Upper Tribunal
(Immigration and Asylum Chamber)

Arshad and Others (Tier 1 applicants – funding – "availability") [2016] UKUT 00334 (IAC)

THE IMMIGRATION ACTS

Listed at The Manchester Piccadilly Tribunal Centre
On 18 April and 04 May 2016

Before

The President, The Hon. Mr Justice McCloskey

Upper Tribunal Judge Dawson

Between

Muhammad Nadeem Arshad

Aamir Ahmed

Ume-Ruman Ali

Rani Gul

Javed Mehmood

Marrium Javed

Mohammad Diaal Javed

Sadia Murid Ahmad

Muhammad Noman Zafar

Appellants

and

Secretary of State for the Home Department

Respondent

and

Profectus Venture Capital

Interested Party

Representation

At the appeal hearings before the Upper Tribunal all Appellants, except Kashif Nazir and Muhammad Usman Qayyum, were represented by Mr Z Jafferji, of counsel, instructed by direct professional access.

Mr H Ali from Wiseman Solicitors appeared on behalf of a former Appellant, Kashif Nazir (to confirm his client's withdrawal of his appeal).

At the first appeal hearing on 18 April 2016 the interested party was represented by Mr Z Malik, of Counsel and at the second appeal hearing on 04 May 2016 the interested party participated via a written submission only, prepared by Mr D Balroop, of counsel, both instructed by City Law Practice Solicitors.

The Secretary of State was represented by Ms C Rowlands, of Counsel, instructed by the Government Legal Department.

(i) The effect of the amendment of the regime in paragraph 41/SD of Appendix A to the Immigration Rules via HC628, dated 06 September 2013, is that any application for entry clearance or leave made before 01 October 2013 is to be decided in accordance with the Rules in force on 30 September 2013.

(ii) Every applicant for Tier 1 Entrepreneurial status bears the onus of proving satisfaction of all of the material requirements of the Immigration Rules.

(iii) The Rules stipulate that every Tier 1 Entrepreneurial applicant have available £50,000 to invest in the proposed business venture. "Available" in this context denotes that the applicant must be in a position to invest this money in his business consequential upon a positive decision of the Secretary of State. The clear import of the Rules is that the investment must be capable of being made almost immediately thereafter.

(iv) A mere intention on the part of a Tier 1 Entrepreneurial applicant to invest £25,000 at the outset of the business venture, coupled with a further intention to invest the balance of £25,000 at some unspecified future date from some unspecified source, does not satisfy the Rules.

DECISION

Preliminary

1.
This is the decision of the panel to which both members have contributed.

2.
The number of Appellants has shrunk since these appeals were launched initially. There were thirteen Appellants at first instance. The active Appellants, for sundry reasons, have now reduced to nine. At the outset of the hearings, Mr H Ali of Wiseman Solicitors, attended and helpfully informed the Tribunal that while he had previously been instructed on behalf of the eleventh Appellant, Muhammad Qayyum, his instructions have lapsed and his understanding is that this Appellant has departed the United Kingdom.

3.
Two of the original Appellants, Kashif Nazir and Muhammad Usman Qayyum, have been granted permission to withdraw their respective appeals. Neither was represented at the hearing and neither attended.

4.
Following the hearing the Tribunal took the precaution of issuing a formal direction, the response whereto confirmed the withdrawals noted in [3] above.

Introduction

5.
The Appellants have much in common. Each of them applied to the Secretary of State for the Home Department (the "Secretary of State"), the Respondent to these appeals, for leave to remain in the

capacity of Tier 1 (Entrepreneur) Migrant under the relevant compartment of the Immigration Rules (hereinafter the "Rules"). These applications were made in various permutations: some of the Appellants applied in an individual capacity; others applied as partnerships; and some of the applications included dependants. While all of the refusal decisions have individual variations, certain critical aspects of them are couched in substantially indistinguishable terms. In the wake of these refusal decisions, the Secretary of State made further decisions to remove each of the Appellants under section 47 of the Immigration, Asylum and Nationality Act 2006 (the "2006 Act").

6.
We record at this juncture that this batch of appeals was selected, with heavy input from the parties' representatives, as representative of a category of some 140 appeals to the FtT, all of which raise comparable issues. It suffices at this juncture to note that the central feature common to all is that every appellant made a Tier 1 visa application based on a representation that the entity known as Profectus Venture Capital (later becoming Profectus Venture Capital LLP - "Profectus") would provide the funding of £50,000 required by the Rules. All of these applications have been refused. The Secretary of State has found this funding scheme to be seriously flawed.

7.
While there were 13 Appellants altogether, reflecting the fact of 13 refusal decisions, the Tier 1 applications considered, and refused, by the Secretary of State involved a total of six business proposals only. The figure of 13 was made up by a mixture of individual Tier 1 applicants, other applicants applying with business partners and, finally, as observed above, the dependants of certain applicants. The proposed business ventures ranged from a hair dressing/beauty salon to the supply of halal meat. All 13 applications were made during the period of January to April 2013. All of the Appellants appealed to the First-tier Tribunal (the "FtT"). By its decision promulgated on 16 July 2015 the FtT dismissed all appeals. In doing so the FtT, in substance, endorsed the Secretary of State's reservations. The question for this Tribunal, on further appeal, is whether the FtT committed any material error of law in doing so within the compass of the grant of permission to appeal (infra).

The Immigration Rules

8.
In order to understand the underlying decisions of the Secretary of State, it is necessary to begin with the relevant provisions of the Rules. **Paragraph 245 DD(h)**, under the rubric of "**Requirements for Leave to remain**" provides:

"Where the applicant is being assessed under Table 4 of Appendix A, the Secretary of State must be satisfied that:

(i) the applicant genuinely:

(1) intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months, or

(2) has established, taken over or become a director of one or more businesses in the UK and continues to operate that business or businesses; and

(ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);

(iii) the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent for the purposes of his business or businesses;

(iv) if the applicant is relying on one or more previous investments to score points, they have genuinely invested all or part of the investment funds required in Table 4 of Appendix A into one or more genuine businesses in the UK;

(v) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DE."

Paragraph 245 DD(j) provides:

"In making the assessment in (h), the Secretary of State will assess the balance of probabilities. The Secretary of State may take into account the following factors:

(i) the evidence the applicant has submitted;

(ii) **the viability and credibility of the source of the money referred to in Table 4 of Appendix A;**

(iii) **the viability and credibility of the applicant's business plans and market research into their chosen business sector;**

(iv) the applicant's previous educational and business experience (or lack thereof);

(v) the applicant's immigration history and previous activity in the UK;

(vi) where the applicant has already registered in the UK as self-employed or as the director of a business, and the nature of the business requires mandatory accreditation, registration and/or insurance, whether that accreditation, registration and/or insurance has been obtained; and

(vii) any other relevant information."

The underlining is ours.

9.
The terms of **Appendix 1, paragraph 41-SD** of the Rules in force on the dates when the underlying applications were made, January – April 2013, are reproduced in Appendix 1 hereto. The densely prescriptive nature of this regime is, by some measure, its most striking feature. At its heart lies a requirement that all Tier 1 applicants intend to invest a minimum sum of £50,000 in their proposed business enterprise. There is an intense focus on the provenance of this money and the evidence required to establish its existence. Fundamentally, the sum of £50,000 must be "available": this is a central and recurring theme of the regime. The second feature to which we draw attention is that it is permissible for applicants to secure the requisite funding from, inter alia, a "Venture Capital firm".

10.
At this juncture we record that a new version of paragraph 41-SD came into existence between the dates when the Appellants' various applications were received and the dates when they were determined by the Secretary of State. The next succeeding version of Appendix A, paragraph 41-SD contains (inter alia) the following provisions:

"41-SD. The specified documents in Table 4 and paragraph 41, and associated definitions, are as follows:

(a) Where this paragraph refers to funding being available, unless stated otherwise, this means funding available to:

(i) the applicant;

(ii) the entrepreneurial team, if the applicant is applying under the provisions in paragraph 52 of this Appendix; or

(iii) the applicant's business.

(b) Where this paragraph refers to the applicant's business, the applicant must be registered as a director of that business in the UK, and provide a Companies House document showing the address of the registered office in the UK, or head office in the UK if it has no registered office, and the applicant's name, as it appears on the application form, as a director."

The words highlighted above lie at the heart of one of the issues which arose at first instance and are directly related to one of the reasons given by the FtT for dismissing the appeals.

11.
The introduction of the new paragraph 41-SD regime was effected by the Statement of Changes in Immigration Rules HC 628 (hereinafter "HC 628"), dated 06 September 2013. Within the "Implementation" section of HC 628 there is a transitional provision whereby certain of the changes effected by HC 628 are governed by the following words:

"…if an applicant has made an application for entry clearance or leave before 01 October 2013, the application will be decided in accordance with the Rules in force on 30 September 2013".

This discrete provision operates in conjunction with another:

"The other changes set out in this Statement shall take effect from 01 October 2013".

The "other changes" incorporate the introduction of the new paragraph 41-SD regime. The applications of all of the Appellants were made on sundry dates preceding 01 October 2013. Thus they fell to be determined in accordance with the former paragraph 41-SD regime. However, the FtT held that the applications fell to be determined in accordance with the new regime. This discrete conclusion forms one of the permitted grounds of appeal: see [26](xii) and [29](i) below.

12.
To summarise, the paragraph 245DD regime requires every applicant to satisfy a series of requirements which may conveniently be divided into four categories:

(a)
Attributes, under Appendix A.

(b)
English Language proficiency, under Appendix B.

(c)
Financial maintenance, under Appendix C.

(d)
In brief compass, a business proposal which is genuine, credible and viable.

The Secretary of State concluded that all of the Appellants satisfied the first three groups of requirements but did not satisfy the fourth. Therein lies the genesis of these appeals.

The Supporting Letters

13.
In purported compliance with the Rules, each application included a letter or letters from Profectus, a letter from Morgan Reach, an accountancy firm and a letter from Equity Chambers, signed by a person described as "Barrister at Law". Given the elevated importance of these letters in the evidential framework, it is appropriate to reproduce them in full.

14.
The aforementioned letters from Profectus were in two forms. The shorter form is, in material part, in these terms:

"**Ref confirmation of entrepreneur funding**

I, Mr M Serfraz represent Profectus Venture Capital. I confirm the following persons have formed an entrepreneurial team. …

I confirm Profectus Venture Capital shall make available the sum of £50,000 to the business run by the entrepreneur team in the United Kingdom".

