



**Upper Tribunal
Immigration and Asylum Chamber
IA/46625/2013**

Appeal Number:

IA/46626/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 17 October 2014**

**Promulgated:
On 23 October 2014**

Before

Upper Tribunal Judge Kekić

Between

**Thanjua Nimali Mary
Dinesh Asela Kumara Gajaman Hewa Malawige
Appellant**

and

Secretary of State for the Home Department

Respondent

Determination and Reasons

Representation

For the Appellant: Mr H Kannangara, Counsel
For the Respondent: Mr S Walker, Senior Home Office Presenting
Officer

Details of appellant and basis of claim

1. This appeal comes before me following the grant of permission on 24 July 2014 by Upper Tribunal Judge Reeds in respect of the determination of First-tier Tribunal Judge Paul who dismissed the appeal following a hearing at Taylor House by way of a determination promulgated on 29 April 2014.
2. The appellant (with her husband as a dependant) is a Sri Lankan national. She was born on 23 December 1982 and he on 1 May 1982. She challenges the decision of the respondent on 16 January 2013 to refuse to grant leave to remain as a Tier 1 entrepreneur. Her team member was also refused leave and currently has an appeal pending.
3. The application was refused because it was considered that she (and her team member who relied on the same documents) had submitted false bank documents in respect of a third party sponsor. Further, the confirmation letter regarding the third party's identity was unacceptable as it did not include details of the third party's identity document such as were required by the rules; the date and place of issue of the document and the expiry date.
4. Permission to appeal was granted on the basis that it was arguable that the judge had not properly considered the paragraph 322 (1A) issue.

Appeal hearing before the Upper Tribunal

5. The appeal came before me on 17 October 2014. The appellant was represented but not herself present. On her behalf, Mr Kannangara submitted that the respondent had failed to discharge the burden on her to show that the appellant had produced false documents and that the judge had erred in finding that the 322(1A) refusals was justified. He argued that the email correspondence between the respondent and the bank was unclear as to whether one or more documents were sent for verification. In any event, the email referred only to the appellant's team member and not to her and the respondent had only questioned the bona fides of one of the two third party sponsors.
6. He further pointed out that Sri Lankan ID cards did not provide a place of issue and date of expiry and so that information could not have been provided by the lawyer who verified the identity of the third party. He also argued that the respondent should have sought the further information by way of the evidential flexibility rule.
7. Mr Walker responded. He argued that the verification enquiry referred to bank letters in the plural as did the response received from the bank. That showed that both letters were forwarded to the

bank for verification. He submitted there was no error by the judge. The appellant produced false documents and the other documents supplied did not meet the requirements of the rules. He further submitted that the additional bank letters provided by the appellant's team member had been forwarded to the bank for verification and they, too, were found to be false. The principle of evidential flexibility did not apply given the two reasons for refusal.

8. Mr Kannangara replied. He argued that the verification report could have been better prepared. No issue had been taken with the other third party sponsor. The appellant had obtained letters from the bank in March to confirm that the initial letters issued were genuine. The appellant's team member's appeal was awaiting hearing before the First-tier Tribunal. This appeal should be remitted back to the First-tier so that both could be linked and heard together. Mr Walker had no views on disposal but submitted that if an error were found, the March bank letters would have to be verified by the Secretary of State prior to any resumed hearing.
9. At the conclusion of the hearing I reserved my determination which I now give.

Findings and conclusions

10. I have considered with care the submissions made by the parties and the evidence to which I was referred.
11. In support of her application the appellant and her team member relied on two letters from the Bank of Ceylon, Personal Branch, dated 7 December 2012 (Annex C; respondent's bundle). These relate to Mr S M R Alexander and Mrs A S Nanayakkara who are the two third party sponsors. The letters are headed: *"In regards to the application of Mrs Thanuja Nimali Mary and Mrs Krishanthi Promodva Nanayakkara Balaharuwa Koralalage for entrepreneur states (sic) in the UK"*.
12. As the main thrust of the appellant's complaints centres around the email correspondence between the Secretary of State and the Bank of Ceylon, it is useful to set out the details of that correspondence in full.
13. On 19 July 2013 the Tier 1 Verifications Team emailed the bank at boc681@boc.lk, the email address provided at the bottom of both letters with a copy to boc@boc.lk. The message stated:
*"Good morning
I am contacting you on behalf of the Secretary of State from the British Home Office with regards to the visa application of Mrs Krishanthi Promodya Nanakkara Balaharuwa Koralalage.*

Please find verification request attached for financial documents. I would be grateful if you could provide a response as soon as possible“.

