Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/31648/2014
IA/31649/2014
IA/31652/2014
IA/31659/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8th July 2015	**On 7th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

NATHANIEL OMOBUYI EGBAYELO (FIRST APPELLANT)
AJIBIKE BUSAYO EGBAYELO (SECOND APPELLANT)
SHINAAYOMI DANIEL EGBAYELO (THIRD APPELLANT)
HARRY DAVID EGBAYELO (FOUTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No representation
For the Respondent: Mr Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Nigeria born respectively on 16th March 1976, 1st October 1978, 13th August 2006 and 18th February 2008. They are related as husband, wife and their two children. Appellants Two, Three and Four are dependants on Appellant One. I shall refer to the First Appellant as "the Appellant" throughout.

2. The Appellant appealed against the decision of the Respondent dated 21st July 2014 refusing him leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant pursuant to paragraph 245DD of the Immigration Rules HC 395 as amended. The other Appellants applied for leave to remain as his dependants pursuant to paragraphs 319C and H. The Respondent also issued removal directions. Their appeals were heard by Judge of the First-tier Tribunal Oxlade on 3rd November 2014. Their appeals were dismissed in a determination promulgated on 11th November 2014.

3. An application for permission to appeal was made by the Appellants and permission was granted by Upper Tribunal Judge Lindsley on 28th April 2015. The permission was granted on limited grounds. It states that the appeal was dismissed for want of evidence but the Appellants claim that this evidence was submitted with the application. They produced copies of financial evidence in support of their application for permission to appeal. A third party declaration letter is listed in the summary of evidence at section 7 of the summary sheet of the Appellant's application form which forms part of the Respondent's bundle. This is the evidence which the Appellants state was submitted to the Respondent with their application. The permission states that it is arguable that the First-tier Tribunal erred in law in finding that the Appellant was unable to meet the requirements of the Immigration Rules as a Tier 1 (Entrepreneur) Migrant, for failure to provide this evidence. These are the limited grounds that permission has been granted on. The other errors of law cited in the grounds of application, relating to Article 8 of ECHR, are not applicable as there was no appeal made under Article 8 of ECHR to the First-tier Tribunal.

4. The Respondent lodged a Rule 24 response. This states that the Judge of the First-tier Tribunal directed himself appropriately. The response states that there were various issues regarding the financial documents the Appellant relied on. At paragraph 20 of the determination the judge finds that the Halifax Bank account could not be considered as it was in the Appellant's spouse's name only, without any declaration from his spouse. Consequently the Appellant and his dependants could not meet the requirements of the Rules. The response goes on to state that it should be further noted that the Appellant requested a paper hearing as opposed to taking advantage of the appellate system, thus ceasing the opportunity to make his case including the claims about the documentation before the SSHD and the Tribunal. The response states that the grounds have no merit and merely disagree with the adverse outcome of the appeal.

The Hearing

5. The Appellant made submissions stating that the only problem with the application is the financial situation and he submitted that the Halifax bank account statements were with his application and the Immigration Officer ignored them. He submitted that a previous application was made on 11th November 2013 and refused on 3rd December 2013. He submitted that he appealed and the decision was withdrawn by the Home Office in February 2014. He submitted that the refusal letter relating to that

application stated that the bank statement provided from Halifax Bank was not acceptable because it was for an account that is not in the Appellant's name, as required by paragraph 41-SD(a)(ii)(4) of Appendix A of the Immigration Rules. That refusal letter states that the Appellant had not demonstrated he had access to funds as required. The sum referred to is £10,300. The Appellant said that the new refusal letter of 21st July 2014, which is the decision I am dealing with at this hearing, indicates that the bank statement and the letter from the Appellant's spouse, (the Second Appellant), were not with the application. He submitted that they were with the application.

6. The Presenting Officer submitted that the decision the Home Office withdrew in February 2014 and the refusal letter of 3rd December 2013 state that the bank statement provided from Halifax Bank is not acceptable because it is for an account that is not in the Appellant's name. The first refusal letter therefore, under the heading "funds held in regulated financial institutions" awarded no points. He submitted that the refusal letter of 21st July 2014 refers to this again for the same reasons.

7. The Appellant submitted that the Halifax account is now in joint names and was in joint names before the hearing but the Presenting Officer submitted that this cannot be looked at as this was not the situation at the date of the application.

8. The Presenting Officer referred to paragraph 41-SD(c)(ii)(4) and submitted that there requires to be a third party declaration and at paragraph 41-SD(d)(ii) there requires to be a letter confirming the validity of the declaration from the financial institution.

9. He submitted that there is now a signed declaration of support on file. This is what the Appellant states was submitted with the application but there is no confirmation on the bank statements or otherwise that the funds will be available specifically to the Appellant, as required by in the Immigration Rules 41-SD(c)(i).

10. The Appellant submitted that there is nothing in the first refusal letter about confirmation being required from the bank. He submitted that it was him who put the money into that account with the Halifax Bank.

11. The Presenting Officer put to the Appellant that the first refusal letter is not relevant, we are only dealing with the refusal letter dated 21st July 2014.