This letter purports to be signed by one Mr Serfraz (whose role and designation we analyse infra) and the entrepreneur applicant/s concerned.

15.
The longer form Profectus letter is considerably more elaborate. This example is taken from the joint Tier 1 application of Messrs Ahmed and Mehmood, the second and fifth Appellants, who proposed to establish a retail fast food business known as "Chunky Chick-Inn":

"Dear Sir/Madam,

I Mr. M Serfraz represent Profectus Venture Capital. Profectus Venture Capital is a trading name of Providential Capital and is registered with the FSA under registration number 426749. A printout from the FSA register is attached herewith. Profectus Venture Capital has FSA permission to carry out investments and operate as a venture capital firm.

In my role as the Risk Analyst I am involved in taking decisions as to the feasibility of a future investment. I have a duty to my fund investors to ensure that the investments I make are both viable and credible to the best of my ability.

As part of my role I was tasked to consider a business proposal submitted by the following person(s)

Team member 1

(i) Mr Aamir Ahmed…

Team member 2

(ii) Mr Javed Mehmood…

Upon receipt of this and subject to market conditions, having met and carried out due diligence on the proposed business/business sector, I am pleased to confirm that the fund shall make available the sum

of £50,000 (Fifty thousand pounds) to the business run by Mr Aamir Ahmed and Mr Javed Mehmood ('The Entrepreneur Team') in the United Kingdom. Further, should there be a need for 2nd stage funding round injection into the business, this will be considered at the appropriate time.

As part of the funding conditions, the fund shall take a shareholding in the company set up by The Entrepreneur Team. This company shall be managed by our accountants Messrs Morgan Reach. A representative of the fund shall sit as a board member in the company to ensure business decisions are taken that safeguards the funds interests and develop the Company for the mutual benefit of the fund and The Entrepreneur Team. The fund shall have a 33% shareholding in the business and shall hold a preferred class of shares ('Class A shares'). I can confirm that the funds shall remain available until such time that they are transferred on my instructions from the fund into the business of The Entrepreneur(s).

General nature of the business: The purchase and subsequent operation of 'Chunky Chick-Inn' franchise. This is a general outline and is subject to change/amendments according to market conditions.

As the Risk Analyst I am satisfied that Mr Aamir Ahmed and Mr Javed Mehmood demonstrably have the credentials to operate this business and it is for this reason that the fund is prepared to make the sum of £50,000 available to the business they shall operate.

Signed ..... On behalf of 'Profectus Venture Capital'

Signed ..... Mr Aamir Ahmed

Signed ..... Mr Javed Mehmood

Profectus Venture Capital is a trading name of Providentia Captal LLP which is authorised and regulated by the Financial Services Authority under registration number 426749 as a Venture Capital Firm.

Please feel free to contact our Mr M Serfraz on m.serfraz@profectusventurecapital.com or at the above address in case of queries.

Kind Regards

On behalf of Profectus Venture Capital ".

16.
All of the applications were also accompanied by a letter in identical terms from Morgan Reach, an entity describing itself as "Chartered Certified Accountants", signed by one Dr Kamran Shaikh in the professed capacity of Managing Director. This example is again taken from the joint application of the second and fifth Appellants:

"**EVIDENCE OF FUNDING BY A VENTURE CAPITAL FIRM**

Dear Sir/Madam,

We have been instructed by our clients, Profectus Venture Capital ('The Fund') to provide the following information.

The Fund has made the sum of £50,000 (Fifty Thousand pounds) available to the business set up by the following ('The Entrepreneur team'). The Effective date of this agreement is 3 rd April 2013

(‘The Entrepreneur Team’)

Team member 1

(i) Mr Aamir Ahmed…

Team member 2

(ii) Mr Javed Mehmood…

Profectus Venture Capital is (trading name of Providentia Capital LLP) authorised and regulated by the Financial Services Authority, registration no. 426749. I provide the contact details of the fund manager:

Mr. Mohammed Serfraz

Profectus Venture Capital

Parham House, 416 High Street, West Bromwich, B70 9JR

Tel: 0121 222 9696

Fax: 0121 222 9899

Email: info@profectusventurecapital.com

m.serfraz@profectusventurecapital.com

Web: www. profectusventurecapital.com

I hereby confirm that I meet the requirements of the policy guidance in that I am a qualified Accountant and my supervisory body is The Association of Chartered Certified Accountants (ACCA). The above information is supplied based on the requirements in the Tier 1 Entrepreneur policy guidance effective from 31 st January 2013.

We have provided this information in strict confidence without undertaking any liability financial or otherwise towards our firm’s partners, colleagues and staff.

Please do not hesitate to contact our firm or Profectus Venture Capital should you have any queries.

Kind Regards

Dr Kamran Shaikh BA (Hons.) MBA FCCA Phd

Managing Director

Morgan Reach Chartered Certified Accountants”.

17.
The third letter common to all of the applications emanated from an entity described as Equity Chambers, signed by one Y Gulraiz “Barrister at Law”. While the terms of this letter were materially indistinguishable, there were, inevitably, some variations. The sample letter selected for present purposes is again taken from the joint entrepreneurial application of the third and sixth Appellants:

“**REF: CONFIRMATION OF AGREEMENT**

TO WHOM IT MAY CONCERN

I hereby confirm I have witnessed the signatures of Mr Mohammed Serfraz acting on behalf of Profectus Venture Capital and those of Mr Aamir Ahmed and Mr Javed Mehmood ('The Entrepreneur Team'). I confirm the signed document dated 3 rd April 2013 and carrying the reference AA/JM0403 constitutes a valid agreement as between the parties. I further confirm I have seen the passport identification of all parties to the agreement.

Should you require any further assistance please contact me through my clerk at Chambers.

Kind Regards

Y Gulraiz LLB Law (Hons) Barrister at Law".

As stated in the text, the author claims to have witnessed the making of the three signatures which appear at the end of the Profectus letter. There is no indication on the face of the Profectus letter that the signatures were witnessed by any third party and there is no other evidence about this exercise in any of the thirteen appeals.

The Secretary of State's Decisions

18.
The Secretary of State was persuaded that the applications were compliant with the first three groups of requirements summarised in [11] above. However, in every case, the applications were refused under (d). In short, while all of the Appellants satisfied the points scoring requirements, they failed to achieve the non-points scoring requirements.

19.
In every case the Secretary of State's refusal decisions expressed the reasons for rejection in the following terms:

" You have applied for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) but the Secretary of State is not satisfied that on the balance of probabilities that:

a.
You genuinely intend and are able to establish, take over or become a director of one of [sic] more businesses within the next six months; and

b.
You genuinely intend to invest the money referred to in Table 4 of Appendix A in the Immigration Rules in your business or businesses; and

c.
The money referred to in Table 4 of Appendix A of the Immigration Rules is genuinely available to you and will remain available to you until such a time as it is spent by your business or businesses. "

This text correlates directly with the requirements enshrined in paragraph 244 DD(h)(i)(1) & (2), (ii) and (iii).

20.
The scepticism which all 13 applications generated on the part of the Secretary of State's decision making officials is exemplified in the refusal letter in the case of Mr Zafar (the ninth Appellant), whose proposal was to establish a computers and IT solutions business:

“ I do not find it credible that a venture capital company with the genuine intention of investing funds into a business would be persuaded by your business proposal. I therefore question what due diligence Profectus have carried out before agreeing to invest the £50,000 into your business idea ….

The Profectus letter confirming funding is dated 06 March 2013. This means that from the initial meeting on 01 March 2013 at which you state you submitted a business plan ……. Profectus had approximately five days to undertake due diligence before agreeing to invest £50,000 in your business idea of a computer and IT solutions business. It is not credible that sufficient due diligence would have been undertaken in such a short period of time. ”

This Appellant’s explanation that he had learned of Profectus from a friend was also rejected as lacking in credibility. It was further noted that he had not submitted a business plan. His unconvincing answers during interview relating to market research were also highlighted. Furthermore, his claim that he would be able to rent a specific business property was, upon checking, demonstrated as significantly incorrect.

21.
As regards Mr Arshad (the first Appellant), the decision maker highlighted a series of replies made during interview, namely that the Profectus funding of £50,000 was not a loan; Profectus was a 33% shareholder in the business; they are “the shareholders”; “contracts were signed”; the funding was conditional upon the Tier 1 visa being secured; the Morgan Reach accountancy firm introduced this Appellant and his partner to Profectus; the Tier 1 application was not accompanied by any business plan; and while a business plan was submitted subsequently, it was identical to that also submitted by another of the Appellants. The general refusal reasons advanced in respect of this Appellant mirror closely those pertaining to the other Appellants.

22.
While each of the Secretary of State’s refusal decisions was individual in nature, a certain pattern is discernible upon careful scrutiny. Thus, in the case of Ms Sadia Ahmad (the eighth Appellant), whose proposal was to establish, in partnership with the fourth Appellant (Rani Gul), a hair and beauty salon, the decision states, inter alia:

“ You have submitted a letter from Profectus ….. which confirms that Profectus have agreed to invest £50,000 in your business. Based on the lack of detail and clarity of your responses at interview when asked about the specific service that you would be providing as a business, I do not find it credible that a venture capital company with the genuine intention of investing funds into a business would be persuaded by your business proposal …. You stated that the venture capitals [sic] had given you £50,000 ….

You were uncertain of the name of the venture capital company …. and you then state [sic] that Profectus will release the money after you get the visa ….

You were also unable to highlight all the specific dates, meetings, locations and people involved in this process ….

I ….question what due diligence Profectus have carried out before agreeing to invest the £50,000 into your business idea ….

If you were genuinely intending to be an entrepreneur, you would be able to give a specific business location for your intended venture …

Your market analysis summary does not include any specific information about market research in the Rochdale area for customers …

Furthermore …. you were asked what [your proposed partner's] role will be. You were unable to state what your roles would be within your business … You were unable to state clearly what machinery you required, where you would purchase them and how much they would cost …

You have not provided any evidence of the knowledge and experience gained to market your business. "

All of these factors were identified as undermining the credibility, genuineness and viability of the application. Finally, the decision maker concluded that there was an inexplicable discrepancy between the high English proficiency scores recorded in this Appellant's TOEIC certificate and her English language proficiency demonstrated during interview, prompting the further assessment that she did not have a sufficient command of English to run a business in the United Kingdom.