Details of the sender are provided. The message shows a PDF attachment named “BOC” (Annex D).

14. An email response was received from boc681@boc.lk. This stated:
*“Dear sir/madam,
 This has reference to your email regarding visa application of Mrs Krishanthi Promodya Nanakkara Balaharuwa Koralalage.
 Please be informed that we have **not** issued the balance confirmation letters you have forwarded for verification.
 Kind regards
 Manager Customer Services
 Personal Branch”.*
15. A refusal letter in respect of Mrs Koralalage was submitted by Mr Walker. This confirmed that on 11 September 2014 the respondent refused her application on the basis that she had submitted a false bank letter in respect of Mr S M R Alexander. Additional letters from the bank dated 18 and 19 June 2014 were also verified but were found to be false. The application was also refused because insufficient details of the third party’s identity documents had been provided. These reasons are therefore the same as those relating to the present appellant with the exception that in Mrs Koralalage’s refusal, there were two additional false documents.
16. It is the appellant’s case that the verification process was unclear and left much to be desired. With respect, I see no merit in Mr Kanangara’s criticism that the email from the Verification Team to the bank only referred to Mrs Koralalage. Both she and the appellant relied on the same bank documents and the fact that the email to the bank only mentioned her as opposed to both of them is neither here nor there. What is relevant is that the information received in respect of the documents was pertinent to both applications.
17. There was also criticism of the lack of clarity in the request for verification. Mr Kannangara pointed to one attachment. I see no merit in this argument either. One attachment does not mean one scanned document. It can incorporate any number of documents.
18. The respondent has provided copies of both the bank letters along with email correspondence. No other bank letters were available from the appellant or her team member at the time and so it has to be the case that these were the letters sent to the bank for verification. There being no other financial documents on file from the bank, these must be the documents referred to in the email correspondence. The email correspondence from the respondent

and from the bank both refer to documents in the plural but even if I were to accept Mr Kannangara's submission that perhaps only a document relating to Mr Alexander was sent for verification, that does not assist the appellant because it was found not to have been issued by the bank.

19. Mr Kannangara argued that the bank had not explained the steps taken to verify the document(s). I do not see that it is obliged to. For reasons of security it may not wish to reveal flaws in false letters. What is important is that it confirmed that it had not been issued the letters forwarded.
20. Mr Kannangara also argued that the respondent only took issue with the authenticity of the documents of one of the sponsors. I cannot speculate on the reasons for that but it does not matter. Mr Alexander's document was found to be a forgery and the judge was perfectly entitled to consider that the correspondence adduced by the respondent demonstrated that the burden on her had been discharged.
21. Mr Kannangara also took issue with the second basis for the refusal; that Sri Lankan identity cards do not provide the details the Secretary of State wanted and so the lawyer who verified the sponsor's signature could not have supplied information such as the date of issue and expiry of the document. I can see no merit in this argument either. The rules set out the information that must be provided. If the sponsor's identity card did not provide the required information then other evidence should have been adduced which did supply the information. I do not see that the evidential flexibility principles apply here because there was no missing document as such; incomplete evidence or the wrong type of evidence had been provided. In any event even if this information had been requested and been provided, the application was doomed to fail because of the reliance on false documents.
22. For these reasons I find that the judge did not make any error of law such that requires his determination to be set aside either under paragraph 322(1A) or the rules relating to Tier 1.

Decision

23. The First-tier Tribunal did not make any error of law and the decision to dismiss the appeal is upheld.

Anonymity

24. The First-tier Tribunal did not make an anonymity order and no request for one was made to me.

Signed:

Dr R Kekić
Judge of the Upper Tribunal
21 October 2014