Appeal No: 206/E/R

IN THE MATTER OF AN APPEAL UNDER THE GANGMASTERS (APPEALS) REGULATIONS 2006

Appellant		**Respondent**
Gofond International Limited	v	Gangmasters and Labour Abuse Authority

Appointed person: Employment Judge Hyams, sitting at Watford Employment Tribunals

DECISION ON THE APPEAL

The appeal against the decision to refuse the appellant a licence as taken by the respondent on 12 June 2024 is dismissed

REASONS

Introduction: the procedural and legal background

1 On 12 June 2024, the respondent sent a letter stating that the appellant's application for a licence to act as a gangmaster within the meaning of the Gangmasters (Licensing) Act 2004 had been refused. In paragraph 2 of that letter, the respondent pointed out that "it is a criminal offence under section 12(1) of the Gangmasters (Licensing) Act 2004 to act as a gangmaster without the authority of a licence".

2 The reasons for the decision to refuse the licence were stated in the following passage of the letter.

> '5. When assessing compliance with Licensing Standard 1.2 the GLAA considers whether a PA [i.e. a Principal Authority within the meaning of rule 2(1) of the Gangmasters (Licensing Conditions) Rules 2009, SI 2009/307] has the required competence and capability to fulfil this responsibility. Further, paragraph 4.8 of the Licensing Standards

states that "A new business will be expected to show that it has systems in place that demonstrate its ability to comply with the standards".

6. A licence applicant is therefore expected to be sufficiently advanced in its business preparations so that it can demonstrate its ability to be compliant at the date of the inspection and not some later date.

7. Following your application inspection, you have been unable to demonstrate the required level of competence and capability to hold a GLAA licence. This licensing standard has therefore been failed. The factors that have been taken into account when reaching this decision are set out below.

8. During the inspection, you were asked by the inspector whether GoFond was required to be registered with the Nepalese government. The response you provided was that GoFond did not need to be registered because they are a UK registered business.

9. However, Nepal's Foreign Employment Act 2064 (2007) states that "No one shall carry on the foreign employment business without obtaining a licence pursuant to this Act". The Act defines a Foreign Employment Business as "a business carried on to provide employment to citizens of Nepal in abroad(sic)".

10. The Nepalese Act directly contradicts your answer and therefore demonstrates that you have a limited awareness of what is required from the Nepalese government to supply workers abroad.

11. In addition, during the inspection you stated that you were not required to provide the Nepalese government with a copy of your worker contract in order to receive a permit to supply workers abroad. Yet, this contravenes the requirements of the Nepalese Department of Foreign Employment.

12. When you were questioned further on this, you stated that the government required documents such as an acceptance letter, medical certificate and visa. But you were not aware of the requirement for a Two Party Agreement, Guarantee Letter or Companies Trade Licence.

13. During the inspection, you claimed to understand the Seasonal Worker scheme in the UK, but when questioned on the scheme, you explained that GoFond would supply workers directly to farms in the UK.

14. Yet this is incorrect, as the scheme only allows a few listed sponsored scheme operators to supply workers directly to UK farms. GoFond would therefore be required to supply to these scheme operators and not the farms.

15. During the inspection, you were asked what statutory benefits workers in the UK are entitled to, however you stated that you had not looked into this and was therefore unaware.

16. You stated that you were unaware of the amount of holiday entitlement that workers for GoFond would receive if supplied to work in the UK.

17. When asked about what statutory rest breaks workers are entitled to, you were unable to provide the correct information.

18. You were asked who would be responsible for the health and safety of GoFond's workers, to which you explained that you had not read this section of the licensing standards and therefore could not provide an answer.

19. At the time of the inspection, you were also unable to inform the GLAA as to who would be responsible for the induction and training of workers.

20. You were also unable to provide any information about how you would organise the safety of workers, for example through the provision of PPE, welfare facilities and first aid.

21. Overall, your knowledge of the Licensing Standards and relevant legislation was shown to be deficient. Your management processes were also shown to be below the required standard. The GLAA can have no confidence that you have the competence to ensure compliance with the Licensing Standards or to ensure that GoFond's workers receive the rights that they would be legally entitled to.