23.
Messrs Ahmed and Mehmood, the second and fifth Appellants respectively, based their applications for leave to remain on a proposal to establish, as partners, a business with the trading name "Chunky Chick-Inn Limited". The evidence before the FtT included a franchise agreement, the parties whereto were the aforementioned entity (on its face, an incorporated company) and the two Appellants concerned, both described as franchisees. Whereas this document, which purports to be a deed of franchise, contains multiple signatures and addresses, notably it has no dates. The Secretary of State's refusal letters in these cases noted that Mr Gulraiz (of Equity Chambers – supra) was previously a director of Profectus, until 01 February 2013. Various concerns relating to the franchise agreement were detailed. These included varying descriptions of the trading name and the absence of Profectus as a franchisee, in contradiction of one of the express terms of the agreement. Furthermore, the representation that the franchisor was a registered company was, following due enquiry, considered to be false. The decision maker also noted, with evident incredulity, the assertion that whereas Profectus would be providing the entire funding of £50,000, the consideration therefor would be limited to 33% of the " total value of the business" calculated following five years' trading. The proliferation of fast food retail outlets in the area where these Appellants were proposing to trade was further noted.

Decision of the FtT

24.
The thirteen appeals were conjoined and were heard together. In its decision the FtT identified the main documentary evidence, together with the viva voce evidence, considered. Two of the protagonists, Profectus and one Mr Serfraz (who features prominently in the pre-decision interviews of the Appellants), were not represented. The decision of the FtT contains various references to the Appellants' expert witness, Mr Tunkel, who was engaged by Profectus. We shall revisit this discrete issue infra.

25.
We distil from the decision of the FtT the following main findings and conclusions:

(i)
The expert evidence relating to the structure of Profectus as a Venture Capital fund and its commercial relationship with the entity Providentia was accepted.

(ii)
The “backers”/drivers of Profectus were Mr Serfraz and Mr Aziz, both Pakistani nationals.

(iii)
The FtT accepted the evidence about the large credit balances in the Pakistani bank accounts of both men. These amounted to some £2.9m. However, the Tribunal highlighted that there was no evidence of funds available in the United Kingdom to support any of the proposed business ventures.

(iv)
Specifically, at [98]:

“So far as the Appellants are concerned, the funds have to be in cash and either held in a United Kingdom regulated financial institution or transferable to the United Kingdom. There was no evidence of other funds at the relevant times held by or immediately available to Profectus.”

(v)
The total number of appeals involving Profectus was around 140. The FtT found:

“There was no evidence to show that if many of these proposed investments proceeded that (sic) Profectus would be in a position to advance the funds from cash resources.”

This would require a total sum of around £7 million (140 x £50,000).

(vi)
There was no oral testimony from Mr Serfraz and his two witness statements (dated 15 July 2014 and 27 September 2014) were “general in their expression and vague and lacking in detail ……. [and] … do not attempt to address the individual circumstances of any of the principal Appellants.”

(vii)
There was a “dearth of documentary evidence relating to the offers made by Profectus to the principal Appellants” and, apart from assertions about telephone contact and initial meetings:

“…. there was no evidence before the Tribunal of Profectus’ involvement with the individual Appellants’ business proposals.”

(viii)
The Profectus letters of offer were “lacking in the terms and conditions which one would have expected to see in an investor agreement”.

(ix)
There was no shareholders’ agreement.

(x)
There was no accountancy evidence relating to Profectus of the kind the Tribunal would expect to have received.

(xi)
On the whole, the evidence relating to the ability and willingness of the Profectus to make the asserted investments was “unsatisfactory” and “insufficient”, deserving of no more than “little weight”.

(xii)

As all of the Profectus written offers of funding were directed to the businesses, rather than the individual or partnership entrepreneurs, they fell within paragraph 41 – SD of Appendix A, with the result that the requirements of subparagraph (b) – requiring that the business be a company and the applicant a registered director, coupled with the provision of a Companies House document in specified terms – were applicable. These requirements were not satisfied by any of the Appellants.

(xiii)
The FtT construed the Rules thus:

“We therefore accept the Respondent’s argument that an offer of funding to a business which does not yet exist does not satisfy the requirements of the Rules. We find that this is fatal to all the appeals before us, irrespective of all the other grounds on which we find the appeals fail.”

(xiv)
This was followed by the omnibus conclusion:

“We take into account the little evidence about the offers said to have been made by Profectus to which we have referred above and the extensive adverse credibility findings against each of the principal Appellants detailed with reasons below. We have come to the conclusion that the Respondent has established sufficient precedent facts to transfer the burden of proof to the principal Appellants on the issue of the genuineness of the funding said to be offered by Profectus. Looking at the evidence in the round and taking into account the adverse findings against the principal Appellants and the lack of evidence from or for Profectus, we are satisfied that the funding offers from Profectus are not genuine and that the businesses of the principal Appellants into which Profectus is said to be ready to invest are not genuine or not viable propositions for the principal Appellants on the basis described in their evidence. The consequence is that each of the appeals is dismissed under both the funding limb as regards Profectus and the viability limb as regards the business proposal of each of the principal Appellants.”

26.
The structure of the FtT’s decision was to deal firstly with issues of a general nature, common to all of the appeals. In the remainder of its decision the FtT dismissed the Appellants’ appeals under the separate heading of Article 8 ECHR and then engaged in an exercise of applying each of its general findings and conclusions to the six individual groups of Appellants.

Permission to Appeal

27.
The decision of the FtT was followed by a wide ranging application for permission to appeal to this Tribunal. At a preliminary hearing we raised the issue of the content and scope of the grant of permission to appeal, which we did not find easy to construe. Having considered the oral submissions of Counsel, we gave both sides the opportunity to provide written submissions. These were duly provided and we considered the same in conjunction with the application for permission to appeal and the grant of such permission. Its meaning and scope are clearly a question – one of law – for this Tribunal to determine.

28.
When the hearing of the appeals was reconvened, in the wake of the preliminary hearing, we pronounced in advance our ruling that the permitted grounds of appeal are the following:

(xv)

Arguable error of law in holding that paragraph 41-SD of Appendix A of the Immigration Rules in force on the dates of the Secretary of State's impugned decisions were applicable.

(xvi)
Arguable misdirection in law in its approach to the issue of burden of proof.

(xvii)
Arguable perversity in the finding that the Profectus offers of funding were not genuine, having regard to the evidence that the necessary funds would be drawn down or paid in tranches.

(xviii)
Arguable error of law in failing "to apply the Rules as they apply to venture capital firms".

It was common case that grounds (iii) and (iv) merge substantially.

First ground: the applicable Immigration Rules issue

29.
The analysis in [10] above was not, correctly in our view, contested by Ms Rowlands on behalf of the Secretary of State. The FtT proceeded on the basis that the "new" version of paragraph 41-SD of Appendix A applied to the Appellants' applications to the Secretary of State. The FtT noted the argument on behalf of the Secretary of State that none of the Appellants satisfied the "company directors" requirement enshrined in the new version of paragraph 41-SD(b), coupled with the contention that this was "fatal to all these appeals": see [115]. The FtT concluded:

"We therefore accept the Respondent's argument that an offer of funding to a business which does not yet exist does not satisfy the requirements of the Rules. We find that this is fatal to all the appeals before us, irrespective of all the other grounds on which we find the appeals fail".

For the reasons which we have given in [10] above this conclusion is unsustainable in law, having regard to the transitional provisions. Ms Rowlands, on behalf of the Secretary of State, did not argue to the contrary.

30.
The crucial question, therefore, is whether this constitutes a material error of law. We are impelled to the conclusion that it is not. Our reason for thus concluding is that the decision of the FtT, considered as a whole, discloses an abundance of other tenable grounds for dismissing the appeals. This is clear from the résumé in [24] above. Thus the avoidance of this error of law would have made no difference to the outcome. In our judgment the FtT would inevitably have dismissed the appeals for all the other reasons expressed. It follows that no material error of law is established.

Second Ground: The Burden of Proof Issue

31.
Some four months before the commencement of the appeal hearings the FtT, sensibly, conducted a case management review. This was followed by formal case management directions, which included the following discrete provision:

"The nature of the Respondent's allegations (akin to deceit or fraud) in relation to the VCF and Appellants is such as to place a burden of proof on the Respondent. This is without prejudice to the obligation of the Appellants to address the Respondent's concerns about the VCF".

At the outset of its decision the FtT said the following:

“9. The standard of proof is the civil standard; that is, on the balance of probabilities. The burden of proof is on the Appellant. The Respondent has in each case challenged the genuineness and viability of the principal Appellant’s business and the funding arrangements with Profectus. In respect of these allegations the burden is on the Respondent to establish the precedent facts to support such allegations whereupon the burden shifts to the Appellant”.

In a later passage, the FtT stated:

“We take into account the little evidence about the offers said to have been made by Profectus to which we have referred above and the extensive adverse credibility findings against each of the principal Appellants detailed with reasons below. We have come to the conclusion that the Respondent has established sufficient precedent facts to transfer the burden of proof to the principal Appellants on the issue of the genuineness of the funding said to be offered by Profectus. Looking at the evidence in the round and taking into account the adverse findings against the principal Appellants and the lack of evidence from or for Profectus we are satisfied that the funding offers from Profectus are not genuine and that the businesses of the principal Appellants into which Profectus is said to be ready to invest are not genuine or not viable propositions for the principal Appellants on the basis described in their evidence. The consequence is that each of the appeals is dismissed under both the funding limb as regards Profectus and the viability limb as regards the business proposal of each of the principal Appellants”.

32.
In the submissions of Mr Jafferji (of counsel) on behalf of the Appellants, the essential complaint made was that the approach formulated in the decision of the FtT differed from that promulgated in its earlier ruling. It was submitted that the FtT decided the appeal on “an entirely different basis”. The Appellants complain, per Mr Jafferji’s skeleton argument:

“The Appellants’ appeals would have been prepared on the basis that the Respondent bore the burden of proof with regard to the allegation of fraud. The FtT determined the appeal on the entirely different basis that the Respondent simply bore the burden of establishing precedent facts, with the burden then shifting to the Appellants. The FtT did not set out the precedent facts that the Respondent had to establish and has provided no reasoning in relation to its finding and no finding as to the facts established”.

On behalf of the Secretary of State, Ms Rowlands countered this argument by contending that, at its zenith, this aspect of the Appellants’ challenge must fail for the reason that even if the FtT erred in law on this discrete issue, its approach was the most favourable conceivable to the Appellants.

