



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/12288/2013
IA/12172/2013

THE IMMIGRATION ACTS

Heard at Field House
On 3 February 2014

Determination Promulgated
On 20 February 2014

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MRS KAMALJEET KAUR
MR AVTAR SINGH

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms D Ofei-Kwatia, Counsel instructed by Berkleys Solicitors
For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are wife and husband. Both are Indian nationals born on 20 April 1981 and 6 February 1980 respectively. They arrive in the UK on 14 March 2011, the

first appellant as a Tier 4 (General) Student and the second appellant as her dependant with leave valid until 28 July 2012. On 27 July 2012 the first appellant applied for leave to remain as a Tier 1 (Entrepreneur) Migrant under the Points-Based System, whilst the second appellant applied for leave as her partner.

2. On 4 April 2013 the respondent refused the first appellant's application under paragraph 322(1A) of the Immigration Rules, for having submitted false documents. The second appellant's application was refused in consequence. At the same time, the respondent decided to remove the appellants from the UK by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. By a letter dated 14 August 2013 the respondent withdrew the Section 47 decision.
3. In support of her application, the first appellant submitted documents from the Oriental Bank of Commerce, Allahabad Bank and the State Bank of India in respect of funds said to be held by her sponsors. However, as a result of enquiries made with the banks concerned, the respondent was satisfied that these documents were false, resulting in a mandatory refusal under paragraph 322(1A).
4. The appeals of the appellants were allowed by First-tier Tribunal Judge Scott.
5. Judge Scott made the following findings:-

"17. While it is true that the DVR has been redacted, perhaps to an extent that is more than necessary, I am not persuaded that it is thereby rendered meaningless. The DVR still contains details of the enquiries made and the responses received. Contact was made with the banks by an initial telephone call, followed by an email copying the relevant document to the bank. A further telephone call was then made on receipt of the bank's response and finally attempts were made to contact the account holders. No doubt it would have been better if the emails had been copied in the respondent's bundle along with the responses, but the DVR is a record of what the author was told by the bank's representatives and by one of the account holders. On the face of it, the DVR was prepared by the person who made the relevant enquiries.

18. In respect of the accounts with the Allahabad Bank and the State Bank of India, it is true to say that the DVR does not actually assert that the documents submitted were false, simply that the term deposits in question were no longer held.

19. It is also the case that the documents purporting to have come from the Oriental Bank of Commerce are not called "false" in the DVR, but the result of the enquiries made was clearly that the certificate purporting to be from the bank was not in fact issued by the bank, which must mean that it was false. That conclusion is reinforced by the information said to have been gleaned from the account holder himself.

20. The appellant sought to show, by reference to Mr Makwana's letter and the various documents attested by him, that all of the documents submitted with the application were genuine. However, while the documents so attested may have been genuine and actually held by the person who appeared before him, there is nothing to connect these items to the first appellant and nothing which explains the certificate which the Oriental Bank of Commerce denied having issued.
21. The question in this case is whether the DVR by itself is sufficient to discharge the burden of proof which rests on the respondent. The appellants' grounds of appeal, which were expressly relied upon in submissions, draw attention to the respondent's Immigration Directorates' Instructions, now contained in the Modernised Guidance, Section 4, v13.0, valid from 21st March 2013, which includes the following:-

'This page explains what to consider when an applicant applying for leave to remain has given a false document with their application. This relates to general grounds for refusal under paragraphs 332(1A) and 322(2) of the Rules.

Standard of Proof

To confirm that a document is false you must get independent evidence. Ideally you should ask the authority which issued the document or information to confirm in writing that it is not genuine. When this is not possible, you should consider whether you can refuse the application for substantive reasons'.