22. Therefore, Standard 1.2 is failed. This is a critical standard with a score of 30 points.

Summary

23. Applicants must score less than 30 points to be granted a licence. GoFond has scored 30 points. Therefore, GoFond's application is refused.'

3 On 27 June 2024, the appellant, via Mr Ram Lamichhane, the appellant's Principal Authority, sent an email enclosing its grounds of appeal. The appellant asked for "an appeal process without a legal hearing". The email enclosed an undated document stating the reasons for appealing. There were three substantive grounds of appeal. The substance of the first ground was stated in the following bullet points.

> "• We acknowledge the Nepalese Foreign Employment Act 2064 (2007), which mandates licensing for Nepalese companies involved in foreign employment.
>
> • Our approach is to collaborate with licensed Nepalese companies, ensuring compliance with both Nepalese and UK regulations.
>
> • Specifically, outside companies cannot directly hire prospective Nepalese migrant workers without the involvement of licensed Nepalese companies.
>
> • Therefore, GoFond will collaborate with licensed companies in Nepal rather than seeking a license directly from the government of Nepal.
>
> • We kindly request that this collaborative model be considered a valid alternative to direct registration, given our commitment to worker welfare and ethical practices."

4 The second ground of appeal, under the heading "Language and Technical Terminology", was this.

> "• As a non-native English speaker, I admit that during the inspection, I faced challenges in recalling specific technical terms.
>
> • For instance, when referring to the UK Seasonal Worker Scheme, I inadvertently used the term "farms" instead of "scheme operators."
>
> • We recognize the importance of precise terminology and are committed to continuous learning.
>
> • Our team is actively studying UK laws and regulations to ensure full compliance.
>
> • We kindly request that this miscommunication be considered in context, recognizing our genuine intent."

5 The third ground of appeal, stated under the heading of "Commitment to Worker Rights and Safety", was this.

"• GoFond places the utmost importance on worker welfare, safety, and adherence to statutory benefits.

• Our management processes include robust induction and training programs.

• We are actively exploring options for safety measures, including the provision of personal protective equipment (PPE), welfare facilities, and first aid.

• Our commitment extends beyond compliance; it reflects our ethical responsibility to protect workers' rights."

6 The appeal was acknowledged by the Secretary of Gangmasters Licensing Appeals ("the Secretary") on 1 July 2024.

7 On 29 July 2024, the respondent responded to the appeal in an 18-page document from which it is not necessary to set out quite such extensive quotations here. I do record, however, that in paragraph 48 of that document, it was said that

> "it is clear that during the application process and up to and including the inspection of 23 May 2024, the PA was holding out the Appellant as planning to operate by a business model that the Appellant now appears to agree would not be compliant with the applicable Nepalese legislation, for the simple reason that it was not the collaborative model."

8 In paragraphs 51 and 52 of the response, this was said in relation to the first of the three grounds of appeal which I have set out in paragraph 3 above.

> "51. If the Appellant's contentions under the first section of its grounds of appeal are intended to demonstrate that it has now adopted compliant practices, namely the collaborative model, the GLAA respectfully submit that this was not the business model put forward by the PA during the application process and inspection and that this must therefore be rejected.
>
> 52. It is well-established in the judgements of previous Appointed Persons in appeals against the GLAA's licence decisions that the appropriate time for assessing an applicant or licence holder's compliance with the Licensing Standards is at the time of the inspection."

9 In paragraphs 76-78 of the response to the appeal, this was said in response to the second ground of appeal, which I have set out in paragraph 4 above.

‘76. Whilst it is accepted that the PA is a non-native English speaker, the GLAA disputes that the PA’s responses during the inspection should be disregarded due to alleged “miscommunication”.

77. The inspection of 23 May 2024 was attended by an independent and suitably qualified Nepalese-language interpreter. This was at the insistence of SCO Kenneally, after an earlier inspection with the PA in March 2023 was abandoned very soon after commencing, as SCO Kenneally deemed the PA’s spoken English to be insufficiently strong to carry out the inspection fairly and properly.

78. In this connection, the GLAA notes that neither SLO Alexander’s inspection notes (Document 10), nor SCO Kenneally’s inspection notes (Document 18) indicate that the PA raised any difficulties regarding terminological confusion during the inspection.’