33.
At the hearing we suggested that in the text of the impugned decisions the Secretary of State did not take her stand on fraud or any vitiating factor of a kindred nature. We further suggested that fraud does not feature in the regime of the Immigration Rules under consideration. Neither counsel dissented from either proposition. We acknowledge, of course, that in principle, fraud or something kindred could form part of a sustainable refusal decision. However, in these cases it did not, either explicitly or implicitly, form part of the Secretary of State’s decisions.

34.
It follows that the FtT erred in law in adopting the approach expressed in the case management direction. However, this error of law does not, without more, vitiate the FtT’s decision. In order to decide whether it does have this effect it is necessary to outline the legal framework pertaining to the

FtT's approach. This is summarised in the recent decision of this Tribunal in Muhandiramge (section S-LTR.1.7) [2015] UKUT 675 (IAC), at [10]:

"10. One of the more recent reported decisions belonging to this stable is that of Shen (Paper Appeals: Proving Dishonesty) [2014] UKUT 236 (IAC). This decision is illustrative of the moderately complex exercise required of tribunals from time to time. Here the Upper Tribunal held, in harmony with established principle, that in certain contexts the evidential pendulum swings three times and in three different directions:

(a) First, where the Secretary of State alleges that an applicant has practised dishonesty or deception in an application for leave to remain, there is an evidential burden on the Secretary of State. This requires that sufficient evidence be adduced to raise an issue as to the existence or non-existence of a fact in issue: for example, by producing the completed application which is prima facie deceitful in some material fashion.

(b) The spotlight thereby switches to the applicant. If he discharges the burden - again, an evidential one - of raising an innocent explanation, namely an account which satisfies the minimum level of plausibility, a further transfer of the burden of proof occurs.

(c) Where (b) is satisfied, the burden rests on the Secretary of State to establish, on the balance of probabilities, that the Appellant's prima facie innocent explanation is to be rejected.

A veritable burden of proof boomerang!"

35.
In its decision the FtT employed the terminology "precedent facts" and made an explicit finding that the Secretary of State had discharged the burden of establishing such facts sufficient to transfer the burden of proof to the Appellants. Juxtaposing the substance of what the FtT said in the two passages under scrutiny with the legal framework quoted above, we are satisfied that no error of law is demonstrated. The effect of the FtT's approach was to impose a mere evidential burden on the Appellants, while subjecting the Secretary of State to the legal burden. The correct approach would have involved imposing the legal burden on the Appellants to demonstrate that the requirements of the Rules had been met. Thus, while we have held that the FtT's starting point was erroneous, we consider that this operated to the advantage of the Appellants and Mr Jafferji did not argue to the contrary. It follows that the flawed starting point was not a material error of law.

36.
While we have focused above mainly on the question of material misdirection in law and have held that there was none, we nonetheless address the gravamen of this ground. It is, in substance, that the Appellants were wrong-footed by the pre-hearing ruling, to the extent that they did not arm themselves fully for the substantive hearing. Having explored the prosaic realities of this submission with Mr Jafferji, we are satisfied that it is devoid of merit, for two fundamental reasons. First, it was abundantly clear to the Appellants from the pre-hearing ruling that they should have come prepared to discharge a burden, an evidential one. There was no suggestion (quite properly, given the factor of legal representation) of any misunderstanding in this respect. Second, though invited to do so, Mr Jafferji was unable to point realistically to any further evidence which the Appellants might have adduced. In particular, his submission that the Appellants might otherwise have sought to adduce evidence from Mr Aziz (identified in [24] above) was speculative, faint and fragile, wholly devoid of any evidential foundation.

37.
To summarise, we conclude that the correct approach in law is that it was incumbent upon the Appellants to establish that they satisfied all of the relevant requirements of the Rules, in particular those relating to the refusal reasons. The FtT should have adopted this approach to burden of proof. It failed to do so. However, for the reasons given, we are satisfied that this did not result in any material error of law.

Third and fourth grounds of appeal: venture capital funding, perversity and the Immigration Rules

38.
Our assessment that these two grounds of appeal effectively merge was accepted by the parties' representatives. Mr Jafferji, developing these grounds, attacked the FtT's finding that the Profectus funding offers were not bona fide simply because the evidence established that the company had only a fraction of the total cash funds required to finance 140 business proposals. The gravamen of this argument was that the FtT fundamentally failed to grasp the essential elements of how venture capital funding operates in the business world. The central issue ventilated in promoting these grounds of appeal concerned the availability of the necessary finance. Mr Jafferji argued that the "expert" evidence of Mr Tunkel was undisputed. He pointed to the specific finding of the FtT that Mr Tunkel was "a reliable expert witness". He argued that the FtT failed to properly comprehend Mr Tunkel's evidence that it is not normal for the totality of the funding required for investment to be provided by the investors fully and simultaneously. Mr Jafferji further attacked the FtT's discrete finding that Profectus had not actually made any financial investment in any of the business proposals involving the 140 appellants. The gist of this argument was where venture capital funding is the source of the financial investment required by the Rules, there is no industry standard to the effect that the money promised must be actually available at the time when the promise of funding is made.

39.
The related, though (in our view) free standing, submission on behalf of the Appellants was that the Rules do not require the funding promised by the venture capital investor/s to be available at the time when the promise of funding is made.

40.
On behalf of the Secretary of State, Ms Rowlands highlighted the elevated and exacting nature of perversity as a ground of appeal. She submitted that there was nothing perverse about the FtT findings that the Appellants were not genuine entrepreneurial applicants or that the Profectus offers of funding were not genuine. Ms Rowlands submissions made clear that the Secretary of State, as well as the Appellants, relied on the evidence of Mr Tunkel. Thus it was common case that, as a venture capital undertaking, Profectus was "properly structured and regulated". Ms Rowlands' submissions described Mr Tunkel as "a patently honest and knowledgeable witness". She contended that his evidence inflicted irreparable damage on the Appellants' cases. This submission was based on his evidence of the kind of due diligence exercises and the staged payments approach which, it was contended, was wholly lacking in the Profectus funding offers and arrangements.

41.
On the discrete issue of compliance with the Rules, Ms Rowlands submitted that the requirements of the Rules are that the funds be made available in the United Kingdom, not in land situated in Pakistan; that the funds be immediately available to each Tier 1 applicant – not in staged payments and not contingent on the grant of immigration status; and that each applicant genuinely intends to

invest the monies in the business put forward in the Tier 1 application. Ms Rowlands submitted that the requirement of immediate availability was not satisfied because the liquid assets at the disposal of Profectus fell measurably short of what was required to honour all of its funding promises (£2.9 million versus £7 million) and each promise of funding was contingent upon the grant of immigration status to each of the Tier 1 applicants.

42.
Finally, Ms Rowlands submitted that the shortcomings and deficiencies highlighted immediately above were not overcome by the FtT's assessment that Profectus is a properly established venture capital entity. This, she argued, is no answer to the contention that the Profectus offers of funding were manifestly not genuine. Ms Rowlands further argued, in this context, that while there was no evidence that the entity described as Providentia was "regulating" Profectus (as claimed) the FtT's evident acceptance of this assertion availed the Appellants little.

43.
As this summary of the parties' rival contentions demonstrates, the third and fourth grounds of appeal raise two inter-related issues. First, what are the requirements of the Rules in cases where a Tier 1 leave to remain application relies upon funding from a venture capital source? Second, is there any demonstrable perversity in the findings of the FtT bearing on this issue?

44.
As our summary in [11] above of the four discrete categories of requirements imposed by the Rules demonstrates, the first three categories, or groups, differ sharply from the fourth. The first three categories embody a series of requirements which are mechanistic in nature. They are of the bright line variety. As we have already noted, these requirements were considered to have been satisfied by all of the Appellants.

45.
We consider the fourth category – which, reduced to its core, requires a genuine, credible, properly funded and viable business proposal – to be of a quite different species. The question of whether this discrete set of requirements is satisfied in any given case is not answered by the conduct of a mechanistic exercise. Rather, it requires evaluative judgment and intuition on the part of the decision maker. The reason for this is that the characteristics of genuineness, credibility and viability are not regulated by a comprehensive, prescriptive code. This has the consequence that the legality of every decision maker's assessment of these factors is to be adjudged by reference to the well established public law standards of taking into account all material evidence and factors; disregarding everything immaterial; and avoiding descent into the Wednesbury abyss by lapsing into irrationality. In these appeals the public law misdemeanour in play is that of irrationality. This is common case.

46.
Under the Rules, the minimum funding – of £50,000 – can, in principle, be provided by a venture capital source. This is explicitly recognised in paragraph 41-SD (iii). This subparagraph stipulates that, in such a case, an accountant's letter complying with a series of requirements is necessary. Fundamentally, this letter must confirm the amount of money "made available". This central requirement is repeated. There must also be an "original declaration" containing:

"…. confirmation of whether this body is regulated by the Financial Conduct Authority ("FCA") and is listed as permitted to operate as a Venture Capital Firm."

The requisite declaration must also embody:

“…. confirmation that the money will remain available until such time as it is transferred to the applicant, the entrepreneurial team or the applicant’s business.”

The third major requirement is the provision of a letter from a “legal representative” confirming the validity of the signatures on any such declaration and that the same “… contains the signatures of the people stated”. This letter must also comply with other specified requirements.

47.
All of the aforementioned requirements are arranged in paragraph 41-SD of Appendix A. Under the scheme of the Rules these have the character of so-called “Attributes”. As appears from the text reproduced in [7] above, paragraph 245DD of the Rules operates in tandem with paragraph 41-SD of Appendix A. By paragraph 245DD the Secretary of State must be satisfied about the five matters listed in (h). Reduced to their core, these requirements are twofold. First, the applicant must genuinely intend and be able to establish the business in question, genuinely intending to invest the requisite monies therein. Second, the requisite monies must be genuinely available to the applicant and remain available to him until expended for the purposes of the proposed business. The availability of the requisite money to invest in the proposed business, £50,000, is a constant and recurring theme of the regime.

48.
Paragraph 245DD (i) of the Rules equips the Secretary of State with certain tools, or touchstones, to facilitate the formation of the evaluative judgment required. In the context of these appeals, the most significant of these are the viability and credibility of the proposed business funding and the viability and credibility of the applicant’s business plan and market research into the chosen business sector. Paragraph 245DD (i) has two notable features. First, the language (“may take into account the following factors”) makes clear that the Secretary of State is not obliged to take into account all or any of the contents of the list which follows. The second is that the Secretary of State is empowered to take into account other facts and considerations. This would, of course, be subject to the well established legal constraint that any other facts or considerations weighed must be material. Thus, to take an example, if there were evidence that the Secretary of State had taken into account the applicant’s ethnicity or creed this would be likely to vitiate a refusal decision.