22. That instructions or guidance was not followed in this case. There is no independent evidence to show that any of the documents submitted by the first appellant are false. There is nothing in writing from any of the issuing authorities. There is no explanation for the lack of such written evidence and no apparent reason why it could not have been obtained.
 23. In these circumstances, bearing in mind the serious consequences for the appellants of a refusal under paragraph 322(1A), I find that the respondent has not discharged the burden of proof in this case."
6. DIJ Zucker granted the Secretary of State permission to appeal the judge's decision in the following terms:-
 - "3. The issue before the Judge was whether Document Verification Reports ("DVR") obtained by the Respondent were sufficient for the Respondent to be able to discharge the burden of proof that was upon her. The Judge found that they were not because the Respondent's evidence was found

not to conform to the Respondent's own guidance as to what would amount to sufficient evidence.

4. The grounds continue to assert that the documentation was false and reliance is placed upon AA (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 773.
5. At paragraph 21 the Judge has set out an IDI. There are arguably two parts. One requires independent evidence; one suggests evidence in writing. Arguably the Judge has treated both parts as mandatory and has fallen into error as it is arguable that the Respondent did have independent evidence obtained when speaking to the bank with the independent evidence recorded in the DVR."
7. Mr Saunders relied on the grounds and the grant of permission. He said that the judge based his decision on the IDI and if he is right about what the IDI says then his reasoning is adequate. However, the instruction in the IDI to caseworkers is to get as much information as they can. There is no stipulation as to how many pieces of evidence and what sort of evidence is required. The respondent's argument is that the DVRs do constitute evidence sufficient to sustain the refusal because, in particular, the documents from the three banks and the responses to enquiries to all three showed that there were some problems with the documents. The judge rightly sets out at paragraphs 18 and 19 what the difficulties were. He argued that the Secretary of State has done enough by way of enquiries and the nature of the DVRs adequately described at paragraph 17 are enough to bear the weight of the respondent's refusal.
8. Mr Saunders asked me to take into account the responses to enquiries that came from the banks themselves. The countervailing evidence comes from somebody not connected to the banks. The banks know better.
9. He submitted that the judge made a material error of law and I should reverse his decision.
10. Counsel asked me to maintain the judge's decision. She relied on the skeleton argument drafted by the appellant's solicitors. Counsel then took me through what she considered to be the defects in the DVRs, stating that there were no details in relation to the account number at the Oriental Bank, the name or the balance in the account. There was nothing to indicate what enquiries had been made. The result page was blank. The contact history did not contain full details. It did not identify who the British High Commission official was talking to and there was no evidence of the trailing of email. The same was said of the DVR Report in respect of the Bank of Baroda. With the Allahabad Bank she said that Mr Chavada does not have an account with this bank. He has an account with the State Bank of India.

11. I made the point to Counsel that there was no challenge in the skeleton argument against the findings the judge made in respect of the DVRs. Indeed the appellants had not cross-appealed those findings. Consequently, those findings remain and I cannot go behind them.
12. Counsel then argued that the judge did not apply too high a test by requiring independent evidence because it could be asserted with confidence that the DVRs had independent evidence to support the Secretary of State's decision.
13. I find that the judge made a material error of law. The IDI relied on by the judge is an instruction to caseworkers what they must do in order to confirm that a document is false. I find that that is precisely what the caseworker did. He asked the authority that issued the document, namely the banks for information about the reliability of the bank documents. Although there was no written confirmation from the banks, the information as to their falsehood was contained in the DVRs. The judge accepted that the DVRs contained details of the enquiries made and the responses received. He also accepted that enquiries were made by an official of the British High Commission to the banks that issued the documents. He identified the difficulties that had arisen following the enquiries made by the British High Commission. In the circumstances I find that for the judge applied too high a test to require further independent evidence and not identify where that independent evidence was to come from. By so doing he had treated both parts of the IDIs as mandatory and therefore fell into error. I agree with what DIJ Zucker said at paragraph 5 of his grant of permission. The respondent did have independent evidence obtained when speaking to the bank with the independent evidence recorded in the DVR.
14. I find that the judge materially erred in law. His decision cannot stand.
15. I re-make the decision and dismiss the appeals of the appellants.

Signed

Date

Upper Tribunal Judge Eshun