



IAC-AH-SC/CJ-V1

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

Appeal Number: IA/05790/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12 January 2016

Decision & Reasons Promulgated  
On 25 January 2016

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

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

Appellant

**and**

**MR RAM KUMAR GUPTA  
(ANONYMITY DIRECTION NOT MADE)**

Respondent/Claimant

**Representation:**

For the Appellant:

Ms E. Savage, Specialist Appeals Team

For the Respondent/Claimant:

Mr O. Noor, Counsel instructed by Samuel & Co

**DECISION AND REASONS**

1. The Secretary of State appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Sweet sitting at Richmond Magistrates' Court on 7 July 2015) allowing the claimant's appeal against the decision of an Immigration Officer to Counsel's existing leave to enter the United Kingdom as a business visitor under paragraph 321A of the Rules on the ground there had been a material change of circumstances since leave was given, such that leave should be cancelled. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the

appellant requires to be accorded anonymity for these proceedings in the Upper Tribunal.

### **The Reasons for Granting Permission to Appeal**

2. On 28 October 2015 First-tier Tribunal Judge Colyer granted the Secretary of State permission to appeal for the following reasons:
  - “3. The appellant sought leave to enter the UK on 29 January 2015 as a business visitor. This was cancelled on 30 January 2015 as the respondent considered that the appellant has established a business in the UK without the requisite visa.
  4. The respondent submits that there was the making of a material misdirection of law. Firstly the failure to resolve conflict in evidence:
    - ‘In finding that the appellant had not breached his business visa, it is respectfully submitted that the tribunal have failed to resolve conflicts in the evidence about the appellant’s business activities in the UK in relation to IMPACT Corporation UK Ltd, as detailed in the respondent’s explanatory statement dated 5 April 2015’ points 1-5.
    - ‘This amounts to a material error of law as there has been a failure to consider and resolve the points of concern raised by the Secretary of State, particularly concerns that he had a UK driving licence issued on 03 11 12 registered to impact Corporation’s UK address, a business card in the same company name showing him as CEO/proprietor with a UK e-mail address, and a companies house AP01 appointment of director document showing his country of residence as UK, conflicting evidence as to whether or not he had put money into the business (including payment of £167,300 he received).’
  5. Ground two-failure to provide adequate reasons on a material fact.
    - ‘It is respectfully submitted that the tribunal have therefore failed to provide any reasons other findings made at paragraph 12, that the appellant has not breached his business visa-especially as the appellant is said to own 99% of the company’s shares. It is incumbent upon the tribunal to explain why this decision has been reached given the concerns raised by the respondent in the explanatory statement of 5<sup>th</sup> April 2015.’
  6. It may be argued that the decision was not sufficient to meet the standards identified in the guidance on the approach a court should take to the reasons given by a specialist tribunal such as the FTT in **R (Iran and others v. SSHD [2015] EWCA Civ 982** and **R (Ashworth Hospital Authority) v Mental Health Review Tribunal [2001] EWHC 901 (Admin)** at [77]. What is required is that the reasons must give sufficient detail to show the parties and the appellate tribunal or reviewing court, the principles upon which the lower tribunal has acted, and the reasons that led to its decision, so that they are able to understand why it reached its decision. The reasons need not be elaborate, and need not deal with every argument presented, however it may be argued in this case that a number of important issues raised by the respondent have not been satisfactorily decided upon by the tribunal.

7. It is arguable that the judge has misdirected himself for the above reasons and all of the grounds submitted by the respondent are arguable. Permission to appeal to the Upper Tribunal is granted."

### **Relevant Background**

3. The claimant is a national of India, whose date of birth is 12 July 1956. He has been a businessman since 1995. He had been in possession of a business visitor visa since 2002 to enable him to travel to the United Kingdom on business. In 2012 he was issued with a 10 year multi-visit business visa.
4. At the beginning of January 2015 he applied for entry clearance as a Tier 1 (Entrepreneur). In support of his application, he relied inter alia on a letter from a firm of accountants who said they had been acting as accountants for Impact Corporation UK Limited since 8 January 2009. They confirmed that the claimant had been a creditor of the company since 2010, and that in the course of a three year period running from the tax year ending 2011 to the tax year ending 2014, payments totalling £167,300 had been made to him as a return of credit owed to him by Impact Corporation UK Limited. He now intended to take over the company, and had been appointed as a director of Impact Corporation UK Limited on 15 August 2014. He intended to invest £200,000 in the company in order to expand its business in the UK and the EU.
5. On 29 January 2015 the claimant flew into the UK with the intention of attending a meeting with the other director of the company to finalise his takeover of the business and to be briefed by two potential clients. He says he intended to remain for two days before travelling on to the USA. He had a 10 year business visit visa to the USA which had been issued to him in 2011. On his arrival at Heathrow, he showed the Immigration Officer his return ticket to India on 6 February 2015.
6. The claimant's application for a Tier 1 (Entrepreneur) visa had been refused a week before on 23 January 2015. The visa was refused because the Entry Clearance Officer was satisfied that he had established business in the UK, namely Impact Corporation UK Limited, without getting the requisite visa for that purpose.
7. The claimant was asked on his arrival whether he had ever been refused a visa to the UK, and he answered that he had, referring to the refusal of his Tier 1 (Entrepreneur) visa. This led to his baggage being searched, and to two extensive interviews in which he was questioned about his relationship with Impact Corporation UK Limited.
8. On the same day, he was issued with a notice of refusal of leave to enter in the following terms:

"On 23/7/12 you were given an entry clearance which had effect as leave to enter the United Kingdom as a Business Visitor but I am satisfied that there has been such a change of circumstances in your case since he leave was granted that it should be cancelled. This is because you obtained a business visit visa to meet customers and Mr Harish SHAH of New Florence collection for a 10 to 12 day business visit. However,

since this visa was issued you have become a 99% shareholder in MR Harish Shah's business and taken over this business under the umbrella of IMPACT Corporation UK LTD. You have therefore established a business in the UK whilst on a Business visit visa. Furthermore you applied for a TIER 1 Entrepreneur visa which was refused on 23/01/2015. Your visa was refused because the Entry Clearance officer was satisfied that you have established a business in the UK without getting the requisite visa for that purpose. There were also concerns that you have effectively been working in the UK on a business visit visa.

I consider that this and all of the above constitutes a significant and material change of circumstances and that the leave conferred by your entry clearance should be cancelled.

I therefore cancel your leave under Section 2A(8) of Schedule 2 of the Immigration Act 1971 and paragraph 321(A)(1) of the Immigration Rules (HC395)."

### **The Hearing Before, and the Decision of, the First-Tier Tribunal**

9. At the hearing before Judge Sweet, the claimant was represented by Mr Noor of Counsel, and there was no appearance on behalf of the Secretary of State. The judge received oral evidence from the claimant. Mr Noor relied on an extensive skeleton argument in which he advanced the case that what his client had done in the past on previous visits to the United Kingdom, and what he was proposing to do on his latest visit, did not breach paragraph 46G of the Rules which sets out the requirements for leave to enter as a business visitor, nor was it contrary to the published Home Office guidance on business visitors valid from 6 November 2014, all 45 pages of which he annexed to his skeleton argument.
10. In his witness statement, the claimant drew attention to the fact that when refusing his Tier 1 (Entrepreneur) visa, the Entry Clearance Officer had acknowledged that establishing a business in the UK whilst being present in the UK on a business visit visa was not specifically prohibited.
11. In his subsequent decision, the judge acknowledged that the Home Office bundle contained inter alia an explanatory statement dated 15 April 2015, the Tier 1 (Entrepreneur) refusal notice, information relating to Impact Corporation UK Limited, an HSBC bank statement, and interview records.
12. He summarised the evidence which he received from the claimant. He was not employed by Impact Corporation UK Limited. He had never received a salary or dividends from that company. He was aware of the restrictions under the business visa and that he could not be paid or have access to public funds. He had not breached the conditions of his business visa. He was owed money by the UK company, but this was a repayment for credit which he had given to suppliers between 2009 and 2014.
13. At paragraph [9] the judge summarised Counsel's submissions. The claimant had not breached the conditions of his visa. He could be a director and establish a company in the UK.

14. The judge set out his findings of fact at paragraphs [10] to [13], which I reproduce verbatim below:

- “10. The burden of proof is on the Appellant and the civil standard of the balance of probabilities applies. The Appellant was in receipt of a business visa since 2002 to enable him to travel to the UK on business. He made a visit on 29<sup>th</sup> January 2015, with a view to attending a meeting with another director of a company to finalise the takeover of the business and to be briefed by two potential clients. He wished to stay in the UK for two days before travelling to the USA, also for business reasons. He was detained on arrival and refused leave to enter the UK, but granted temporary admission until 14<sup>th</sup> February 2015. He was refused leave to enter on the grounds that there had been a change in his circumstances since 2012 when the visa had been issued. It was alleged that he had established a business whilst on a business visit visa and he had been working in the UK. The purpose of his visit was permitted under paragraph 46 of the Immigration Rules to arrange deals, negotiate or sign trade agreements or contracts and carry out a fact-finding mission. He is the proprietor and chief executive officer of Impact Corporation, a company based in Delhi, India, he has travelled to all parts of the world in the past few years on business and since July 2002 has been issued with three successful long term business visit visa from the UK. He has visited the UK on many occasions and has never overstayed his visa nor breached any of the conditions.
11. Impact Corporation UK Ltd was incorporated in the UK on 8<sup>th</sup> January 2009. The company had, a sole director, Mr Harish Shah, who was responsible for the management of the company, 99% of the shares belong to the Appellant and 1% to Mr Shah. On 15<sup>th</sup> August 2014 the Appellant was appointed a co-director of Impact Corporation Ltd and it was on 12<sup>th</sup> December 2014 that he made an application for a Tier 1 (Entrepreneur) visa to enable him to undertake managerial work for the company of the UK – but that application was refused on 27<sup>th</sup> January 2015. There is a pending judicial review against that refusal.
12. The Appellant has never received any payment in the form of dividends or cash or other pay from Impact Corporation, nor has he done any work for the company since being appointed co-director on 15<sup>th</sup> August 2014.”