49.
We turn our attention to one discrete issue of law. This relates to the word “available” in the various provisions of the Rules rehearsed above. The language of the Rules, in this respect, is, variously, “available ….genuinely available … made available ….” The word “available” is an unpretentious member of the English language. It carries no technical or special meaning in this context. In our judgment, it denotes that in the case of every Tier 1 applicant or partnership the requisite sum, £50,000, must be capable of being provided for the purpose of investment in the proposed business upon the grant of the Tier 1 visa. The Rules clearly contemplate that the grant of such visa will be the impetus for establishing the business and beginning to operate it. The Rules do not address the issue of delay between these two events. We accept that, in the real world, some delay will normally eventuate. However, it is clearly implicit in the Rules that this will be of very short dimensions. Based on this analysis, we consider that £50,000 is “available” only if this sum is capable of being invested in the business within a short period of the grant of a Tier 1 visa. Cases where this cannot be effected are antithetical to the clear thrust and philosophy of the Rules.

50.

Having analysed the main requirements of the Rules in this way, we turn to examine the main evidence adduced at first instance by the Appellants. This has one particular feature which we would highlight. Mr Tunkel was accepted by the FtT as an expert witness. In his report he describes himself as a practising solicitor “specialising in regulatory financial services and investment funds law” and a partner in a LLP authorised and regulated by the Solicitors Regulation Authority. It is trite that any person who claims to be an expert witness in any form of litigation must be demonstrably objective and independent. Mr Tunkel, in his report, discloses that he was “retained by” Profectus, whom he describes as a “client”. Having examined the evolution of the proceedings and the background to the first instance hearing, it is apparent that the FtT conducted no enquiry into Mr Tunkel’s objectivity and independence. This is the first matter of concern which we have identified.

51.
The second matter of concern is that there was no enquiry into the expert qualifications and credentials of Mr Tunkel. Having regard to the Secretary of State’s reasons for refusing all 140 applications and the centrality of the role of Profectus in all such applications, we consider that these three factors are, collectively, a matter of some concern. In highlighting them we do not wish to be unfairly critical of the FtT. Our review of the progress and conduct of the appeals at first instance conveys the clear impression that something of a tide developed and carried everyone concerned, including the parties’ representatives. However, we consider that this issue should have been probed. Furthermore, Mr Tunkel’s second report was non-compliant with the standard expert report requirements, omitting any statement of truth in particular. We take this opportunity to highlight the need for caution and vigorous enquiry in relation to expert witnesses in every case. See, in this respect, this Tribunal’s recent decision in MST v Secretary of State fro the Home Department [2016] UKUT (IAC), at [68] – [69] especially.

52.
Notwithstanding the reservations expressed above, we shall assume, without deciding, that Mr Tunkel possessed the essential characteristics of independence, objectivity and expertise in the field in question. In doing so we are influenced by, inter alia, the consideration that all parties to this appeal relied on his evidence at first instance and continued to do so, evidently because all consider it supportive of his or her case. Our concerns about his evidence are developed below.

53.
It is convenient to note firstly the evidence contained in the witness statements of Mr Serfraz, who is represented to be one of the co-owners of Profectus (with Mr Aziz). Mr Serfraz states that Profectus is a venture capital firm operating “under the umbrella of” Providentia Capital “as a trading name”. He describes himself as a “risk analyst to the fund” who is “able to take decisions on behalf of investors to [sic] the fund”. He claims that all applicants were interviewed and signed the “funding document”. He asserts that “typically” he would have two or three meetings with an applicant before making a funding decision. He suggests that the mechanics of the arrangement are that Profectus will have a 33% share holding in the business via a preferred class of shares (“Class A shares”) and will “exit” the business upon the expiry of five years. His first statement continues:

“I can confirm that the funds shall remain available until such time that they are transferred on my instructions from the fund into the business of the entrepreneur(s).”

54.
Mr Serfraz made a second witness statement. This contains the following claim:

“ The fund [ie Profectus] was attracted to funding these businesses as the investment required was so small and return on investment very attractive. ”

Continuing, he states that scrutiny would have been “much greater” if the investment amounts involved had been considerably larger and the number of proposed businesses smaller. His statement continues:

“It was never envisaged that in each case £50,000 would be invested in one go. In many cases funding will be drip fed in line with the requirements of the business and based on milestones reached. This will correspond with the delivery of the results by the business and by making micro investments the fund will be able to mitigate its risk. The fund is in a very attractive position, given the very small total investment subdivided by small payments, matched by applicant’s agreed milestones.”

Mr Serfraz then states:

“It would be reckless to proceed to funding without vigorous due diligence …. It is [sic] beggars belief that the Home Office have assumed that funding was provided without the necessary due diligence ….

Each applicant was subject to a robust due diligence check and assessed against the micro and macro economics within the parameters of the ten step investment process.”

In the same passage Mr Serfraz repeats the illustration of a £7 million investment in a proposed renewable energy business operation, highlighting that this would attract quite different and more intensive due diligence checks. Finally, in response to the question whether it would be normal in a venture capital context to offer funding to an entrepreneur making little or no investment in the proposed business, Mr Serfraz states:

“The entrepreneurs are indeed investing in their respective businesses, it is accepted that some may be investing more capital than others however all entrepreneurs are investing through a variety of ways; capital investment in tranches based on performance, remuneration is also paid in lieu. There is also the investment of man labour hours in operating the business which is an investment in the business itself.”

55.
Mr Serfraz’s witness statements singularly and strikingly fail to contain any particulars of the due diligence exercises allegedly carried out by him, on behalf of Profectus, or otherwise, in respect of any of the proposed businesses. Second, his statements contain no particulars of any of the multiple interviews of the applicants allegedly carried out by him. Third, his statements contain manifestly contradictory assertions relating to the depth of the due diligence allegedly carried out. Fourth, while he claims to have received extensive documentary evidence of the applicants’ “educational and commercial experience both here and in their native countries [and] ….reference letters from previous employers and CVs demonstrating their experience”, none of this is produced or illuminated.

56.
Furthermore Mr Serfraz’s description of the franchise agreement noted in [22] above as “unsigned” is fundamentally inaccurate: this document is replete with signatures. This is an egregious error. In addition, he attempts no explanation of how Profectus might become a party to any franchise agreement. Finally, his attempt to deal with the lack of financial investment by the applicants in the proposed businesses is demonstrably evasive and inadequate.

57.

The wholly unsatisfactory nature of the evidence of Mr Serfraz in his witness statements, objectively demonstrated by unsophisticated analysis, is compounded by a third evidential contribution which he purported to make. Unsolicited, Mr Serfraz corresponded with the FtT by a detailed email dated 16 July 2014 compiled in the wake of a case management review hearing. This communication invites the following observations:

This communication purported to attach "the most up-to-date investment management and in force agreement between Providentia and Profectus": this did not feature in the evidence before us and the supposed predecessor agreement is not mentioned.

Mr Serfraz, in terms which do not lack prolixity or obfuscation, appears to say that the "fund" has no money, a fact which he seeks to explain expansively.

He confirms that the "fund" has only two investors viz Mr Asad Aziz and him, both using "our own capital".

Mr Serfraz attaches an "asset report" which "…was provided by me to Providentia in the format that Providentia required". These words are frankly meaningless, serving only to obscure still further who the owners and operators of Providentia were. Furthermore, the document attached does not fit the description given: it is, rather, a statement of assets relating exclusively to Mr Aziz, prepared by a firm of Pakistani accountants (ex facie) and bearing the date 31 January 2013. Mr Serfraz suggests that this was sent to the FCA "in around April 2013" in response to a request. There is no supporting evidence of these assertions.

This lengthy communication is replete with other meaningless statements such as "this can be ascertained from Providentia", "with the agreement and permission of Providentia", "Providentia would let me know of …" and "under the supervision and leadership of Providentia".

The terms of the asset report and statement of assets appear to belie the suggestion that documents of this kind were required by the FCA. The terms of these documents suggest that they were generated exclusively for the purpose of fortifying the Tier 1 applications in which Profectus had an interest.

The only person other than Messrs. Serfraz and Aziz identified as having any connection with Providentia is one Mr Gulambass (spelt with one 'b' and two 's's') Lakha. His role is entirely unparticularised.

58. Mr Lakha's name does, however, appear in a document, in which his first name is spelt with two 'b's' and one 's'. This document is entitled "To Whom It May Concern" and dated 10 July 2014 viz four days in advance of the FtT's case management review hearing. There is no evidence of the circumstances or context in which it was generated. At the end of the document, following a signature, Mr Lakha is described as "CEO and chief investment officer" of Providentia Capital LLP ("Providentia"). The document is silent on the particulars of Mr Lakha's role. Furthermore, it suggests that Providentia has been in existence, "authorised and regulated", since 2005, without providing any evidence regarding previous investment activities. Fundamentally, the document is entirely silent on the issue of actual money in any fund. Mr Lakha did not give evidence to the FtT. Nor did Mr Serfraz, with the result that none of the myriad issues identified above was probed through the customary adversarial mechanisms

59. We juxtapose this with a series of other descriptions of the Providentia/Profectus relationship. These include, variously:

That Profectus was the trading name of Providentia, per the letter from Morgan Reach dated 3 April 2013 and the letter from Profectus of the same date which further claimed that Profectus was registered with the FSA under registration number 426749.

That Providentia was the managing member (see the letter from Mr Tunkel dated 22 August 2014, infra).

That Providentia served as the investment manager of Profectus– see Providentia Capital's letter dated 10 July 2014 which also states that "in order to build the commercial brand of the fund 'Profectus Venture Capital' was previously listed as a trading name of Providentia on the financial services register".

That Profectus Venture Capital has been the trading name of Providentia Capital LLP since 14 September 2012 and that prior to "this period" Profectus Venture Capital LLP was incorporated but not trading – see the letter from Mr Serfraz on the letterhead of Profectus Venture Capital dated 9 July 2014.

On 5 May 2014 a decision was taken by Providentia Capital LLP to remove the name of Profectus Venture Capital as a trading name from the FCA register – see the letter referred to in (d). This letter also stated that "… in the interests of simplicity and clarity Providentia would continue to manage Profectus directly".

There was an assertion of a limited liability partnership agreement of 1 February 2013, the parties whereto were Profectus, Providentia, Mr Serfraz, Mr Asram and Mr Aziz, coupled with an assertion of an earlier agreement of 03 September 2012 between Profectus and Providentia, which Mr Serfraz claimed to be still effective: see [30] of the decision of the FtT, summarising the evidence of Mr Tunkel.

