



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

Appeal Number: IA/34364/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 30 April 2018**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**SATNAM TANK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss L Turnbull, Counsel, instructed by Louis Kennedy Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant to the decision of First-tier Tribunal Judge Telford (the judge), promulgated on 4 December 2017, in which he dismissed the Appellant's appeal against the Respondent's decision of 17 November 2015. The Respondent's decision was in relation to an application under Tier 1 of the Immigration Rules made on 12 December 2012. The reason why matters have taken so long in this case is that the initial application had been refused in 2013, that refusal then being

successfully appealed to the First-tier Tribunal in 2014. First-tier Tribunal Judge Rothwell had allowed the appeal to the limited extent that the original decision was not in accordance with the law because financial evidence had not been considered and there was an issue with the service of a curtailment decision. In due course a fresh decision was made by the Respondent, and it is this which was appealed and came before the judge in due course. The core issue in the Respondent's latest decision letter related to the genuineness of the Appellant's entrepreneurial application under Tier 1. In short terms the Respondent clearly stated that she did not believe the Appellant was a genuine entrepreneur with reference to paragraph 245DD(h) and (i) of the Rules.

The judge's decision

2. The appeal had been listed for oral hearing, not least because the Appellant's previous representatives had asked for this and the requisite fee had been paid. Notwithstanding this, the Respondent did not provide a Presenting Officer and the Appellant did not attend. There was no explanation for his non-appearance. The judge was satisfied that both parties had been properly notified of the hearing and he proceeded to decide the appeal. Without setting out the evidence in any detail the judge notes the existence of bundles of evidence from both the Appellant and the Respondent [5]. At [8] the judge states in robust terms that the evidence showed the Appellant to be "entirely unprepared for beginning, running or developing a business." The proposed business partner was no longer available and it is said that the relevant money was not available. At [9] the judge states in summary terms that the Appellant was not successful in the appeal in relation to the Rules or under Article 8. At [10] and [11] the judge, again in fairly robust terms, concludes that the Appellant was not a genuine entrepreneur in any way, had no "real money" to put into any business, and that his lack of knowledge of the proposed business partner and circumstances were such that the claim must fail. In relation to Article 8 the lack of relevant evidence from the Appellant is noted. It is concluded that there was no family life in the United Kingdom, and that any private life here was tenuous. The appeal was dismissed on all grounds.

The grounds of appeal and grant of permission

3. It must be said that the grounds are rather vague and discursive in their nature. On my reading of the papers before me they appear to be copy and pasted from a witness statement provided by the Appellant previously. In essence, they just about raise the issue of an alleged failure to take evidence into account and a lack of adequate reasons for findings and/or conclusions reached by the judge.
4. Permission to appeal was granted by First-tier Tribunal Judge P J M Hollingworth on 8 March 2018. Grant of permission focuses entirely on the Article 8 claim outside the scope of the Rules.

The hearing before me

5. Prior to the hearing the Appellant's representatives had submitted a bundle of evidence, indexed and paginated 1-96, pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules. I admitted this into evidence, although it is entirely irrelevant to the question of whether the judge erred in law or not. What is clear is that the bundle referred to by the judge in his decision is that indexed and paginated 1-22. This bundle included the Respondent's decision, a witness statement from the Appellant dated 28 November 2017, the previous decision of First-tier Tribunal Judge Rothwell, and a previous statement from the Appellant dated 2013.
6. At the outset Miss Turnbull indicated that she wished to amend the grounds of appeal. When pressed on the point she then clarified that she was really seeking to condense and clarify the existing ground and was not in fact seeking to add in anything new. On this basis and without objection from Mr Jarvis the hearing proceeded. Miss Turnbull submitted that the judge had failed to take relevant evidence into account and had not provided proper reasons. Miss Turnbull had to recognise that Judge Rothwell had not made any judicial finding on the existence of funds or the genuineness of the entrepreneurial application. However she submitted that the judge had simply not considered financial evidence sent in by the Appellant to the Respondent. I pointed out that if financial evidence sent in by the Appellant had not been included in the Respondent's bundle it is likely that the Appellant and/or his legal representatives would have been aware of this before the hearing and could have included it in the Appellant's own bundle. In relation to the Article 8 issue Miss Turnbull asserted that there was evidence on the Appellant's private life. When asked what this had consisted of, she stated that it was in the Appellant's new bundle at which point I told her that that was irrelevant. I was concerned with the evidence which was in fact before the judge.
7. For his part Mr Jarvis noted that Judge Rothwell had only allowed the appeal to a limited extent. There were no judicial findings on any relevant matter. He noted that the Appellant had chosen not to attend the hearing before the judge. It was also the case that due to the age of the Appellant's last application the old section 85(5) of the 2002 Nationality, Immigration and Asylum Act 2002 applied. Therefore, the only evidence that the judge could have taken into account was that submitted with the application or at the most that provided before the Respondent's decision was made. Any subsequent change of circumstances would have been immaterial. Mr Jarvis submitted that there were no material errors of law.
8. Miss Turnbull made no reply.

