



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

Appeal Numbers: IA/43020/2014  
IA/43023/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 September 2015**

**Decision & Reasons  
Promulgated  
On 28 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SHAKEEL AKBAR CHOUDHRY  
FAIZ UL HASSAN  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Miss. E Savage, Home Office Presenting Officer  
For the Respondents: Mr. M. Ilahi of Rana & Co Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge levins promulgated on 1 April 2015 in which he allowed the appeals of Mr. Choudhry and Mr. Hassan against the Secretary of State's refusal to grant leave to remain as Tier 1 (Entrepreneurs) under paragraph 245DD of the immigration rules.

2. For the purposes of this decision, I refer to Mr. Choudhry and Mr. Hassan as the Appellants and to the Secretary of State as the Respondent, reflecting their positions as they were before the First-tier Tribunal.
3. Permission to appeal was granted on the basis that it was arguable that the judge had failed to supply sufficient reasoning to explain to the Respondent why she had lost the appeal. The grounds argued that insufficient regard had been paid to section 85A of the 2002 Act; there was an absence of reasoning as to why the appeal had been allowed outright taking into account post-decision evidence as opposed to holding that it was not in accordance with the law for failure to request the same; there was absence of reasoning as to why the advertising material provided met the requirements of paragraph 41-SD(e), or why the business website met the requirements.

### Submissions

4. Miss. Savage relied on the grounds of appeal. She submitted that this was a narrow point. Section 85A had been misapplied. The judge was not able to consider post-decision evidence. She submitted that the decision should have been allowed as being not in accordance with the law rather than being allowed outright. She referred to paragraph [29] of the decision. The letter from Barclays Bank could have been considered by the Respondent under paragraph 245AA, had she requested it. She accepted that the decision should have been remitted to the Respondent for reconsideration of this evidence under paragraph 245AA.
5. For the Appellants Mr. Ilahi submitted that the only point in issue was whether or not the decision should have been allowed to the extent that it be remitted for further consideration by the Respondent. The judge had considered all the evidence correctly, the decision was lawful and the judge had authority to allow the appeal outright instead of remitting it back.
6. In response Miss. Savage submitted that section 85A was clear that post-decision evidence could not be considered. It was clear from the decision that the judge had considered post-decision evidence [29]. In relation to paragraph 5 of the grounds, Miss. Savage submitted that, if the decision was not in accordance with the law, this ground fell away. The judge was bound to have found that the decision was not in accordance with the law for failure to properly apply section 245AA and he should have remitted it.

### Decision

7. I found that the decision involved the making of an error of law on a material matter.
8. Section 85A of the 2002 Act provides that in an appeal where the immigration decision concerned an application under the Points Based System, the tribunal may only consider evidence which was submitted in support of and at the time of making the application to which the

immigration decision related (85A(4)(a)). The further evidence which may be considered under section 845A(4) is not relevant here.

9. In paragraph [29] of the decision the judge states:

“I am satisfied that that evidence can be considered under the provisions of paragraph 245AA(b)(iv) inasmuch as the business bank statements were documents that did not contain all the specified information. The Respondent could, and should, have contacted the Appellants to request the specified information.”

10. It was accepted by Miss. Savage that the second sentence of this was correct. The Respondent should have contacted the Appellants under paragraph 245AA to request the specified information. For this reason, the decision should have been allowed as being not in accordance with the law. However, the first sentence of this shows that the judge took into account evidence which was provided after the date of the decision in reliance on paragraph 245AA, which is in conflict with the provisions of section 85A. Paragraph 245AA allows the Respondent to request further documents but it does not permit a tribunal to consider further documents provided after the date of decision.

11. I find that, having found that the Respondent should have contacted the Appellants under paragraph 245AA, the correct course of action was for the appeals to have been allowed to the limited extent that the refusals were not in accordance with the law, with a direction that the Respondent consider the applications again. I find that the judge was not entitled to take into account the post-decision evidence to which he refers in paragraph [29] and was therefore not in a position to allow the appeals outright.

12. I found that the decision involved the making of an error of law on a material matter.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of a material error of law and is set aside.

The decision is remade as follows:

The appeals are allowed to the extent that the refusals are not in accordance with the law. The matter is remitted to the Respondent for further consideration.

No anonymity direction is made.

Signed

Date 25 September 2015

Deputy Upper Tribunal Judge Chamberlain