The FtT recorded at [34] of its decision that other than registration with the FCA, Mr Tunkel accepted that Providentia added little or nothing to the business of Profectus.

We pause here to observe that it is unclear whether the FtT accepted that the relationship between Profectus and Providentia was sufficient to meet the regulatory requirements of the Rules. There is no specific finding that either Providentia or Profectus was authorised to operate as a venture capital firm.

60. We turn at this juncture to consider Mr Tunkel's two reports which, we note, were provided to the FtT by Mr Serfraz. We have noted also the letter from Mr Tunkel to Mr Serfraz. We note further that Mr Tunkel gave evidence to the FtT. The first report invites certain observations. First, Mr Tunkel makes no pretence of neutrality or objectivity. Rather, in unvarnished terms, he sets himself the aim of demonstrating that all of the Tier 1 applications relying on funding from Profectus –

".. should have been accepted by the Home Office as satisfying the condition in the Immigration Rules that funding is obtained from a relevant form of venture capital firm."

Second, with one minor exception, Mr Tunkel makes no attempt to address the requirements of the Rules. This is compounded by his misrepresentation of what the Rules require, portrayed in the following statement:

".. The applicable criterion under the Immigration Rules is based upon the need for the applicant to show that he has **a firm commitment to funds** in the requisite amount (minimum £50,000) …"

[Our emphasis.]

This is not what the Rules say. In the language of the Rules (as we have stressed above), this discrete requirement is that the funds be (variously) " available ", " genuinely available " and " made available ". The second, related requirement is that the source of the funding is viable and credible. Mr Tunkel omits this from his commentary.

61. The unashamedly partisan tone of the report continues. Mr Tunkel accuses both the Home Office and unspecified Tribunals, in unspecified cases, of having reached a "perverse" conclusion. Next, he suggests that Profectus satisfies the Financial Conduct Authority ("FCA") requirements that the manager of the venture capital fund be licensed and that the firm hold a series of "permissions" required by statute. The report purports to address the relationship between Providentia Capital LLP ("Providentia") and Profectus. This relationship, it is suggested, is governed by a LLP Agreement ("LL PA"). Objective scrutiny of this agreement is not possible as it is not provided. Providentia is described as the "Managing Member" of the LLP. The LLPA confers on Providentia all rights to use "Profectus" as its own trading name. The immediately succeeding sentence is of note:

"I understand that there is also an investment management agreement under the terms of which Profectus' business is managed by Providentia".

The inference that Mr Tunkel was neither provided with nor requested this agreement is irresistible. This is surprising, given the stated purpose of his report.

62. Mr Tunkel summarises certain provisions of the LLPA as follows:

Providentia is both the "Managing Member" of the LLP and the "operator for collective investment scheme operational purposes".

Profectus is a "client" of Providentia.

Providentia exercises the rights of the "Designated Members and/or the LLP": Mr Tunkel does not illuminate the reference to "Designated Members".

Providentia's powers include evaluation of investments for the purposes of acquisition or disposal, making agreements relevant to investments, executing documents in relation to investments and addressing "outsourcing" issues.

The terminology "the total Commitment" is also employed in the LLPA. This, per Mr Tunkel, is the sum of all "capital" received from investors who, in turn, are classified "A Members". In this context, the following description is of note:

"It would be common practice for a fund of this nature to accept an investor as a member of the fund only on having assured itself that such investor is clearly able to fund tranches of his Commitment on relatively short notice (say 10 days to 2 weeks from the date of a Draw down request) and is unlikely to default."

While Mr Tunkel observes that investors have "other uses" for their money until a Draw down request is made, he avoids entirely the key issue of the practical consequences for the fund, and those seeking to rely on it, in the event of investors defaulting.

63. Mr Tunkel purports to analyse the position of Tier 1 applicants generally. He suggests, without particulars or elaboration:

"…. Profectus exists chiefly or entirely to fund successful applicants for their Tier 1 (Entrepreneur) Visas. **Or it is likelier that Draw downs will be conducted ad hoc**."

He does not attempt to augment or illuminate the highlighted words. He continues:

"It is not until the application is granted (or any initial request is overturned on appeal) that Profectus needs to have the monies committed to it to fund the applicant."

We construe this to signify that at all stages of the process preceding the grant of a Tier 1 Visa – consisting of funding application to Profectus, interview/s, analysis, due diligence, funding offer and submission of the Tier 1 application to the Home Office – Profectus was not capable of providing the money promised to the applicant. The reason for this is that Draw down requests had not been made of third party investors. Accordingly, the "money" was purely notional, or imaginary, throughout.

64. Mr Tunkel's main report also touches on the issue of consideration and scrutiny of applications for funding. He begins by noting that an applicant's criteria must meet the "investment objectives of Profectus" without explaining what these are. He continues:

"We would expect to see that [Providentia] had a discretionary investment management mandate …. [in specified terms]."

Such mandate would authorise Providentia to review and consider each application on its intrinsic merits, to subject the applicant to due diligence, to determine whether the application fell within the remit of the fund being managed and to make the investment requested. The purely abstract terms in which Mr Tunkel expresses himself are striking. This theme continues through the next passage:

"These decisions would typically be taken through some sort of investment committee structure and might in relevant circumstances be informed or assisted by discussion with external advisors. However, the firm would in due course be involved in making the decision to invest, maintaining a record of that decision and reporting on that decision and others like it in periodic statements to the fund's investors."

Mr Tunkel's failure to relate these purely abstract descriptions to the realities, legal and otherwise, of the arrangements, powers and structures of Providentia and Profectus is noteworthy. So too is the later statement in his report where he expressly disavows any knowledge of the Providentia/Profectus due diligence internal procedures. Why did he not proactively seek to arm himself with this self-evidently important information?

65. Mr Tunkel provided a supplementary report, which we have also considered. We have found aspects of this report troubling. For example, on the one hand, Mr Tunkel quotes from the explicit requirement of the Rules that venture capital firms be "regulated by the [FCA]". However, on the other hand, he makes no attempt to address the implications of Providentia, rather than Profectus, being the FCA regulated entity. He does not address the issue of Providentia being two steps removed from all of the Tier 1 applicants. Furthermore, he fails to address the issue of the Providentia/ Profectus "investment management agreement" mentioned in bare terms in his first report. He confines himself to the vague observation that:

"… behind all of these applications there is an FCA-regulated firm involved in the process."

He follows this by an observation regarding "semantics" in the provisions of the Immigration Rules. He suggests that the "FCA Rules" have –

"… a very broad and non-prescriptive view of what venture capital is and how venture capital investments made by made."

Finally, the lengthy section in his second report addressing the freedom of Tier 1 applicants to choose their preferred proposed business is puzzling, given that this has at no time been an issue. It bears all the hallmarks of a smokescreen.

66. At the FtT hearing, Mr Tunkel gave a sharply contradictory response about one discrete issue in cross examination. The decision of the FtT records, in [36]:

"Mr Tunkel was aware that Profectus had been closed for new investments since August 2013."

This is manifestly irreconcilable with his earlier evidence on the same issue, which was, at [30]:

"He had no information about the Profectus fund now being closed but assumed that like most venture capital funds once it had raised sufficient to fund its proposed investments or had raised as much money as it wished, the fund would not remain open indefinitely for further investors".

Furthermore, the first assertion is devoid of any supporting evidence, whether in the form of documentary evidence or via the witness statements of Mr Serfraz. In addition the suggested date of fund closure – August 2013 – was crying out for a proper explanation and supporting evidence, taking into account particularly the elaborate attempts by Mr Tunkel and Mr Serfraz in their evidence to explain why, in the real world of venture capital funding, Profectus/Providentia would not have been in a position to provide the promised funding of £50,000 (multiplied by 140/187 applicants – both multipliers feature) at the time when the applications for the Tier 1 visas were made viz January to April 2013. The contradictions and discrepancies are many and manifest.

67. Mr Tunkel also purported to give evidence about Providentia. He suggested, vaguely and without elaboration, that there were "a number of individuals working in" Providentia and that these unidentified persons were "regulated". This contrasts with his main report, which states that only Providentia is regulated. He referred to yet another agreement – an earlier LLP agreement – which he clearly had not seen and evidently had not requested. The following passage is noteworthy:

" He [Mr Tunkel] had no information about the Profectus fund now being closed but **assumed** that like most venture capital funds once it had raised sufficient to fund its proposed investments or had raised as much money as it wished, the fund would not remain open indefinitely for further investors. "

It is striking that Mr Tunkel had neither received nor requested important information of this kind and, further, was prepared to make an assumption about it. His assumption was that the "sufficient" funding, that is to say £7 million, had been raised. There was no evidence whatsoever to this effect.

68. Mr Tunkel was asked about what he would expect a due diligence exercise to entail. According to the Tribunal's decision, his evidence was this:

"There should be a financial report on the individuals involved in the business and an analysis of any profit and loss account or projected profit and loss account. The fund managers would concentrate on the backgrounds and strength of key individuals such as those who would form the board of management."

We make the observation that no "financial report" or "analysis" of this kind in respect of any of the Appellants was produced. Next, Mr Tunkel declined to comment on the capacity of Mr Serfraz to

manage and oversee some 187 agreements with “start-up” firms during a compressed period of time. He described Mr Serfraz as the “investment advisor” and the “link to the Providentia investment team”. We can find no evidence whatever about the membership of this “team”. Mr Tunkel knew nothing about the expertise or qualifications of Mr Serfraz. He suggested that Mr Serfraz –

“… was not an employee of Providentia but was contracted to them …. was provided by Profectus to Providentia under the agreement between Profectus and Providentia to enable Providentia to discharge its management function to its client, Profectus.”

Strikingly, there is nothing to this effect in Mr Tunkel’s main report. Indeed, neither Mr Serfraz nor any named person features in either of this reports. Furthermore, there is no mention of these inter-company arrangements in either of Mr Serfraz’s witness statements. No Profectus/Providentia “contract” has been produced. Finally, Mr Aziz features nowhere in the evidence of either Mr Tunkel or Mr Serfraz.

69. We highlight one final feature of the evidence of Mr Tunkel. The FtT records the following discrete aspect of his cross examination:

“It was put to him that the type of investment which Profectus intended to make in the business of the Appellants would not yield any income for at least five years.”

We interpose here the observation that the total investment required would be £7 million if the multiplier is 140 and £9.35 million if the multiplier is 187. The FtT’s decision records Mr Tunkel’s response thus:

“He did not consider this in itself to be a matter for concern. Whether an investment produced an income flow depended on the nature of the investment and other factors.”

