



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

Appeal Number: IA/10442/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 September 2018**

**Decision & Reasons  
Promulgated  
On 10 October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD**

**Between**

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

Respondent

**and**

**MR WAQAS AHMED  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**Representation:**

For the Appellant: No appearance.

For the Respondent: Ms A Everett

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan born on 3 April 1983. On 11 August 2011 he was granted leave to enter the United Kingdom as a Tier 4 general student until 15 December 2013. On 2 April 2013 he applied for leave as a Tier 1 (Entrepreneur) and on 9 January 2014 he was interviewed. His application was refused under paragraph 245 DD of the Immigration Rules (HC 395 as amended). The Respondent was not satisfied the Appellant genuinely intended to establish or invest in a business or that funds which were to be advanced by Profectus Venture Capital were genuinely available to do so.

2. The Appellant appealed and, following consideration on papers, and in a decision promulgated on 31 July 2017, Judge of the First-Tier Tribunal Roopnarine-Davies dismissed the Appellant's appeal. At paragraph 3 of her decision she found the Appellant had not filed any evidence which addressed the deficiencies in the evidence previously submitted concerning the genuineness and availability of the loan facility said to have been made available by Profectus and which deficiencies had been identified by the Respondent in his reasons for the decision under appeal or by the Upper Tribunal in **Arshad and Others (Tier 1 applicants - funding - "availability") [2016] UKUT 00334 (IAC)**.
3. The Appellant sought permission to appeal which was granted by Judge of the First-Tier Tribunal Grant-Hutchison on 23 May 2018. Her reasons for so granting were:-
  - "1. The Appellant seeks permission out of time to appeal against a decision of the First-tier Tribunal (Judge Roopnarine-Davies) promulgated on 31 July 2017 whereby it dismissed the Appellant's appeal against the Secretary of State's decision to refuse his application for leave as a Tier 1 (Entrepreneur). The Respondent was not satisfied that the Appellant genuinely intended to establish or invest in a business or that funds which were to be advanced by Profectus Venture Capital were genuinely available to do so. I am satisfied that there are special circumstances and accordingly I extend time and admit the application.
  2. The Tribunal gave notice of its intention to decide the appeal without a hearing pursuant to the appropriate Procedural Rules for all appeals involved with funds from said organisation and invited the Appellant's solicitors to make representations which were duly submitted timeously. Although the Judge decided that the Appellant's for the submission were expressed in general terms it is arguable that if the Appellant had been given an oral hearing he would have been able to adduce evidence by giving oral evidence and for his representatives to make formal submissions on his behalf which may have made a material difference to the outcome or the fairness of the proceedings (Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC))."
4. Thus the appeal came before me today.
5. The Appellant was served with notice of today's hearing by way of a notice issued on 24 August 2018. At 11.15 today he had not presented himself to the Tribunal to appear at the hearing. He is acting in person. Having been satisfied that he had been duly served with notice of hearing, and on listening to the submissions of Ms Everett, I decided to proceed to hear this appeal.
6. The nub of the Appellant's grounds and the basis of grant for permission to appeal is that albeit the Appellant's submissions to the First-Tier were expressed in general terms it is arguable that if he had had the benefit of an oral hearing he would have been able to adduce evidence which may

have made a material difference to the outcome or the fairness of the proceedings.

7. I find that the issue of fairness prevails at all times. Indeed, in coming to my decision it has been at the forefront of my mind. However, this Appellant, since making his application for permission to appeal has filed no additional evidence nor attended at today's hearing.
8. Having considered the procedure adopted by the First-Tier Tribunal and the Appellant's response to the requirement to file evidence therein alongside the position in the Upper Tribunal I find that there is no material error within the First-Tier Tribunal's decision. Fairness did prevail. The Appellant had opportunities to provide specific evidence particularising his claim under the Immigration Rules and Article 8 of the ECHR and has failed to avail himself of them.

### **Notice of Decision**

In those circumstances the decision of Judge Roopnarine-Davies is not set aside.

No anonymity direction is made.

Signed

Date 1 October 2018

Deputy Upper Tribunal Judge Appleyard