



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

Appeal Number: IA 44082 2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 28 April 2014**

**Determination**

**Promulgated**

**On 25 June 2014**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**CLARICE TAGOE-REINHOLD**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Tetteh, Counsel instructed by Anderson Browne,  
Solicitors

For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Ghana. She appeals against a decision of the First-tier Tribunal dismissing her appeal against a decision of the respondent refusing her application for leave to remain as a Tier 1 (Entrepreneur) under the points-based system.
2. There is one point taken against her in the reasons for refusal. It is that the appellant did not produce a document showing that on a date falling within three months immediately prior to the date of the application she was in fact registered with Her Majesty's Revenue & Customs as self-employed.
3. According to the reasons for refusal the document was dated 30 March 2013 but the application was made on 28 August 2013, which plainly is more than three months later. The First-tier Tribunal agreed with the respondent's decision and dismissed the appeal.

4. Permission to appeal was sought on a variety of grounds raising questions of interpretation and the evidential flexibility rule but although permission to appeal was refused by the First-tier Tribunal it was granted by Upper Tribunal Judge Grubb who said as follows:

“The grounds identify an arguable error of law in that the application form arguably only required the appellant to provide the bill falling immediately before the application was made which she had done. Whilst dated earlier than three months before the application, it is arguable that it was evidence of her continued registration with HMRC at the time required by the Rule. It is arguable that the Rule does not require that the bill be dated within the three month period.”

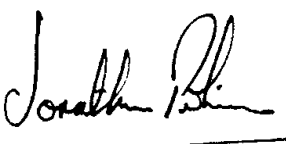
5. Mr Duffy made it plain in his submissions that it is the Secretary of State’s position, as I believe is reflected in guidance notes, that the documents that must be produced are dated within the three month period. Mr Duffy could not show me anything in the Rules that required documents to be dated in that period.
6. The whole scheme of the points-based system is, and I do not think this is controversial, extremely pedantic. It is intended to remove as much discretion as is possible from the decision-maker who has to decide only if certain strictly defined criteria are met. We are told that if they are met the application will succeed and if they are not met the application will fail. It is, no doubt, intended to simplify the decision making process.
7. The respondent clearly thinks that the criteria were not met but I have been unable to find any justification for that view in the Rules.
8. Mr Duffy has been particularly helpful and has properly and fairly drawn my attention to the relevant paragraph of the rules. The requirement is at subparagraph (iii)(1) of Table 4(d) of Appendix A. It is that the applicant:

“was, on a date falling within the three months immediately prior to the date of application, registered with HM Revenue and Customs as self-employed, ...”.
9. In other words, the applicant had to show was that she was registered at a point three months before the application was made. The rules do not state how she must show it. There are many examples in the Rules of documents having to be dated within a particular period. No such requirement appears here. The Rule does not say that the applicant has to produce a document dated within the three month period.
10. I was told in argument, and I accept, that the usual arrangement with HM Revenue and Customs required a person paying tax and national insurance as a self-employed person to pay bills at six monthly intervals. It follows that it is entirely plausible that he appellant produced the most recent bill in her possession as independent proof of her registration.
11. Mr Duffy submitted that the appellant could have asked HM Revenue & Customs for a more recent letter confirming she was still self-employed. Whether HM Revenue and Customs would have been obliged to produce such a letter is a matter of conjecture. Perhaps they would but there was nothing in the Rules that requires such a letter even though I do not want

to discourage anyone seeking to prove that they are registered obtaining as Mr Duffy suggested.

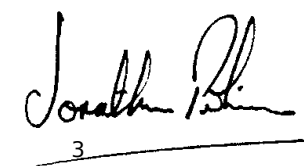
12. The appellant produced a recent document which, coupled with her oral assertion that she was indeed self-employed, satisfies me that she met the requirements of the Rule. It is at least probable that she was, on a date within the three months immediately prior the application, registered with HM Revenue & Customs as self-employed.
13. I am not sure that it is necessary to say more but I do make the point that it is exceedingly plausible that she remained registered because the whole purpose of her application was to remain as a self-employed person. It is very hard to imagine circumstances where a person having introduced themselves to the Revenue would cease to be registered whilst an application was processed. Even if the business was not doing very well there was no obvious reason to deregister and so there is nothing about the circumstances of a document dated a little sooner than the application period of three months to make it appear suspicious or in any way unreliable.
14. It may be that the Secretary of State needs to consider the terms of the Rules or the terms of the guidance but it does seem to me, having looked at the Rule carefully, that the interpretation that she favours is not one actually required by her Rules, and the Rules have made requirements which this applicant has met.
15. I have considerable sympathy for the First-tier Tribunal Judge, who was not assisted by the way the Secretary of State, I am sure in good faith, prepared her case, but I am satisfied his interpretation was wrong and on the correct interpretation of the Rules this appeal should have been allowed.
16. I therefore set aside the decision of the First-tier Tribunal and I substitute the decision allowing the appeal for the reasons given.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



---

Dated 24 June 2014



---

3