### **The Hearing in the Upper Tribunal**

15. At the hearing in the Upper Tribunal to determine whether an error of law was made out, Ms Savage relied on the case advanced in the permission application. On behalf of the claimant, Mr Noor developed the Rule 24 response which had been served on the Secretary of State and the Upper Tribunal. I asked him about the refusal of the Tier 1 (Entrepreneur) visa. He said that the appellant had commenced judicial review proceedings, which had recently been compromised with the Secretary of State agreeing to give fresh consideration to the appellant's application for a Tier 1 (Entrepreneur) Migrant visa.

### **Discussion**

16. The main reason advanced for cancelling the claimant's business visa mirrors the main reason given for refusing the claimant's application for a Tier 1 (Entrepreneur)

Migrant visa, which is that he had wrongly established the business in the UK in which he now proposed to invest the sum of £200,000.

17. The claimant's case is that his historic relationship with Impact Corporation UK Limited was that of a founding shareholder and creditor, and this was permitted under the Rules, as were the preparatory steps which he took in the late summer and autumn of 2014 with a view to converting his status from that of a business visitor to a Tier 1 (Entrepreneur) Migrant. The claimant recognised that, in order to take over the management of the UK company, he needed to "upgrade" his status from that of a business visitor to a Tier 1 (Entrepreneur) Migrant.
18. Although not cited to me, I have had regard to Muse & Others v Entry Clearance Officer [2012] EWCA Civ 10 on challenges to the adequacy of a judge's reasons. In South Bucks District Council v Porter (2) [2004] UKHL 33, cited with approval by the Court of Appeal at paragraph 33, Lord Brown said:
 

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need only refer to the main issues in the dispute, not to every material consideration."
19. Ground 1 is that the judge failed to resolve conflicts in the evidence detailed in the Secretary of State's explanatory statement, and thus failed to provide adequate reasons for finding that the claimant had not breached his business visa, especially as the claimant was said to own 99% of the company's shares.
20. The main issue raised by the explanatory statement was whether what the claimant agreed he had done in the past, such as (a) becoming a 99% shareholder in the UK company and (b) in August 2014 becoming a director of the company, constituted a breach of his business visa. There was also a subsidiary issue as to whether, contrary to his denial, the appellant had engaged in business activity which was clearly prohibited by the conditions of his business visa, such as being employed by the UK company.
21. Judge Sweet gave adequate reasons for resolving both these issues in favour of the claimant. It is true that he did not refer to every piece of evidence relied on in the explanatory statement as reinforcing the suspicion that the appellant had breached the conditions of his business visa. However, the judge was not required to do so, following Muse.
22. Furthermore, some of the specific concerns raised in the permission application are matters about which there was no factual dispute. The claimant accepted that he

owned 99% of the company's shares, as indeed he had done since the company was formed. He also accepted that he had been appointed as a director.

23. The other points of concern (the driving licence allegedly registered to the company's UK address, the possession of a business card allegedly showing the claimant as the CEO/proprietor of the UK company with a UK email address, and the Companies House document showing him as having a UK residence), were relevant to the credibility of the claimant's denial that he had crossed the line by engaging in activity in the UK which was prohibited by the Rules.
24. There is no specific challenge to the judge's findings of fact at paragraph [12] of his decision, and accordingly those particular points of concern melt away. Despite (alleged) outward appearances, the claimant had not engaged in impermissible activity.
25. I say "alleged" advisedly, as Mr Noor informed me in the course of oral argument that two of the three points of concern were factually incorrect. The claimant's driving licence had not been registered to the UK company's address, but to a friend's address, and he produced evidence of this for my inspection. It was also not the case that the claimant was in possession of a business card in respect of the UK company. His Indian company trades under the name Impact Corporation, and the claimant's business card related to the business in India, not the business which he proposed to take over in the UK. The claimant agreed that it had been a mistake to register himself as a UK-based director, and the entry at Companies House has since been corrected.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Monson