, with permission granted by Judge of the First-tier Tribunal Heynes on 1 April 2014, against the determination of Judge of the First-tier Tribunal A. J. M. Baldwin dismissing his appeal against the decision of the respondent of 4 June 2013 to refuse his application of 18 January 2013 for variation of his leave as a Tier 1 (Entrepreneur) Migrant under the Points-based System.

2. The respondent refused the application because she considered that the documentary evidence submitted with the application did not meet the following requirements for

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"Attributes" under Appendix A of the Statement of Changes in the Immigration Rules HC 395 (as amended) (the Immigration Rules). She therefore decided that the appellant did not score the necessary 75 points in respect of "Attributes" under Appendix A.

3. The requirements of the Immigration Rules that are in issue in this case are as follows:

Para 245DD (b)
Appendix A, Para 36, taken with: Table 4, para (d) (iii) (3)
Table 4, para (d) (iv)
Appendix A, Para 41(c)
Appendix A, Para 41-SD (a) (i) (10)
Appendix A, Para 41-SD (c) (i)
Appendix A, Para 41-SD (c) (iii) (1)

4. Whilst the text of para 245DD and Appendix A are set out in greater detail in the attached Annex (with those requirements in issue shown in bold and underlined text), we set out here the text of only those in issue:

"245DD. Requirements for leave to remain

Requirements:

(a) …

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

(c) …

(d) …

Appendix A

Attributes for Tier 1 (Entrepreneur) Migrants

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

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

Investment and business activity	Points
(a) … (b) … or (c) … or (d) The applicant: (i) is applying for leave to remain, (ii) has, or was lasted granted, leave as a Tier 1 (Post-Study Work) Migrant, (iii) was, on a date falling within the three months immediately prior to the date of application, (1) … (2) … (3) registered as a director of an existing business,	25

	(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 (v) …	

[**The opening words: "is working" are incorrectly quoted in the decision letter dated 4 June 2013 as: "are engaged in business activity other than work necessary to administer his business,". We are satisfied that nothing turns on this in this case.* ***]***

Investment: notes

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

(a) …

(b) …

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

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) …
(2) …
(3) …
(4) …
(5) …
(6) …
(7) …
(8) …
(9) …
(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) …

(b) …

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

(i) his job title,

(ii) …

(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) …
(3) …
… "

5. The respondent considered that the documentary evidence submitted by the appellant did not meet these requirements for the following reasons:

   i. The bank letter from State Bank of India did not confirm that the funds were transferable and disposable in the United Kingdom (Appendix A, para 41(c)).

   ii. In addition, the telephone numbers of the third parties were not provided in the bank letter (Appendix A, para 41-SD(a)(i)(10)).

   iii. The appellant had failed to provide any evidence that he was registered as a director of a new or existing business (Appendix A, para 36 and table 4, para (d)(iii)(3)). Although he had provided a certificate of incorporation for his company (Wadhwa Business Limited) (WBL), he had failed to provide a "current appointment report" from Companies House.

   iv. The appellant had provided a job title that was listed in Appendix J (Appendix A, para 36 and table 4(a)(iv)). The evidence he had submitted to demonstrate that he was active in that occupation as part of his business was advertising material and a service contract between WBL and Castle Food Company Co. London Ltd (CFCCLL). The Respondent considered that these documents did not satisfy the relevant requirements for the following reasons:

      a. the contract between WBL and CFCCLL was not acceptable because the contract states that the appellant would be providing IT business solutions but the appellant had stated that his job description was marketing manager (Appendix A, para 41-SD(c)(i)); and

      b. the advertising material did not mention his name and did not state what services his business would be providing (Appendix A, para 41-SD(c)(iii)(1)).

6. The respondent therefore refused the application without giving the appellant an opportunity to submit further documents.

7. The appellant does not dispute that the documents submitted with his application were indeed deficient and did not satisfy the relevant requirements for the reasons given by the respondent. Pursuant to section 85A of the Nationality, Immigration and Asylum Act 2002, he was precluded from relying upon any documents in his appeal that had not been submitted to the respondent. The appeal before the Judge was argued on the basis that the decision was not in accordance with the law because the respondent had refused the application without giving the appellant an opportunity to submit amended/further documents.