Decision on error of law

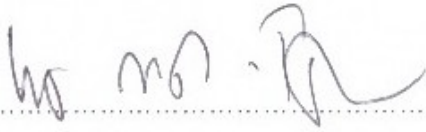
9. As I announced to the parties at the hearing, there are no material errors of law in the judge's decision.

10. It is right that he expressed himself in brief and robust terms but that does not of itself disclose any error of law. He did make reference to the evidence before him, albeit in very summary form. What is important here is the nature of that evidence. It is quite clear to me that the relevant evidence was that contained in the interview record and the Appellant's two witness statements. Having read this for myself it is immediately apparent that it was extremely poor, to say the least. The Respondent was of similar view and had relied upon the lack of genuineness to refuse the application. The judge did likewise. On the basis of the evidence that he did have before him it was open to him to conclude that the Appellant was not a genuine entrepreneur for the reasons briefly stated in [10] and [11] of his decision. A reading of the interview record in combination with the two statements shows that the Appellant had very little idea whatsoever as to any business plans, the circumstances of his proposed business partner, or indeed any other aspect of setting up or running a business in the United Kingdom. The issue about the funds is really beside the point. Even if the Appellant had in fact had access to relevant funds, this would not have in any way been determinative in his favour. Indeed, there is not even the remotest possibility that this factor could have trumped the considerably adverse evidence relating to the genuineness of the application as a whole.
11. In any event, there was no relevant financial evidence before the judge. If the Appellant had in fact sent in such evidence to the Respondent previously it would have been clear to him and/or his legal representatives that it was not included in the Respondent's bundle prior to the hearing. The Appellant could and should have provided such evidence himself. There is no explanation as to why the Appellant simply failed to engage with the appeal in this way. It is also notable that he chose not to attend the hearing, something that clearly did him no favours whatsoever.
12. In relation to Article 8 there was essentially no evidence at all for the judge as to the Appellant's private life as noted at [12] of the decision. The thin bundle says virtually nothing about any ties in this country. In light of the lack of evidence and the relevant case law, this part of the Appellant's case was almost bound to fail. Certainly, the judge was entitled to conclude that removal would be proportionate in all the circumstances.

Notice of Decision

The decision of the First-tier Tribunal does not contain any errors of law and it shall stand.

No anonymity direction is made.

A handwritten signature in black ink, appearing to read 'W. Norton-Taylor', written over a horizontal dotted line.

Signed

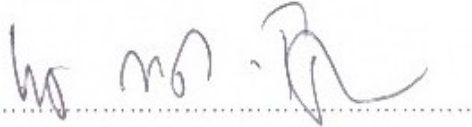
Date: 4 May 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

The appeal is dismissed and therefore there can be no fee award.

A handwritten signature in blue ink, appearing to read 'W. Norton-Taylor', is written over a horizontal dotted line.

Signed

Date: 4 May 2018

Deputy Upper Tribunal Judge Norton-Taylor