10 As for the third ground of appeal which I have set out in paragraph 5 above, among other things, this was said in the response of the respondent.

‘110. A crucial component of the Licensing Standard 1.2 PA competency and capability assessment is whether the PA has adequately prepared for the inspection by taking the time to familiarise himself with the Licensing Standards.

111. Prospective applicants are given plenty of warning that their understanding of the Licensing Standards is of importance. The publicly available guidance on the GLAA’s website for prospective licence applicants (Document 21) states “You will also need to make sure you meet the conditions of the Licensing Standards”.

112. The PA was also emailed a copy of the Licensing Standards on 29 February 2024 (Document 4, Page 3), and because of the initial cancelled inspection in March, had almost six full months between submitting the Appellant’s licence application on 28 November 2023 and the inspection on 23 May 2023 to read and properly study the Licensing Standards. Paragraph 4.8 of Part One of the Licensing Standards (Document 1, Page 4) clearly states that “A new business will be expected to show that it has systems in place that demonstrate its ability to comply with the standards”.’

11 In paragraph 128 of its response to the appeal, the respondent said this.

‘As Employment Judge Tucker held in *Firstcall Advance Recruitment Ltd v GLA (now GLAA)* (Document 23, paragraph 10):

> *"The Appellant failed to establish compliance with the standards at inspection; mere assertions that it will operate in compliance with legal and other requirements…is neither a legitimate nor sufficient basis for appeal"*.'

12 On 31 July 2024, the appellant wrote to the Secretary:

> "Please let me know if there is room for explanation and rebuttal from our side for the discussion or if you need any further information and clarification from our side as we do not agree with GLAA's points."

13 The appeal and the response to it were sent to me on behalf of the Secretary by email on 23 September 2024. I was at that time on leave. The email enclosing the various documents included this sentence: "I now await any direction from yourself as The Appellant appears to be requesting leave to provide a formal reply to the Respondents reply." On 12 October 2024, after my return from leave, I gave formal permission for the appellant to respond to the respondent's response.

14 On 17 November 2024, the appellant sent to the Secretary a document with the file name "Comments on GLAA's Decision to Refuse License.pdf". On 21 November 2024, I gave the respondent 28 days from its receipt of that document to send a response to it. A response was then sent by the respondent on 16 December 2024, and the matter was left for determination by me as it then stood.

A discussion

An apology for the delay

15 There has been some delay in the proceedings, and I apologise for that.

The applicable law

16 I spent some time, after I had read all of the papers carefully, looking into the law applying to the appeal. I was unable to ascertain any route for appealing from my decision, despite looking at the parts of the White Book (the standard practitioners' text containing the Civil Procedure Rules 1998 ("the CPR"), much commentary on them, and much information about civil procedure, including appeals) and for example *Halsbury's Laws*. In fact, I looked also in such works as I could find on civil appeals. I therefore came to the conclusion that any challenge to my decision would have to be made by way of an application for permission to apply for judicial review, under Part 54 of the CPR.

17 All of the decisions on which reliance is placed by the respondent as showing that the role of an appointed person (within the meaning of regulation 3 of the

Gangmasters (Appeals) Regulations 2006, SI 2006/662) is merely to decide whether the appealed decision was correct at the time it was made, are decisions of such appointed persons. In my view, those decisions were of interest, but plainly they did not bind me.

18 Similarly, statements made by other appointed persons in other cases on comparable facts could not bind me. They were, however, also of interest.

19 In fact, different views have, I saw from what the respondent said in paragraph 55 of its response to the appeal, been taken on the question of how an appointed person should determine an appeal of the sort which was now before me. Paragraph 55 bears repeating here:

> "In a small number of appeals Appointed Persons have diverged from this approach and held that appellants should be assessed on the basis of their compliance with the Licensing Standards at the time the disputed decision is taken. However, even if this approach is adopted in the present matter it provides no assistance to the Appellant, as its assertions as to the change regarding its business model were provided only in its grounds of appeal, which were served on the GLAA after the disputed decision was taken."