8. Before us, it was argued that the respondent's obligation to give the appellant such an opportunity arose under the following:

   (a) the "Evidential Flexibility Policy" (hereafter the "Policy"); or
   (b) para 245AA of the Immigration Rules.

9. Judge Baldwin concluded that the Policy did not require the respondent to give the appellant an opportunity to submit amended/further documents before deciding the application. He therefore refused to remit the case to the respondent for the Policy to be applied. He did not mention para 245AA.

10. We will deal with the appellant's case in relation to the Policy and para 245AA in turn.

The Policy

11. The terms of the Policy as it existed in June 2011 are set out at Appendix B of the determination of the Upper Tribunal in *Rodriguez (Flexibility Policy)* [2013] UKUT 00042. At Appendix A to the determination, the Upper Tribunal set out the terms of a letter dated 19 May 2011 which it held also represented relevant and applicable policy. The Upper Tribunal's determination in *Rodriguez* was appealed to the Court of Appeal, along with other cases. The Court of Appeal's judgment was delivered in *Rodriguez & Others* [2014] EWCA Civ 2 on 20 January 2014, after the determination of Judge Baldwin in the instant appeal. The Court of Appeal held (inter alia) that the letter of 19 May 2011 did not represent policy and overturned the Upper Tribunal's determination in that regard. This aspect of the judgment of the Court of Appeal does not concern us in this appeal, as Mr. Makol did not seek to rely upon the terms of the letter dated 19 May 2011. The Court of Appeal also considered the application of the Policy of June 2011 at paras 89-93.

12. However, Mr. Makol submitted that the Court of Appeal's judgment could not be applied in order to decide whether Judge Baldwin had erred in law because the judgment post-dated the determination of Judge Baldwin. We have some difficulty with this submission, as it would mean that, whilst the three applicants in the appeal before the Court of Appeal in *Rodriguez* were unable to rely upon the determination of the Upper Tribunal in *Rodriguez*, this appellant can. Furthermore, even if we concluded that Judge Baldwin had erred in law in concluding that the appellant did not come within the terms of the Policy, it does not follow (as Mr. Makol appeared to assume) that the case should be remitted by us to the respondent for the Policy to be applied. If we decided to set aside Judge Baldwin's decision, we would be bound to re-make the decision on the appeal, at which point we would be bound to apply the Court of Appeal's judgment in *Rodriguez*. Thus, it seems to us that this appellant cannot avoid having the judgment of the Court of Appeal in *Rodriguez* applied to him.

13. In addition, Mr. Makol proceeded on the assumption not only that the Policy continued to exist as at the date of the appellant's application for leave but also that it existed in precisely the same form as it did in June 2011, i.e. in the form set out at Appendix B of the Upper Tribunal's determination in *Rodriguez*.

14. We have difficulty with both of these assumptions. It is clear from para 47 of the Court of Appeal's judgment in *Rodriguez* that the Policy was incorporated in the form of para 245AA of the Immigration Rules from 6 September 2012, that para 245AA has itself been amended since it was first brought into force on that date and that para 245AA itself has an accompanying guidance document, version 5 of which applied from 7 November 2013. Thus, given that the appellant made his application on 18 January 2013, it cannot simply be assumed that the policy continued to exist at the date of his application or that (if it did) its terms remained the same as that which applied in *Rodriguez*.

15. Our observations at paras 12 and 13 are sufficient to dispose of the appellant's case in relation to the Policy.

16. However, even assuming that the Policy continued to exist in the same form, the appellant could not avail himself of the benefit of it. Before we give our reasons for saying so, we will

set out the relevant parts of the June 2011 version of the Policy, which we take from paras 48-49 of the Court of Appeal's judgment in *Rodriguez*:

"48. I turn then to the Evidential Flexibility policy extant in June 2011 and taken to be the version potentially relevant to these three cases (that is, as recorded in the PBS Process Instruction which is Appendix B to the *Rodriguez* determination). It has to be said that it is not in all respects very clearly drafted. It is to be noted that it is not confined to Tier 4 applications. In its introductory remarks the process instruction explains that a flexible process was first introduced in 2009 allowing caseworkers "to invite sponsors and applicants to correct minor errors or omissions in applications". The instruction enabled caseworkers "to query details or request further information, such as a missing wage slip or bank statement from a sequence". Following analysis and review, as it was said, there had been "two significant changes" to the original Evidential Flexibility instruction. These were identified as follows:

"1. The time given to applicants to produce additional evidence has been increased from three working days to seven working days; and

2. There is now no limit on the amount of information that can be requested from the applicant. However, requests for information should not be speculative, we must have sufficient reason to believe that any evidence requested exists."

