



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA350502015

THE IMMIGRATION ACTS

Heard at Field House
On 31 May 2017

Decision Promulgated
On 1 June 2017

Before

Upper Tribunal Judge Southern

Between

MUHAMMAD MUJAHID IQBAL

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Gilbert, of counsel

For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION

1. The appellant has been granted permission to appeal against the decision of First-tier Tribunal Judge Coaster who, by a determination promulgated on 4 October 2016, dismissed his appeal against a decision of the respondent, made on 3 December 2015, to refuse his application for leave to remain as a Tier 1 Entrepreneur. Because the appellant submitted his application as long ago as 18 October 2013, he has a right of appeal against this decision because of the applicable transitional provisions. The initial adverse decision made by the respondent was withdrawn after the respondent had agreed to reconsider her decision.

2. The respondent gave three reasons for refusing this application:
 - a. It was not accepted that the appellant had genuinely established, taken over or become a director of one or more businesses in the UK and continued to operate them;
 - b. It was not accepted that the sum of at least £50,000 demanded by Table 4 of Appendix A of the Immigration Rules was genuinely available to the appellant;
 - c. It was not accepted that the appellant did not intend to take employment in the United Kingdom other than of the nature permitted.
3. The judge did not accept the first of those concerns was made out, and found as a fact that the appellant “has genuinely established or taken over and became a director of Lifestyle Express Limited”.
4. However, the judge dismissed the appeal because she did not accept that the appellant had established that the £50,000 required by Table 4 was in fact available to the appellant. It is not difficult to understand why the judge entertained concern about this aspect of the appellant’s case because there was a stark and wholly unexplained contradiction between what he had said in his application form as to how this investment was received by his company into an account with National Westminster Bank and his oral evidence before the judge to the effect that the relevant funds had in fact been received into a different account, in his own name.
5. The appellant said that there had been an investment into his business of more than £100,000. In respect of the application to be decided, he had said in his application form that there had been an investment of £56,123, received from his brother, Mr Iqbal Atain, who had invested that sum in LifeStyle Express Limited. He set out the dates and amounts of the instalment paid to accumulate this total, saying that the payments were received into a National Westminster Bank account.
6. There were plainly real difficulties with what had been said in the application form because, as the judge noted, there were no National Westminster Bank statements showing the nine payments totalling £56,123.67 that the appellant claimed had been received on the dates specified.
7. In his oral evidence at the hearing the appellant said something different, as the judge recorded at paragraph 48 of her decision:

“At the hearing, in evidence in chief, the Appellant stated that the payments into his personal; RBS account number ending xxxx398 came from his brother Mr Iqbal Arain, and were available for investment in the business. We looked at the RBS bank statements. The entries are cited on the RBS bank statements as being from “Queens News”, his brother’s business. The appellant said that the payments were

in instalments because his brother did not have the funds to provide him with £50,000 in one tranche.”

8. At paragraph 47 of her determination the judge said this:

“Having searched the documents provided to me, I am unable to find any clear unequivocal documentary evidence of a loan agreement between the appellant and Lifestyle Express Limited; nor a loan referred to in the company’s accounts; nor evidence of bank transactions or bank transfers where the Appellant and/or Lifestyle Express can be seen to have received sums totalling at least £50,000. There were no bank statements provided for Nat West bank showing the instalments set out at table 3a1 of the application form.”

And, having reproduced the schedule of payments into the National Westminster Bank account set out in the application form, as for the RBS account the judge said:

“There are no receipts entered in the “paid in “column in the RBS statements between the above mentioned dates, corresponding to the above listed investment funds... There was no evidence before me of the above mentioned funds being received.”

The judge then observed that there was no copy of a director’s loan agreement in the documents before her and that it was not for the Tribunal “to try and cross reference payments and receipts between various bank statements to establish his claims are correct or not. This led her to conclude that the appellant’s evidence “lacked transparency and as a result his evidence lacked credibility”. As a consequence, she did not accept that the appellant had established that which was required and so dismissed his appeal. Having done so, she did not go on to consider the third reason giving for refusing the application, presumably because, in the light of her decision that the appeal failed on the basis of the second reason for refusal, it was unnecessary to do so.

9. In his oral submissions, Mr Tufan pointed to the evident difficulties with the case being advanced by this appellant and submitted that the decision to dismiss the appeal was one open to the judge. He emphasised that the appellant’s brother did not attend to give evidence before the judge; that the contradictory account of the source of the funds goes unexplained and that the undated loan agreement now produced by the appellant was not, as had been suggested, between the provider of those funds and the company but between himself and the company. Certainly, each of those matters call for an explanation and may well prove to be formidable obstacles for the appellant. However, I am persuaded by the submissions advanced by Mr Gilbert that the judge arrived at her conclusions and determined the appeal on the basis of three significant errors:

- a. The judge was wrong to consider that there had not been receipts of at least £50,000 into the RBS account because the receipts from Queens News, the company owned by the appellant’s brother, did indeed exceed £50,000. If she

reached that conclusion simply on the basis that there were no such receipts matching precisely the date and amounts stated in the application form, then she was wrong to do so, given the nature of the appellant's evidence before her;


- b. The judge was wrong to hold against the appellant the absence of a director's loan agreement without raising that matter with him so that he had an opportunity to address that in evidence;
- c. The judge was simply wrong also to say, at paragraph 58 of her decision, that the appellant had resigned from AS Stores Ltd, the company referred to in his evidence recorded earlier at para 23 to establish that his business interests were expanding.

10. Those three misapprehensions were at the core of the reasoning leading to the adverse credibility findings arrived at by the judge and I am unable to say that the outcome would necessarily have been the same if not for those errors. It follows that the judge has made an error of law material to the outcome of the appeal so that her decision cannot stand.

Summary of decision:

- (i) The Judge of the First-tier Tribunal made a material error of law error of law and the decision of the judge to dismiss the appeal shall be set aside.
- (ii) The appeal to the Upper Tribunal is allowed to the extent that the appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed



Upper Tribunal Judge Southern

Date: 31 May 2017