20 There was one decision of an appointed person in the bundle of documents before me which referred to an authority in the form of an Administrative Court judgment for the proposition that the appeal was in itself to be conducted by the appointed person as a rehearing of the matter. That decision was that of Employment Judge ("EJ") Britton in appeal number 189/ER, the appellant in which was Gary Cook trading as Gary's Labour Agency. The appeal was in person and took place on 27 and 28 March 2017. The respondent was represented by counsel, and the appellant was in person. In paragraphs 13-15 on page 3 of the written decision, this was said.

> "13. Save for judicial review, which of course would be exceptional; there is otherwise no mechanism for appeal from the decision of an AP. Thus there is no jurisprudence at a higher court level relating to GLA appeals. However there has built up a library of decisions by APs, which Mr Jupp has put before me. But of course they are illustrative, rely very much on their own facts, and do not bind me.
>
> 14. However, there is jurisprudence relating to other licensing regimes and which is in Mr Jupp's authorities bundle and which in terms of assistance that can be derived there from was in part rehearsed by me in the NV case and particularly commencing at paragraph 49.
>
> 15. Additionally to assist the GLA (and indeed future Appellants) the approach to hearing the appeal is first as per *Hope & Glory Public*

> *House Ltd v City of Westminster Magistrates' Court* [2009] EWHC 1996 (Admin) (at 31). Thus, in relation to an appeal from a decision of the GLA, it is a) a rehearing and at which b) the AP should have regard to the intentions underpinning the GLA regulatory regime."

21 I looked at that decision of the Administrative Court (the judge was Burton J), and it was indeed to the effect that the appeal in that case (it was, as its name suggests, a public house licensing case) was to be conducted by way of a re-hearing, but it was not to the effect that it was a completely unfettered re-hearing. The case was reported in the Administrative Court Digest ("ACD") series, which does not contain full copies of the judgments it reports. Rather, it has (as the name suggests) digests of those judgments. The report was at [2010] ACD 46 (the case itself having the reference [2010] ACD 12).

22 Paragraph 31 of the judgment of Burton J was only part of the relevant passage, the whole of which was paragraphs 28-43. The summary of the effect of those paragraphs, in the ACD report, at H11, at [2010] ACD 47, was this.

> "It was common ground that the appeal was to be heard by way of rehearing, rather than review of the decision. Within this framework, the appellate court, having heard all the evidence, must consider if it was satisfied that the judgment below was wrong. With respect to fresh evidence, the appellate court must reach its conclusion on the basis of the evidence before it and then conclude that the judgment was wrong, even if it was not wrong at the time. Wrong meant that the district judge (as the appellate court) was to give a decision whether, because he disagreed with the decision below in light of the evidence before him, it was therefore wrong."

23 I therefore agreed with EJ Britton in thinking that the appeal before an appointed person must be conducted as a rehearing, but taking into account the factors referred to in paragraphs 28-43 of the *Hope & Glory* case, as summarised in the passage which I have just set out. If that was not what he decided, then it was in my view the way in which an appeal had to be conducted by an appointed person within the meaning of regulation 3 of the Gangmasters (Appeals) Regulations 2006, SI 2006/662. I add that my view in that regard was based in part of the proposition that an appeal to an appointed person is the only time when there could be an assessment by a judicial officer of the evidence supporting the appeal. I should say that the fact that the decision of an appointed officer can be in effect appealed only by making an application for judicial review was in my view irrelevant. That is because I have for a long time thought that an appeal should be capable of being pursued where there has been an error of law of the sort which is capable of giving rise to a successful application for judicial review (which is always determined by reference to the background of the impugned decision, and here that would be so far as relevant that the application related to

a decision of a judicial officer), but that some appellate judgments have in the past regarded appeals as being capable of being successful only on slightly narrower grounds. Accordingly, in my view the scope for a successful judicial review is no narrower than the scope for a successful appeal.

This appeal

24 The fact that I had heard no oral evidence meant that all that I had before me by way of evidence was documentary. All I had in that regard, however, was what was before the respondent when it made its appealed decision (including notes of what was said in interviews of Mr Lamichhane, the appellant's Principal Authority) and the appellant's documents prepared for this appeal. The latter, however, consisted purely of a number of assertions, mostly about the intentions of the appellant, which was a newly-established company. By way of example, I now set out several passages in the final document (speaking chronologically) of the appellant.