49. The process instruction thereafter sets out the various procedural step sequences with the recommended actions. I need not repeat them all here. They are prefaced by the words (which appear in the corresponding place in the 2009 version of the process instruction) "this procedure describes the steps to take when an application has missing evidence or there is a minor error". It is to be noted, among other things, that in Step 3 it is said that:

"We will only go out for additional information in certain circumstances which would lead to the approval of the application.

Before we go out to the applicant we must have established that evidence exists, or have sufficient reason to believe the information exists. Examples include (but are not limited to) bank statements missing from a series…"

In step 4, it is indicated that:

"…where there is uncertainty as to whether evidence exists benefit [sic] should be given to the applicant and the evidence should be requested…."

But that is in the particular context there specified.

50. It can be seen, then, that the overall intent was to afford some alleviation to the harshness of the requirements of the Immigration Rules by sanctioning, in certain circumstances, requests for further information from applicants. The question is in these three cases: how far did the process instruction require the relevant caseworker to go?"

(our emphasis)

17. Judge Baldwin dealt with the appellant's submissions in relation to the Policy at para 20 of the determination in the following terms:

"20. Mr. Makol very sensibly did not seek to waste the time of the Tribunal by arguing that the evidence belatedly supplied by the Appellant meant that he met the requirements of the Rules. Rather, he invited me to remit the case on Evidential Flexibility Grounds. <u>The requirements for Tier 1 (Exceptional Talent) Migrants are numerous and it would not be unreasonable to expect that even those who are exceptionally talented might miss something</u>. That is presumably why, when there is some minor error or omission, evidential flexibility and fairness demand that an Applicant should be given the opportunity to put that matter right. However, in the case of this Applicant there were a whole series of such matters. Furthermore, if it took the Appellant six months from the time of the Refusal to get around to providing a Current Appointments Report there would seem to be no reason for believing he would have done so promptly had he been asked for this and all the other matters to be attended to before the Application was considered further. Lastly, it was very

> difficult to believe that the marketing leaflets were not created in a great hurry, as they self-evidently would inspire very little confidence in the company's ability to provide the services they offer. This Application, I find, was not one where it has been shown that fairness and evidential flexibility demanded the taking of a different course by the Respondent. The Appellant does not I find meet the requirements of the Rules."

(our emphasis)

18. The appellant accepts that the documentary evidence he submitted was deficient. We have set out the shortcomings at our para 5 above. The shortcomings include the fact that the bank letter from State Bank of India did not confirm that the funds were transferable and disposable in the United Kingdom; that the telephone numbers of the third parties were not provided in the bank letter; and that the appellant had not provided evidence that he was registered as a director of a new or existing business. It is impossible to see how it can reasonably be said that there was reason to believe that the missing information existed. The funds may not have been transferable and disposable in the United Kingdom. The third parties may not have had telephone numbers. The appellant may not have been a director at the date of his application. it is not an answer to say that the benefit of the doubt should have been given to the appellant pursuant to step 4, given that there was nothing to suggest that any of this evidence may have existed.

19. Accordingly, even if the Policy continued to exist in the same form as the June 2011 version, Judge Baldwin was entirely correct to conclude that this was not a case in which fairness and the terms of the Policy demanded that the respondent give the appellant an opportunity to adduce further documents.

20. We turn to deal with the challenge to the reasoning of Judge Baldwin.

21. The first point was that Judge Baldwin had incorrectly referred to the "Tier 1 (Exceptional Talent) Migrants" category. It is argued that this meant that he had misunderstood the nature of the case or prepared his determination in a hurry.

22. We accept that the sentence underlined in the quote from para 20 above does suggest that Judge Baldwin may well have mistakenly thought that the application was for an application for leave as a Tier 1 (Exceptional Talent) Migrant category, although we have also noted that he had earlier (at paragraph 1 of the determination) correctly described the category as the Tier 1 (Entrepreneur) Migrant category. Nevertheless, the essential point he was considering was whether the deficiencies *on the face of the documents* were such that the terms of the Policy required the respondent to have requested the appellant to provide further documents. Clearly, he proceeded to undertake that assessment. The appellant accepts that his documents were deficient in the ways and to the extent recorded in the decision letter. We do not accept that the mistaken reference to a different category makes any difference to the Judge's assessment, especially given our attention has not been drawn to any relevant differences in the applicable requirements between the two categories.