We find this evidence frankly bizarre.

Third and Fourth Grounds of Appeal – Our Conclusions:

70. Mr Tunkel’s evidence to the FtT, in both written and oral form, was, by some measure, one of the most important components of the overall evidential matrix. Furthermore, in promoting the third and fourth grounds of appeal, the Appellants rely heavily on it. Mr Tunkel’s evidence is the cornerstone of Mr Jafferji’s submission that the FtT misunderstood, to the extent of perversity, how venture capital funding operates in the real world of finance. He pins his submission particularly on Mr Tunkel’s description of how “A” Members fund “tranches” of their commitment to the fund. We consider this evidence to have no bearing whatsoever on the realities of the Profectus/Providentia offers of funding to the Appellants. As we have outlined extensively above, Mr Tunkel testified unequivocally that the fund had been closed for some time. Closure, in this context, denotes receipt of sufficient monies to enable the requisite number of funding offers to be made to applicants. There was no suggestion that the “fund” was notional or fictitious. We can identify no misunderstanding of the type suggested in the FtT’s decision.

71. We add, with some emphasis, that Mr Tunkel’s evidence must be considered as a whole. We have undertaken this exercise in the detailed analysis above. In our judgment a consideration of Mr Tunkel’s evidence as a whole leads inexorably to the conclusion that the third and fourth grounds of appeal have no sustenance. As our analysis demonstrates, the overall evidential matrix was riddled with discrepancies and omissions. In particular, there were repeated oblique references to

documentary evidence of unmistakable materiality which was not produced. A single and pertinent illustration of this was highlighted by the FtT in the following passage:

“We find it remarkable that we have not been shown a single document to confirm that any of this investigative work was done in respect of any of the cases now before us …. We would have expected to see a detailed file of documents assembled by Profectus on each of these cases to demonstrate that these proposed businesses really were considered to be viable and worthy of a genuine investment of £50,000. There was no explanation why such documents had not been released to the Appellants to support their appeals.”

See [42]. The expectation to which the FtT refers in this passage is based on a combination of pure common sense and Mr Tunkel’s evidence. In short, there was not a scrap of paper either supporting or verifying the due diligence claims of Mr Serfraz. The Tribunal’s resulting incredulity formed one of the pillars of its dismissal of the appeals.

72. In similar vein, in [103], the Tribunal noted with surprise the absence of “a substantial paper trail”. It considered the letters of offer to be “lacking in the terms and conditions which one would have expected to see in an investor agreement”. It noted further that there was “no evidence of the terms and conditions which were to be incorporated in any share holder’s agreement”. It highlighted the bare assertion, with no supporting evidence, in the Morgan Reach letters that Profectus had “mad e available” (past tense) £50,000 to the applicants concerned. Nor had Morgan Reach made any attempt to relate this assertion to the actual assets of either Mr Serfraz or Mr Aziz. The Tribunal also considered, separately, the documentary evidence provided in an attempt to demonstrate that Profectus was a genuine, established investment vehicle: see [105] – [108]. Its conclusion was that this evidence was unsatisfactory and insufficient. We find this conclusion unassailable and, in this context, we highlight the absence of any challenge to it upon the hearing of these appeals. To this we add that none of the multiple gaps and question marks was filled or answered by Profectus in its written intervention (at the invitation of the Tribunal) upon the hearing of these appeals.

73. Fundamentally, the Secretary of State reasons for refusing all of the Appellants’ applications were twofold. First, the Secretary of State was not satisfied that there was a genuine intention to establish the business in question. Second, the Secretary of State was not satisfied that the necessary monies were genuinely available, and would remain available, to the Appellants. The FtT, for its part, endorsed these conclusions. In doing so, it found no error of law on the part of the Secretary of State. The Tribunal concluded, in terms, that there was an abundance of evidence justifying these conclusions. We, for our part, can identify no legal flaw in the FtT’s omnibus conclusion to this effect. It was amply supported by a series of pertinent, rational and unimpeachable findings relating to discrete issues. The proliferation of question marks, shadows, omissions, inconsistencies and discrepancies which we have highlighted above rendered this conclusion inevitable.

74. We consider that, taking the evidence at its absolute zenith and in its most favourable light from the Appellants’ perspective, the necessary £50,000 was not available to any of them. The evidence established that the only possible source of the funding was a total sum of approximately £2.8 million held in personal bank accounts of Mr Serfraz and Mr Aziz in Pakistan. The arithmetic is simple. Profectus/Providentia was not in a position to honour the 140/187 promises of funding of £50,000 which had been made. It was no answer for the Appellants to argue (as they did at first instance) that they merely had to demonstrate the availability of £300,000 (i.e. £50,000 x 6), for the simple reason that they had no legal entitlement, contractual or otherwise, to preferential treatment or precedence

vis-à-vis the monies in the Pakistan bank accounts. We conclude that these monies were not as a matter of law "available" to any of the 140/187 applicants.

75. To this we add, as regards the separate though related requirement of the Rules, that the gaping chasm between £2.8 million and £7 million/£9.35 million was sufficient per se to sound the death knell on the issue of genuineness. There was, of course, a host of other factors rendering the conclusion of the Secretary of State and FtT on this discrete issue unassailable, as we have held above.

76. Finally, we reject the submission of Mr Jafferji concerning the ninth Appellant, Mr Zafar, that a mere intention to invest only £25,000 at the outset of the business venture, coupled with an intention to invest the balance of £25,000 at some unspecified future date from some unspecified source, satisfies the requirements of the Rules. This submission is confounded by the plain and simple wording of the relevant provisions. Furthermore, it finds no sustenance in Mr Jafferji's resort to "commercial reality". The operative "reality", in this context, is what the Rules dictate. In addition where, as in Mr Zafar's case, the business proposal is a joint one, based on equal funding contributions, the withdrawal of a partner applicant at any stage has the consequence that the remaining applicant/s must fail. The appeal of Mr Zafar is defeated on this free standing ground, as is that of Mr Nazir (the second appellant).

77. The second discrete matter which we highlight, in conclusion, is that these appeals have featured generic issues only. The permitted grounds of appeal do not extend to any challenge to the assessments, findings and conclusions of the FtT in the individual appeals.

78. We conclude with the observation that, in the interests of certainty and maximum clarity, consideration could usefully be given, if a viable and workable model could be found, to the introduction in the Rules of some time limit or time measurement for the actual investment of monies calculated from the date of a positive Tier 1 decision.

Conclusion

79. On the grounds and for the reasons elaborated above, which both reflect and augment those of the FtT, we dismiss all appeals and affirm the decision of the FtT.

Bernard McCloskey

THE HON. MR JUSTICE MCCLOSKEY

PRESIDENT OF THE UPPERTRIBUNAL,

IMMIGRATION AND ASYLUM CHAMBER

Date: 27 May 2016

APPENDIX 1

Paragraph 41-SD of Appendix A

Version in force between 31 January 2013 and 30 June 2013 (HC 943)

41-SD. The specified documents in Table 4 and paragraph 41 are as follows:

(a) The specified documents to show evidence of the money available to invest are one or more of the following specified documents:

(i) A letter from each financial institution holding the funds, to confirm the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). Each letter must:

(1) be an original document and not a copy,

(2) be on the institution's official headed paper,

(3) have been issued by an authorised official of that institution,

(4) have been produced within the three months immediately before the date of your application,

(5) confirm that the institution is regulated by the appropriate body,

(6) state the applicant's name, and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix,

(7) state the date of the document,

(8) confirm the amount of money available from the applicant's own funds (if applicable) that are held in that

institution,

(9) confirm the amount of money provided to the applicant from any third party (if applicable) that is held in that

institution,

(10) confirm the name of each third party and their contact details, including their full address including postal

code, landline phone number and any email address, and

(11) confirm that if the money is not in an institution regulated by the Financial Conduct Authority (FCA) and the

Prudential Regulation Authority (PRA), the money can be transferred into the UK;

or

(ii) For money held in the UK only, a recent personal bank or building society statement from each UK financial institution holding the funds, which confirms the amount of money available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). The statements must satisfy the following requirements:

(1) The statements must be original documents and not copies;

(2) The bank or building society holding the money must be based in the UK and regulated by the Financial Services Authority;

(3) The money must be in cash in the account, not Individual Savings Accounts or assets such as stocks and shares;

(4) The account must be in the applicant's own name only (or both names for an entrepreneurial team), not in the name of a business or third party;

(5) Each bank or building society statement must be on the institution's official stationary and confirm the applicant's name and, where relevant, the applicant's entrepreneurial team partner's name, the account number, the date of the statement, and the financial institution's name and logo;

(6) The bank or building society statement must have been issued by an authorised official of that institution and produced within the three months immediately before the date of the application; and

(7) If the statements are printouts of electronic statements from an online account, they must either be accompanied by a supporting letter from the bank, on company headed paper, confirming the authenticity of the statements, or bear the official stamp of the bank in question on each page of the statement;

or

(iii) For £50,000 from a Venture Capital firm, Seed Funding Competition or UK Government Department only, a recent letter from an accountant, who is a member of a recognised UK supervisory body, confirming the amount of money made available to the applicant (or the entrepreneurial team if applying under the provisions in paragraph 52 of this Appendix). Each letter must:

(1) be an original document and not a copy,

(2) on the institution’s original headed paper,

(3) have been issued by an accountant engaged by the Venture Capital firm, Seed funding competition or UK Government Department to provide the information,

(4) have been produced within the three months immediately before the date of the application,

(5) state the applicant's name, and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix,

(6) state the date of the document,

(7) confirm the amount of money available to the applicant or the applicant's business from the Venture Capital firm, Seed funding competition or UK Government Department, and

(8) confirm the name of the Venture Capital firm, Seed funding competition or UK Government Department and the contact details of an official of that organisation, including their full address, postal code, landline phone number and any email address,

(b) If the applicant is applying using money from a third party, he must provide all of the following specified documents:

(i) An original declaration from every third party that they have made the money available for the applicant to invest in a business in the United Kingdom, containing:

(1) the names of the third party and the applicant (and his team partner's name if the applicant is applying under the provisions in paragraph 52 of this Appendix),

(2) the date of the declaration;

(3) the applicant's signature and the signature of the third party (and the signature of the applicant's team partner if the applicant is applying under the provisions in paragraph 52 of this Appendix),

(4) the amount of money available to the applicant from the third party in pounds sterling,