25 On the first page of that document, this was said.

> "**Newly Established Business and Purpose**
>
> GoFond International Limited is a newly established company with a mission to address the labor shortage in the UK. We have applied for the GLAA license to commence operations, and we are currently in the process of building our business, network, and partnerships. Our activities so far have been limited to research and testing, and we have not yet begun hiring. The application for the license, for which we paid £2250, is a step towards establishing our operations once our business foundations are solidified.
>
> The GLAA should consider the fact that GoFond is a new business endeavoring to provide solutions to the ongoing labor shortages in the UK market. As a new business, it is natural that we may not possess exhaustive knowledge initially, but we are committed to learning, growing, and adhering to all GLAA guidelines. We assure the GLAA that we will follow all regulations and, if we violate any laws, they have the authority to revoke our license. However, it is crucial for us to obtain the license to start our operations and build our business."

26 At the top of the second page, this was said.

> "We adhere to UK laws and regulations. It is impractical to register and meet requirements in every potential labor-sourcing country. Therefore, we establish partnerships with licensed companies in those countries to serve

> as our channel partners. Each party fulfills their responsibilities in compliance with their respective local laws.
>
> The GLAA inspector's difficulty in understanding this simple and logical business model should not be a reason to deny us the license. This point raised by the GLAA and their inspector lacks a solid basis."

27 The words in the second of those two passages "We adhere to UK laws and regulations" were patently untrue given that the appellant is, as it said in the first of those two passages:

> "a newly established company with a mission to address the labor shortage in the UK. We have applied for the GLAA license to commence operations".

28 On page 4 of that final document from the appellant, this was said.

> "The business model of GoFond International Limited has consistently been to collaborate with licensed companies in Nepal and other countries to fulfill labor requirements in the UK. This model is practical, efficient, and ensures compliance with all relevant regulations in both the UK and the source countries."

29 Again, that was obviously wrong because the appellant had not yet started to do anything at all in the UK, it being a newly-established business to do something in the UK for which it had not yet been given a licence of the sort which it needed: hence this appeal.

30 Even though I disagreed with what the respondent said in paragraph 129 of its response to the appeal, which was that it was "no defence for the Appellant to rely on the PA's good intentions, when the PA failed to demonstrate that he had the requisite competence and capability to hold a GLAA licence during the application and inspection process", I was faced only with assertions made in documents written on behalf of the appellant about the appellant's future intentions, which were in fact inaccurate since they were statements about what the appellant was doing, when so far as relevant, the appellant was not yet doing anything. I appreciated fully the difficulty of the appellant in that regard, which was that it could not demonstrate a track record since, self-evidently, it did not (yet) have permission to start operating.

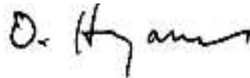
31 However, there was here no appearance before me of any witness on behalf of the appellant whose credibility could be assessed by me, and there was before me no documentary evidence to support the assertions in the documents emanating from the appellant since the appealed decision was made. It was not for me to suggest what those documents might be, but I would have expected at the very least to see copies any relevant agreements entered into with "licensed

companies in Nepal and other countries to fulfill labor requirements in the UK" of the sort referred to in the passage which I have set out in paragraph 28 above. In addition, I would have expected to hear oral evidence from someone acting on behalf of at least one of those companies, as well as the Principal Authority himself.

My decision on the appeal

32 In those circumstances, I first looked carefully at the appealed decision. To my mind, it was unimpeachable. It was, in other words, plainly right. Nothing said by the appellant in its documents stating the reasons for its appeal and then in support of the appeal undermined the correctness of that decision. There was before me no evidence of anything other than intentions of the appellant, and no oral or documentary evidence to give me any reason to accept what amounted simply to unsupported assertions about what the appellant would do in the future.

33 In the circumstances, I concluded that the appeal had to be dismissed.

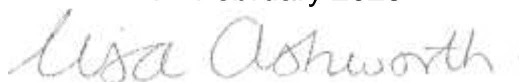


Employment Judge Hyams

Date: 4 February 2025

JUDGMENT SENT TO THE PARTIES ON

7th February 2025



LISA ASHWORTH
FOR THE TRIBUNAL OFFICE