23. Second, it is said that the Judge took into account an irrelevant consideration in commenting on the fact that the marketing leaflets inspired very little confidence in the company's ability to provide the services they offer. Mr. Makol submitted that the respondent does not require the material to be produced in perfect English; she merely asks for it to be produced.

24. We agree that this is a valid point, in the appellant's favour. Mr. Makol submitted that this error influenced the Judge's ultimate decision to find against the appellant in relation to the Policy and not to remit the case to the Respondent. However, for the reasons we have

given above, such were the shortcomings in the documents submitted by the appellant with his application that (even if the Policy existed at the date of his application, which has not been shown) this error was not material to the Judge's ultimate decision.

25. Third, it is said that all the defects in the documents submitted with the appellant's application had been remedied by the submission of a bundle of documents at the hearing before the Judge. However, this simply ignores section 85A of the Nationality, Immigration and Asylum Act 2002 Act which precludes the appellant from relying upon post-decision documents. The argument amounts to no more than an attempt to circumvent the prohibition in section 85A.

26. Fourth, it is said that Judge Baldwin erred in law in referring to the appellant having taken six months to produce a “current appointment report”. It is said that this showed a lack of understanding on his part, in that, a “current appointment report” was an online document that can be printed on any date at any time. Mr. Makol submitted that it was therefore incorrect to suggest that, if the appellant had been asked to submit a “current appointment report”, he would not have been able to do so.

27. We reject this argument. In our judgment, it ignores the fact that a person may be a director one day and not the next. Even if a “current appointment report” can be printed online on any date, that does not mean that there was online evidence in existence at the date of the appellant's application to show that he was a director then. That would depend on whether he was in fact a director then. Thus, even if the respondent had requested the appellant to provide a current appointment report within a specified period, his ability to do so within that period would depend upon whether he was a director then. In our judgment, there was no error in the Judge's reasoning in that respect.

28. Mr. Makol placed heavy reliance on the fact that the respondent had requested documents from many of his clients. Despite his protestations, he was in fact giving evidence. It is not open to him to do so. Further, and in any event, anecdotal evidence of this sort does not establish any practice that is widespread and unequivocal such as to give rise to any legitimate expectation or unfairness in this case.

<u>Para 245AA</u>

29. As stated above, the Policy was incorporated into the Immigration Rules in the form of para 245AA from 6 September 2012. Para 245AA has itself been amended since it was first brought into force on that date.

30. We will say two things straightaway. First, para 245AA was not argued before Judge Baldwin. Although Mr. Makol first sought to suggest that he had raised it in his skeleton argument before Judge Baldwin and then that he had done so at the hearing before the Judge, our examination of the skeleton argument and the Judge’s Record of Proceedings revealed that there was in fact no mention at all of para 245AA in the proceedings before the Judge.

31. Mr. Makol then informed is that he had submitted to Judge Baldwin that the respondent's decision was not in accordance with the Immigration Rules. He submitted that this was sufficient to oblige the Judge to consider para 245AA. We have no hesitation in rejecting this submission. In our judgment, Judge Baldwin was not under any obligation to embark upon a search of the Immigration Rules for provisions which might be of assistance to the appellant. It was incumbent upon the appellant and his representatives to draw the attention of the Judge to para 245AA, if reliance was placed upon it.

32. In our judgment, given that there was no specific mention of para 245AA before Judge Baldwin, he cannot be said to have erred in law in failing to consider it. This is sufficient to dispose of this aspect of the appellant's case.

33. However, and in any event, para 245AA does not assist the appellant. Before we give our reasons for saying so, we will quote the version of para 245AA that existed at the date of the appellant's application. This is the version submitted by Mr. Tufan at the hearing before us and which is as follows:

> **"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)."