(5) the relationship(s) of the third party to the applicant,

(6) if the third party is a venture capitalist firm, confirmation of whether this body is regulated by the Financial Conduct Authority (FCA) and is listed as permitted to operate as a Venture Capital firm,

(7) if the third party is a UK entrepreneurial seed funding competition, a document confirming that the applicant has been awarded money and that the competition is listed as endorsed on the UK Trade & Investment website, together with the amount of the award and naming the applicant as a winner,

(8) if the third party is a UK Government Department, a document confirming that it has made money available to the applicant for the specific purpose of establishing or expanding a UK business, and the amount, and

(9) confirmation that the money will remain available to the applicant until such time as it is transferred to the applicant or the applicant’s business.

and

(ii) A letter from a legal representative confirming the validity of signatures on each third-party declaration provided, which confirms that the declaration(s) from the third party/parties contains the signatures of the people stated. It can be a single letter covering all third-party permissions, or several letters from several legal representatives. It must be an original letter and not a copy, and it must be from a legal representative permitted to practise in the country where the third party or the money is. The letter must clearly show the following:

(1) the name of the legal representative confirming the details,

(2) the registration or authority of the legal representative to practise legally in the country in which the permission or permissions was/were given,

(3) the date of the confirmation letter,

(4) the applicant's name (and the name of the applicant's team partner if the applicant is applying under the provisions in paragraph 52 of this Appendix),

(5) the third party's name,

(6) that the declaration from the third party is signed and valid, and

(7) if the third party is not a venture capitalist firm, seed funding competition or UK Government Department, the number of the third party's identity document (such as a passport or national identity card), the place of issue and dates of issue and expiry.

(c) If the applicant is applying under the provisions in (d) in Table 4, he must provide:

(i) his job title,

(ii) the Standard Occupational Classification (SOC) code of the occupation that the applicant is working in, which must appear on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the Codes of Practice in Appendix J,

(iii) one or more of the following specified documents:

(1) Advertising or marketing material, including printouts of online advertising, that has been published locally or nationally, showing the applicant's name (and the name of the business if applicable) together with the business activity,

(2) Article(s) or online links to article(s) in a newspaper or other publication showing the applicant's name (and the name of the business if applicable) together with the business activity,

(3) Information from a trade fair(s), at which the applicant has had a stand or given a presentation to market his business, showing the applicant's name (and the name of the business if applicable) together with the business activity, or

(4)Personal registration with a trade's body linked to the applicant's occupation.

and

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

Version in force between 1 October 2013 and 5 April 2014 (HC 628)

41-SD. The specified documents in Table 4 and paragraph 41, and associated definitions, are as follows:

(a) Where this paragraph refers to funding being available, unless stated otherwise, this means funding available to:

(i) the applicant;

(ii) the entrepreneurial team, if the applicant is applying under the provisions in paragraph 52 of this Appendix; or

(iii) the applicant’s business.

(b) Where this paragraph refers to the applicant’s business, the applicant must be registered as a director of that business in the UK, and provide a Companies House document showing the address of the registered office in the UK, or head office in the UK if it has no registered office, and the applicant's name, as it appears on the application form, as a director.

(c) The specified documents to show evidence of the funding available to invest are one or more of the following specified documents:

(i) A letter from each financial institution holding the funds, to confirm the amount of money available. Each letter must:

(1) be an original document and not a copy,

(2) be on the institution's headed paper,

(3) have been issued by an authorised official of that institution,

(4) have been produced within the three months immediately before the date of application,

(5) confirm that the institution is regulated by the appropriate body,

(6) state the applicant's name, and his team partner's name where relevant,

(7) show the account number and,

(8) state the date of the document,

(9) confirm the amount of money available from the applicant's own funds (if applicable) that are held in that institution,

(10) confirm the amount of money available from any third party (if applicable) that is held in that institution,

(11) confirm the name of each third party and their contact details, including their full address including postal code, and where available landline phone number and any email address, and

(12) confirm that if the money is not in an institution regulated by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA), the money can be transferred into the UK; or

(ii) For money held in the UK only, a recent personal bank or building society statement from each UK financial institution holding the funds, which confirms the amount of money available. Each statement must satisfy the following requirements:

(1) the statements must be original documents and not copies;

(2) the bank or building society holding the money must be based in the UK and regulated by the Financial Conduct

Authority (FCA) and the Prudential Regulation Authority (PRA);

(3) the money must be in cash in the account, not Individual Savings Accounts or assets such as stocks and shares;

(4) the account must be in the applicant's own name only (or both names for an entrepreneurial team), not in the name of a business or third party;

(5) each statement must be on the institution's official stationery showing the institution's name and logo, and confirm the applicant's name (and, where relevant, the applicant's entrepreneurial team partner's name), the account number and the date of the statement;

(6) each statement must have been issued by an authorised official of that institution and produced within the three months immediately before the date of the application; and

(7) if the statements are printouts of electronic statements, they must either be

accompanied by a supporting letter from the bank, on the bank " s headed paper,

confirming the authenticity of the statements, or bear the official stamp of the bank in question on each page of the statement; or

(iii) For £50,000 from a Venture Capital firm, Seed Funding Competition or UK Government Department only, a recent letter from an accountant, who is a member of a recognised UK supervisory body, or other authorised official in the case of a UK Government Department, confirming the amount of money made available. Each letter must:

(1) be an original document and not a copy,

(2) be on the institution's official headed paper,

(3) have been issued by an accountant engaged by the Venture Capital firm, Seed Funding Competition or UK Government Department or other official of the UK Government Department authorised to provide the information,

(4) have been produced within the three months immediately before the date of the application,

(5) state the applicant's name, and his team partner's name where relevant, or the

name of the applicant’s business,

(6) state the date of the document,

(7) confirm the amount of money available to the applicant, the entrepreneurial team or the applicant's business from the Venture Capital firm, Seed funding competition or UK Government Department, and

(8) confirm the name of the Venture Capital firm, Seed funding competition or UK Government Department and the contact details of an official of that organisation, including their full address, postal code and, where available, landline phone number and any email address,

(d) If the applicant is applying using money from a third party, he must provide all of the following specified documents:

(i) An original written declaration from every third party that they have made the money available to invest in a business in the United Kingdom, containing:

(1) the names of the third party and the applicant (and his team partner's name where relevant), or the name of the applicant ’ s business,

(2) the date of the declaration,

(3) the applicant's signature and the signature of the third party (and the signature of the applicant's team partner where relevant),

(4) the amount of money available in pounds sterling, (5) the relationship(s) of the third party to the applicant,

(6) if the third party is a venture capitalist firm, confirmation of whether this body is regulated by the Financial Conduct Authority (FCA) and is listed as permitted to operate as a Venture Capital firm,

(7) if the third party is a UK Seed Funding Competition, confirmation that the applicant, the entrepreneurial team or the applicant ’ s business has been awarded money and that the competition is listed as endorsed on the UK Trade & Investment website, together with the amount of the award and naming the applicant, the entrepreneurial team or the applicant ’ s business as a winner,

(8) if the third party is a UK Government Department, confirmation that it has made money available for the specific purpose of establishing or expanding a UK business, and the amount, and

9) confirmation that the money will remain available until such time as it is transferred to the applicant, the entrepreneurial team or the applicant ’ s business.

and

(ii) A letter from a legal representative confirming the validity of signatures on each third-party declaration provided, which confirms that the declaration(s) from the third party or parties contains the signatures of the people stated. It can be a single letter covering all third-party permissions, or several letters from several legal representatives. It must be an original letter and not a copy, and it must be from a legal representative permitted to practise in the country where the third party or the money is. The letter must clearly show the following:

(1) the name of the legal representative confirming the details,

(2) the registration or authority of the legal representative to practise legally in the country in which the permission or permissions was or were given,

(3) the date of the confirmation letter,

(4) the applicant's name (and the name of the applicant's team partner’s name where relevant) and, where (b) applies, that the applicant is a director of the business named in each third-party declaration,

(5) the third party's name,

(6) that the declaration from the third party is signed and valid, and

(7) if the third party is not a Venture Capitalist Firm, Seed Funding Competition or UK Government Department, the number of the third party or their authorised representative's identity document (such as a passport or national identity card), the place of issue and dates of issue and expiry.

(e) If the applicant is applying under the provisions in (d) in Table 4, he must also provide:

(i) his job title,

(ii) the Standard Occupational Classification (SOC) code of the occupation that the applicant is working in, which must appear on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the Codes of Practice in Appendix J,

(iii) one or more of the following specified documents:

(1) advertising or marketing material, including printouts of online advertising, that has been published locally or nationally, showing the applicant's name (and the name of the business if applicable) together with the business activity or, where his business is trading online, confirmation of his ownership of the domain name of the business ’ s website,

(2) article(s) or online links to article(s) in a newspaper or other publication showing the applicant's name (and the name of the business if applicable) together with the business activity,

(3) information from a trade fair, at which the applicant has had a stand or given a presentation to market his business, showing the applicant's name (and the name of the business if applicable) together with the business activity, or

(4) personal registration with a UK trade body linked to the applicant's occupation;

and

(iv) one or more of the following documents showing trading:

(1) a contract. If a contract is not an original the applicant must sign each page. The contract must show:

(_a) the applicant's name and the name of the business,

(_b) the service provided by the applicant's business; and

(_c) the name of the other party or parties involved in the contract and their contact details, including their full address, postal code and, where available, landline phone number and any email address; or

(2) an original letter from a UK-regulated financial institution with which the applicant has a business bank account, on the institution " s headed paper, confirming that the business is trading; and

(v) if:

(1) claiming points for being self-employed, the following specified documents to show that he is paying Class 2 National Insurance contributions:

(_a) the original bill from the billing period immediately before the application, if his

Class 2 National Insurance is paid by quarterly bill;

(_b) the most recent bank statement issued before the date of application, showing the direct debit payment of National Insurance to HM Revenue & Customs, if his National Insurance is paid by direct debit;

(_c) an original small earnings exception certificate issued by HM Revenue & Customs for the most recent return date, if he has low earnings; or

(_d) the original, dated welcome letter from HM Revenue & Customs containing the applicant's unique taxpayer reference number, if he has not

yet received the documents in (_a) to (_c); or

(2) if claiming points for being a director of a UK company, a printout of a Current Appointment Report from Companies House, dated no earlier than three months before the date of the application, listing the applicant as a director of the company, and confirming the date of his appointment. The company must be actively trading and not struck-off, or dissolved or in liquidation. Directors who are on the list of disqualified Directors provided by Companies House will not be awarded points.