12. The Appellant referred to paragraph 245 of the Rules relating to missing evidence. He submitted that evidential flexibility applies and that the Home Office should have contacted him if documents were missing and did not do so.

13. The Presenting Officer referred to evidential flexibility, submitting that the Appellant has made a clear admission that the Halifax bank letter was not with the application and he submitted that that is fatal to this appeal. He submitted that although the Halifax account is now in joint names of the Appellant and his wife it is not open to the Appellant to rely on this as this was not the case when the application was made.

He submitted that subsequent events are irrelevant. He submitted that that is the law as it stands.

14. The Appellant submitted that the Secretary of State should have given him the benefit of the doubt. He submitted that the refusal letter refers to funds which are abroad and that he should have been given the opportunity to submit further documents in the interests of fairness.

15. The Presenting Officer submitted that evidential flexibility is not relevant in this case. At the date of the decision discretion should not have been extended and if I overturn the decision the appeal should be remitted back to the Secretary of State. He asked me to find there to be no error of law in the determination and he submitted that the decision should stand.

Decision & Reasons

16. The refusal letter of 21st July 2014 states that the application made by the Appellant was dated 11th November 2013. It states that on 11th November 2011 the Appellant was granted leave to remain in the United Kingdom as a Tier 1 (Post-Study) Migrant until 11th November 2013 and on 3rd December 2013 the application of 11th November 2013 was refused with a right of appeal. On 21st January 2014 the Appellant lodged an appeal but the decision was withdrawn by the Home Office on 11th February 2014. It was withdrawn to enable the Home Office to undertake a reconsideration of this application. The refusal letter refers first of all to paragraph 322(1A) of the Immigration Rules. This does not form part of the permission to appeal. The refusal letter then goes on to the points scoring. Under the heading "Applicant has access to funds as required" no points are awarded. Reference is made to the Halifax bank statement of the Appellant's spouse, the Second Appellant and the signed declaration of support. It states that no confirmation was provided either on the bank statements or otherwise that these funds will be available specifically to the Appellant as required by the Immigration Rules 41-SD(c)(i)(6). The refusal goes on to state that if the Appellant is relying solely on UK bank statements these would need to be in his name only and if relying on UK bank statements from a spouse he would need to provide a declaration of support and confirmation from the bank that the funds are available specifically to him. The specific requirements of the Rules were found by the Respondent not to have been satisfied.

17. Under the heading "Funds held in regulated financial institutions", no points are awarded. The reason for this are that the Appellant has not demonstrated that he has access to funds as required so the Respondent is unable to accurately assess this attribute as he has not demonstrated that the full amount of the funds required is held with regulated financial institutions.

18. Under the heading "Funds disposable in the United Kingdom", the refusal letter states that the Appellant has not provided sufficient evidence with his application, as specified under Appendix A of the Immigration Rules, so no points are awarded under this heading. This is because the Appellant has not demonstrated that he has

access to funds as required and has not demonstrated that the full amount of the funds as required is disposable to him in the United Kingdom.

19. The Appellant's position is that the required documentation has been provided and was provided with the application. There is a letter of support signed by the Appellant and signed by his wife, which was received by the Tribunal on 28th July 2015. This was after the date of the application which was 11th November 2013 and was after the date of the refusal letter of 21st July 2014. There is a letter from Owens, Solicitors, Luton confirming the signatures on the letter of support. This is dated 8th November 2013. At the top of the letter of support there is a handwritten note which states that this letter was previously submitted to the Upper Tribunal prior to the hearing date. Even if this is true the Rules specifically state that confirmation from the bank on the bank statements or otherwise, that these funds will be available specifically to the Appellant is necessary. This is stated in the Immigration Rules 41-SD(c)(i)(6) and there is no such confirmation and no such confirmation was submitted with the application. For this reason the Respondent did not award any points in line with Appendix A of the Immigration Rules. For the same reason no points were awarded for funds held in regulated financial institutions and no points were awarded for funds disposable in the United Kingdom.

20. The specific terms of the Rules have to be satisfied and it is clear that in this case the Appellant has tried to do this but has failed. He has admitted that the confirmation was not with the application. The fact that the Halifax account is now in joint names cannot be taken into consideration as this was done after the date of application.

21. The Appellant therefore cannot meet the requirements of paragraph 41-SD(c) of Appendix A because all the specified documents were not supplied with the application and so the appeal was bound to be refused under the Immigration Rules. Even if these documents had been produced to the Respondent on another occasion that does not mean that the requirements of paragraph 41-SD would have been met. Nor can the deficiencies in the documents submitted with the application be saved by the application of paragraph 245AA and evidential flexibility. The case of **Rodriguez [2014] EWCA Civ 2** applies. There are certain situations in which evidential flexibility applies but this is not one of them. The missing document was not missing from a list and the Respondent could not be expected to contact the Appellant because this was not submitted as the specified documents are set out in the Rules, the terms of which the Appellant had to adhere to.

DECISION

There is no material error of law in the judge's determination. The First-tier determination, promulgated on 11 November 2014 must stand.

The appeals by the Appellants (being the First Appellant and his family) for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant and for leave to remain as his dependants is dismissed.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Murray