34. The version that Mr. Makol relied upon in his grounds of application for permission to appeal to the Upper Tribunal was different. He relied upon the current version of para 245AA that came into force and applied to applications made on and after 1 October 2013. The main difference was that the current version of para 245AA (b) contains the following para (iv):

> "(iv) A document does not contain all of the specified information;"

35. However, the applicable version was the version that applied at the date of the appellant's application. Mr. Makol attempted to shoe horn the deficiencies in the appellant's documents into one or more of para 245AA(b) (i), (ii) and (iii). However, even if para 245AA had been

relied upon before Judge Baldwin (which is plainly not the case), he can only succeed in showing that the Judge erred in law and that the Judge's decision should be set aside if he can persuade is that every single deficiency clearly falls within para 245AA. In our judgment, he falls far short of doing so, for reasons we will now give.

36. We have no hesitation in rejecting Mr. Makol's submission, in relation to the bank letter not confirming that the funds were transferable and disposable in the United Kingdom, that the document was in the wrong format. It is simply impossible to see how this can reasonably be said of the document.

37. The same is true in relation to the fact that the bank letter did not provide the telephone numbers of the third parties. In relation to both, the deficiency is not a formatting issue but (put simply) information that is missing from the document.

38. In relation to the fact that the appellant had failed to submit his "current appointment report", we reject Mr. Makol's submission that this document fell within para 245AA(b)(i). It was not part of any sequence or series of documents. A series of documents is one that has a beginning and an end. The example given in para 245AA(b)(i) exemplifies the point.

39. In relation to the fact that the advertising material did not mention the appellant's name and did not state what services his business would be providing, para 245(b)(i) cannot apply because what is missing is information in the one document, not a document from a sequence of documents. Para 245AA(b)(ii) cannot apply because it cannot reasonably be said that the missing information means that the document is in the wrong format.

40. Finally, in relation to the discrepancy concerning the description of the appellant's job, we cannot see how that can reasonably fall within para 245AA(b). The two documents presented to the respondent that gave rise to this discrepancy cannot be said to be in the wrong format. The appellant may well be able to produce a document to explain the discrepancy but such a document cannot reasonably be said to be missing from a sequence of documents.

41. In reality, Mr. Makol has sought to adopt an unreasonable and artificial interpretation of para 245AA(b). We reject his submissions.

42. We have therefore concluded that Judge Baldwin made no material error of law.

Decision

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

Upper Tribunal Judge Gill Date: 9 July 2014

ANNEX

Extracts from the Immigration Rules as in force at 18 January 2013

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.

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 (b) The applicant has access to not less than £50,000 from: (i) one or more registered venture capitalist firms regulated by the Financial Services Authority, (ii) one or more UK Entrepreneurial seed funding competitions which is listed as endorsed on the UK Trade & Investment website, or (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 (c) The applicant: (i) is applying for leave to remain, (ii) has, or was last granted, leave as a Tier 1 (Graduate Entrepreneur) Migrant, and (iii) has access to not less than £50,000, or **(d) The applicant:** **(i) is applying for leave to remain,** **(ii) has, or was lasted granted, leave as a Tier 1 (Post-Study Work) Migrant,** **(iii) was, on a date falling within the three months immediately prior to the date of application,** (1) registered with HM Revenue and Customs as self-employed, or (2) registered as a new business in which he is a director, or **(3) registered as a director of an existing business,** **(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**	25

website functions for the business, and (v) has access to not less than £50,000.	
The money is held in one or more regulated financial institutions	25
The money is disposable in the UK	25

[***The opening words: "is working" are incorrectly quoted in the decision letter dated 4 June 2013 as: "are engaged in business activity other than work necessary to administer his business,". We are satisfied that nothing turns on this in this case. **]**

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; and

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

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

(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.

44. Money is disposable in the UK if all of the money is held in a UK based financial institution or if the money is freely transferable to the UK and convertible to sterling. Funds in a foreign currency will be converted to pounds sterling (£) using the spot exchange rate which appeared on www.oanda.com* on the date on which the application was made.

45. If the applicant has invested the money referred to in Table 4 in the UK before the date of the application, points will be awarded for funds available as if the applicant had not yet invested the funds, providing the investment was made no more than 12

months before the date of the application and the specified documents in paragraph 46-SD are provided.

45A. No points will be awarded where the specified documents show that the funds are held in a financial institution listed in Appendix P as being an institution with which the UK Border Agency is unable to make satisfactory verification checks.