



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/04366/2014

THE IMMIGRATION ACTS

Heard at Field House
On 12 November 2014

Determination Promulgated
On 3 December 2014

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR RASHID MAHMOOD

Respondent

Representation:

For the Appellant: Mr T Wilding, Home Office Presenting Officer

For the Respondent: Mr Rashid Mahmood

DETERMINATION AND REASONS

1. The Secretary of State has been granted permission to appeal the determination of First-tier Tribunal Judge Howard in which he allowed the respondent's appeal against a decision made on 6 November 2013 to refuse to vary his leave to remain in

the UK as a Tier 1 (Entrepreneur) Migrant. The judge relied on **Rodriguez [2013] UKUT 00042 (IAC)** to allow the respondent's appeal.

2. The Secretary of State was granted permission to appeal on grounds which argued that the judge made a material misdirection in law, in particular by relying on the case of **Rodriguez [2013] UKUT 00042** which has now been set aside by the Court of Appeal in **Rodriguez [2014] EWCA Civ 2**.
3. The judge correctly recognised at paragraph 10 of the determination that this case concerns the evidence submitted to show the availability of £50,000. The requirement for that amount is found in Appendix A. Appendix A requires the letter to meet the prescribed requirements of paragraphs 41-SD. Paragraph 41-SD(b)(i) requires that the original declaration from the third party contains inter alia "the applicant's signature and the signature of the third party". The judge said the affidavit he had contained the signature of the third party, but not that of the appellant.
4. The judge said at paragraph 11 that paragraph 41-SD(b)(ii) requires that there is a letter from the legal representative confirming the validity of the signatures on the third party declaration. In this case there was no letter but the affidavit, which is the third party declaration, and which contains all the information required by paragraph 41-SD(b)(ii) save that it cannot attest to the signature of the respondent because it is not thereon.
5. Mr Wilding said that there was a further issue which, the judge failed to consider and it is this; at page 2 of the Secretary of State's refusal letter, it states that the respondent i.e. claimant has stated that he has access to funds of £50,000 being made available to his business by Mr Mohamed Zariat. As evidence of this he provided Barclays Bank statements and a declaration from Mr Mohamed Zariat. However the bank statements that he had provided were not acceptable because they were for an account that was not in the claimant's name, as required by paragraph 41-SD(a)(ii) and (iv) of Appendix A of the Immigration Rules. For money held in the UK, the account must be in the appellant's own name only, not in the name of a business or third party.
6. Mr Wilding submitted that the judge did not deal with this issue.
7. Mr. Mahmood confirmed that the Barclays Bank statements he had submitted with his application were not in his name. They were in the name of his father, Mr Mohamed Zariat. Consequently on this issue I find that Mr. Mahmood's appeal could not succeed.
8. However, there were other requirements Mr. Mahmood had to meet given that the Barclays Bank statements were in the name of his father, the third party. The requirements were as set out by the judge at paragraphs 10 and 11 of the determination, as recorded above.

9. Mr. Mahmood confirmed that the affidavit from his father did not contain his signature. His explanation was that he forgot to sign it. He had expected that the Secretary of State would write to him so that he could remedy the defect.
10. Mr. Mahmood said he submitted a declaration from a legal representative to establish that the letter of permission supplied was valid. However, as the third party letter of support did not contain his signature, the letter from the legal representative did not confirm his signature. Mr Wilding submitted that the further letter from the legal representative dated January 2014 post-dated the Secretary of State's decision and the date of the claimant's application.
11. I find on the evidence that was before the judge and confirmed by Mr. Mahmood at the hearing before me, that his appeal could not succeed. The judge applied the wrong authority i.e. **Rodriguez [2013] UKUT 00042** which had been set aside by the Court of Appeal in their decision in **Rodriguez EWCA Civ [2014]**. The Court of Appeal did not uphold any of the findings made by the Upper Tribunal.
12. I find that had the judge applied the Court of Appeal's decision, he would not on the evidence before him have allowed the respondent's appeal.
13. Accordingly, the judge's decision cannot stand.
14. I remake the decision and dismiss Mr. Mahmood's appeal.
16. It follows that the Secretary of State's appeal is allowed.

Signed

Date

Upper Tribunal Judge Eshun