



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

**Appeal Number:
VA/05446/2013**

THE IMMIGRATION ACTS

Heard	at	Field	House
			Determination promulgated
On 25 September 2014			On 26 September 2014

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

**Entry Clearance Officer,
New Delhi**

Appellant

and

**Manjit Kaur Virk
(Anonymity direction not made)**

Respondent

Representation

For the Appellant: Mr. S. Kandola, Home Office Presenting Officer.

For the Respondent: Mr. B. Singh, nominated sponsor.

DETERMINATION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Martins promulgated on 19 June 2014, allowing Ms Virk's appeal against the decision of the Entry Clearance Officer ('ECO') dated 14 February 2013 to refuse entry clearance as a visitor.

2. Although before me the ECO is the appellant and Ms Virk the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Ms Virk as the Appellant and the ECO as the Respondent.

Background

3. The Appellant is a national of India born on 1 April 1976. By way of an on-line application form completed on 31 January 2013 she applied for entry clearance as a visitor to see her brother Mr Balwinder Singh ('the sponsor') and his family. In support of the application, amongst other things, the Appellant submitted some crop receipts.

4. The Appellant's application was refused for reasons set out in a Notice of Immigration Decision dated 14 February 2013 with reference to paragraphs 41(i), (ii), (vi) and (vii) and 320(7A) of the Immigration Rules. In this latter regard the Respondent had concluded that three crop receipts were false.

5. The Appellant appealed to the IAC. The First-tier Tribunal Judge allowed the Appellant's appeal for reasons set out in her determination.

6. The Respondent sought permission to appeal which was granted by First-tier Tribunal Judge Lever on 11 August 2014.

Error of Law

7. The First-tier Tribunal Judge misdirected herself as to the applicable standard of proof in respect of the Respondent's allegation that the Appellant had submitted false documents in support of her application. Whilst the Judge correctly identified that the burden of proof in this regard was upon the Respondent, at paragraph 22 of the determination she stated "*it is for him to prove this on a higher degree of probability*". Similarly at paragraph 24 the Judge referred to "*the high degree of probability standard*".

8. The applicable standard of proof is the balance of probabilities. This is not in any way 'heightened' by reason of the subject matter at issue or the gravity of the consequences as the Judge herein appears to have thought. See **Re B [2008] UKHL 35**, in particular per Lord Hoffman at paragraph 13.

9. Plainly a misdirection as to the standard of proof is material, and in my judgement this misdirection is sufficient in itself to warrant setting aside the decision of the First-tier Tribunal.

10. Nonetheless, and for completeness, it is to be noted that the Respondent has contended that there are further errors. I agree. In particular, in my judgement, the First-tier Tribunal Judge also erred in her evaluation of the Respondent's Document Verification Report (DVR). I make the following observations:

(i) The absence of any apparent analysis by the Respondent of a fourth crop receipt (which is of a different appearance from the three receipts that the Respondent contended were false) was immaterial to an evaluation of the evidence relating to the three crop receipts which were subjected to a verification process.

(ii) The Judge is factually incorrect in stating at paragraph 23 *"There is no indication of the nature of the fax, whether it was to make the request or to fax the actual receipts for verification"*. There is on file a copy of the communication sent by the Respondent in response to the enquiry raised by the Market Committee, together with a transmission verification report: it is stated in terms that the relevant crop receipts are being forwarded to the Market Committee *"as requested by your office"*.

11. On the face of it the process of verification was adequately clear. The Appellant responded to the allegation simply by bare assertion that the documents were genuine: she advanced no reasoned criticism of the DVR, and provided no further evidential support as to the genuineness of the documents in question. As regards the sponsor, who gave evidence before the First-tier Tribunal, the Judge recorded: *"As far as the ECO's conclusion that documents his sister had submitted were not genuine, his sister has told him that she submitted genuine documents"* (paragraph 16); and *"The sponsor knows that they sell their crops, but as he is here he has no knowledge of the intricacies of receipts for the crops"* (paragraph 19). It follows that the sponsor's oral testimony did not address the specifics of the DVR or otherwise provide evidence to counter the contents of the DVR: clearly this was because the relevant issues related to matters beyond his direct knowledge; he could only repeat in good faith the assertion made by the Appellant.

12. For completeness, I do not accept that a finding to the effect that the Appellant and her family were engaged in agricultural work is in isolation a significant indicator of the likely veracity of any supporting documents relating to the sale of agricultural produce, or

more particularly, provides an adequate response to the detail of the DVR.

13. In conclusion, the Judge's expressed concerns about the verification process were groundless and/or misconceived. Further, there was no sound evidential basis for undermining the conclusion of the verification process, whether by reference to that process itself, or by reference to anything emanating from the Appellant or sponsor. The conclusion that the Respondent had not discharged the burden of proof was neither adequately reasoned, nor otherwise sustainable on the basis of the available evidence - even by erroneous reference to a standard of 'higher probability'.

14. In the circumstances I find that the decision of the First-tier Tribunal Judge was flawed for material error of law and I set it aside.

15. The decision in the appeal accordingly needs to be remade.

Re-making the Decision

16. The sponsor confirmed that he did not have any further documents to produce in respect of the disputed crop receipts. Moreover, he could do no more than repeat again the assertion of his sister to the effect that false documents had not been used in support of the application.

17. In all of the circumstances - and including the analysis and observations I have made in respect of consideration of the issue of 'error of law' above - I find that the Respondent has established on a balance of probabilities that the three crop receipts identified in the Document Verification Report were false. It is clear that an enquiry was raised by the Respondent to the purported originator of the receipts, copies of the receipts were forwarded to the Market Committee accordingly, and upon checking their own records it was reported back to the Respondent that there was no record of such receipts having been issued. The Appellant has, in my judgement, done nothing to counter the allegation: the bare assertion of the genuineness of the documents does not provide an adequate answer.

18. I find that the Respondent has accordingly discharged the burden of proof to the relevant civil standard in respect of the engagement of paragraph 320(7A). Paragraph 320(7A) requires a mandatory refusal of the application. To that extent the

Respondent's decision was in accordance with the Immigration Rules.

19. In such circumstances it is unnecessary to consider the appeal by reference to paragraph 41 of the Rules. Were I to undertake such an analysis, the adverse finding in respect of the use of false documents would necessarily provide a substantial obstacle to the Appellant demonstrating the genuineness of the intentions underlying the proposed visit.

20. No human rights issues have been raised, and I am otherwise unable to identify any basis for concluding that the Respondent's decision was not in accordance with the law.

Decision

21. The decision of the First-tier Tribunal Judge contained a material error of law and is set aside.

22. I remake the decision in the appeal. The appeal is dismissed.

**Deputy Judge of the Upper Tribunal I. A. Lewis 25
September 2014**