



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

Shebl (Entrepreneur: proof of contracts) [2014] UKUT 00216 (IAC)
THE IMMIGRATION ACTS

Heard at Newport

Promulgated on

On 20 March 2014

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Before

MR C M G OCKELTON, VICE PRESIDENT

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOHAMED ADEL MOHAMED MOHAMED SHEBL

Respondent

Representation :

For the Appellant: Mr I Richards, Senior Home Office Presenting Officer

For the Respondent: Ms S Akinbolu, instructed by VC Legal (UK)

The requirement to prove the existence of “contracts” in paragraph 41-SD of Appendix A to the immigration rules does not itself require the contracts in question to be contained in documents. There is, however, a need for such contracts to be evidenced in documentary form.

DETERMINATION AND REASONS

1.

This is the Secretary of State’s appeal against a decision of First-tier Tribunal Judge Holder allowing the appeal of the respondent (whom we shall call the claimant) against a decision dated 17 May 2013 refusing leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant.

2.

The judge’s findings were as follows:

“16. It can be seen from the Refusal Letter that the Respondent:

a) is satisfied that the Appellant has access to £50,000; and

b) is satisfied that he meets the requirements of provision (d) of Table 4 to Appendix A (i), (ii) and (iii).

17. The Respondent is not satisfied that the Appellant has shown that he meets the requirements of provision (d) of Table 4 to Appendix A (iv), namely:

that he is engaged in business activity, other than the work necessary to administer his business, in an occupation which appears on the list of occupations skilled to National Qualifications Framework Level 4 or above, as stated in the Codes of Practice in Appendix J, and provides the specific evidence in paragraph 41-SD.

18. I find from the Refusal Letter that the Respondent accepts that the Appellant has provided satisfactory evidence of a job title.

19. However, the remaining issue is whether the Appellant has submitted satisfactory evidence of contracts. The Respondent asserts that the purchase orders provided by the Appellant do not reveal the services that he is providing. In other words, it is asserted that he has not provided sufficient documentary evidence to show that he is operating as Sales and Marketing Director.

20. I find from the combination of the Appellant's evidence and the documentation provided (including the Certificate of Incorporation of PLCEUROPE LIMITED, the tax documentation, the accounts, the website information for the Appellant's company, his advertising and marketing information and the numerous purchase orders/Pro-forma invoices and sales/commercial invoices) that the Appellant has demonstrated that he is operating as a Sales and Marketing Director for PLCEUROPE LIMITED.

21. I also find that the combination of the numerous purchase orders/pro-forma invoices and sales/commercial invoices that these form contracts between his company and the purchasers of his goods.

I find that these documents (when looked at compendiously) meet the requirements of paragraph 41-SD(c). The combination of the three principal types of document reveal those matters required by paragraph [41-SD(c)(iv)(1)-(3)] ¹ are present.

I accept (in the absence of a submission by the Respondent's representative to the contrary) that these documents were before the Respondent prior to the Respondent's decision.

22. Taking into account all of the above and the papers before me, I find that the reasons given by the Respondent do not justify the refusal of this application and that the Appellant does not [sic] meet the requirements of paragraph 245DD of the Immigration Rules.

The Appellant should be awarded a minimum of 75 points under paragraphs 35 to 53 of Appendix A".

3.

The Secretary of State appeals on the following grounds:

"The Appellant's application was refused on the basis that he did not fulfil the requirements of provision (d) of Table 4 of Appendix A of the Immigration Rules - he could not meet the requirements of requirement (iv). The refusal letter of 17 May (please see asterisked paragraph on the copy attached) states For requirement (iv) although you have provided a job title that is listed in Appendix J, you have failed to provide any contracts. The purchase orders that you have provided do not meet the requirements of the Immigration Rules as they do not detail the services that you are providing. You have therefore not provided the specific documents to demonstrate that you are operating as a Sales and Marketing Director . As the refusal letter sets out, the evidence specified at paragraph 41-SD of Appendix A has not been provided.

At paragraph 21 of the determination, the FTTJ states: I also find that the combination of the numerous purchase orders/pro-forma invoices and sales/commercial invoices that these form contracts [sic] between his company and the purchasers of his goods. I find that these documents (when looked at compendiously) meet the requirements of paragraph 41-SD(c). The combination of the three principal types of document reveal those matters required by paragraph [41-SD(c)(iv)(1)-(3)] are present.

It is submitted that 41-SD(c)(iv) is very clear: please see attached an extract from the Rules current at the date of decision from which the below is quoted

“(iv) one or more contracts showing trading. If a contract is not an original the applicant must sign each page of the contract. The contract must show:

(1) the applicant’s name and the name of the business

(2) the service provided by the applicant’s business; and

(3) the name of any other party or parties involved in the contract and their contract details, including their full address, postal code, landline phone number and any email address.”

It is submitted that the above is very plain about what is needed and that given what it specifies, it was not open to the FTTJ to find that ‘the combination of the numerous orders/pro-forma invoices and sales/commercial invoices’ comprised contracts such as to meet the requirement of the Rules.”

4.

Ms Akinbolu’s skeleton, provided before the hearing, draws attention to the fact that in English law a contract is not typically a document, but a meeting of minds. At the hearing we heard brief submissions from Mr Richards, and did not need to call on Ms Akinbolu.

5.

The Secretary of State’s position is that the Immigration Rules envisage a contract included in a single document, and that a series of documents that together show all material required by the Rules does not constitute “a contract”. We can see no proper basis for that assertion. The intention behind the Rules is that the claimant be able to show that he is genuinely trading. It strikes us as inconceivable that the entrepreneur route was to be confined to the types of trading in which contracts are made by single documents. Paragraph 41-SD very properly specifies that there must be documentary evidence sufficient to show genuine contracts, and containing sufficient information to enable the Secretary of State to check the matter with the other parties for the contracts if she chooses to do so. But there is a world of difference between requiring contracts to be evidenced by a proper paper trail and requiring each contract to be contained in a single document. In our judgment the Rules require the former, but not the latter.

6.

No other issue has been raised in relation to the judge’s decision. We have looked at the documents that were before him, and, like him, we regard them as including all the relevant material when read together. For these reasons we consider that he made no error in law. The Secretary of State’s appeal is accordingly dismissed.

C M G OCKELTON

VICE PRESIDENT OF THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Date: 29 April 2014

¹ Now 41-SD(e)(iv)(1)(a)-(c).