



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

Appeal Number: VA/08719/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 16 July 2014
Delivered Orally**

**Determination
Promulgated
On 29 July 2014**

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

SIMRANJIT SINGH

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellant: Harvinder Kaur, Sponsor

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the Appellant, a citizen of India born on 10 February 1990, against the decision of a Judge of the First-tier Tribunal who in a determination promulgated on 4 March 2014, dismissed the appeal of the Appellant against the decision of the Respondent dated 26 March 2013 to

refuse the Appellant an entry clearance to visit his British sister in the United Kingdom for three weeks. The application was refused both under paragraph 41 of the Immigration Rules HC 395 (as amended) and under paragraph 320(7A) of the Rules that states that entry clearance or leave to enter the United Kingdom is to be refused where false representations have been made or false documents or information had been submitted (whether or not material to the application and whether or not to the applicant's knowledge) or material facts have not been disclosed in relation to the application.

2. It is right to say that the requirements of paragraph 320 (7A) of the Immigration Rules are in mandatory form and the First-tier Tribunal Judge in the present case, properly considered this ground of refusal first, since a decision on that might be dispositive of the appeal.
3. It was recorded in the Entry Clearance Manager's Review at paragraph 3.2 as follows:

"3.2 The Appellant has submitted Crop receipts (forms J) in support of his application. Thorough checks were made as to the authenticity of these documents and I refer to the document verification report attached with this bundle. As a result of these checks the ECO was satisfied that the crop receipts are false. I have noted the Appellant's comments in respect of these documents. Submission of false documents leads to a mandatory refusal under paragraph 320(7A) of the Immigration Rules. Such an action also undermines the Appellant's credibility to the extent that I am not satisfied that he is being truthful about his intentions in the UK."

4. It is a notable feature of this case that as recorded inter alia, in the judge's determination at paragraph 14:

"... The Appellant accepts that this was the case and therefore the allegations proved by the Appellant's own admission. He says that he is now providing accurate crop receipts and asks that the errant behaviour of his accountant should not prevent him from being granted a visa. The fact remains that the Appellant did submit documents which could have been relied upon by the ECO in granting an entry clearance, and the issue is that he got found out. Paragraph 320(7A) applies whether or not the false representations were material to the application and whether or not the Appellant was aware of them."

5. In consequence the judge concluded that the Respondent's refusal of entry clearance in this case was justified and in accordance with the law and he dismissed the appeal.
6. The Appellant made a successful application for permission to appeal the decision. In his grounds he stated that he "came to know about the errant behaviour of the accountant only on receipt of the refusal letter" and that had he known "that the accountant of the firm issued crop receipts without verifying the books of accounts, the Appellant would never [have]

submitted said crop receipts. Whilst the Appellant admitted the falsity of the receipts, he maintained that he had no intention to deceive. He had submitted crop receipts “under the belief that the same were correct according to the produced sold”.

7. The Appellant contended that the requirements of paragraph 320(7A) therefore did not apply in this case and that in consequence, the First-tier Tribunal Judge had erred in law.

8. In granting permission to appeal, Designated First-tier Tribunal Judge McDonald had this inter alia to say:

“Given what is said in AA (Nigeria) v SSHD EWCA Civ 773 this was an arguable error of law as it is necessary in law that the Appellant was aware of the fact that the representations were false.”

9. Prior to the hearing and by letter dated 21 May 2014 the Respondent served her Rule 24 response in which she had this to say:

“The grounds contend that making a false representation should not have been taken against [the] Appellant given that this was done by his accountant without his knowledge. The grant of PTA suggests that in line with AA (Nigeria) it is arguable that the grounds are correct and 320(7A) only applies when false documents are submitted when there was deliberate deception by the Appellant.

Indeed the very clear terms of 320(7A) confirm that the Rule is engaged where “*false documents or information have been submitted (whether or not material to the application and whether or not to the applicant's knowledge ...) in relation to the application*”.

On the basis of the clear concessions from the Appellant that the crop receipts submitted were indeed forgeries, the First-tier Judge was bound to find that the appeal fell to be dismissed under 320(7A).”

10. Thus the appeal came before me on 16 July 2014 when my first task was to determine whether the determination of the First-tier Tribunal Judge disclosed an error or errors on a point of law such as may have materially affected the outcome of the appeal.

11. At the outset of the hearing the Appellant's sponsor, Miss Harvinder Kaur, appeared before me and given that neither I nor Mr Kandola objected, I granted her permission to act as the Appellant's representatives.

12. Mindful that she was unfamiliar with the legal process and the nature of the hearing; I made a point of carefully explaining the matter to her and my task. I explained to her the requirements of the Rule concerned. I asked Miss Kaur if there was anything she wished to say on the Appellant's behalf and she told me as follows:

“My brother did make a mistake that he did rectify and produced new papers that were true. We are all human and make mistakes. All I want is for him to visit us. That’s all I want. My son’s birthday is on 25 July and we have got a religious programme on 27 July and it would be nice to have him here.”

13. Mr Kandola in response relied on what was said in the Rule 24 response. He continued that there was a difference between a false document and a false representation and in that regard he referred to paragraphs 66 and 67 of AA (Nigeria) and further in reference to paragraph 68 of AA, pointed out the court had thus drawn a distinction between a false representation and a false document in terms of this particular Rule.
14. Mr Kandola continued that although the judge was incorrect in saying that he did not have the Document Verification Report before him (as it been [produced] at the hearing and indeed attached to the Entry Clearance Manager’s response) it was the case that in any event the Appellant had accepted to his credit, that he had, albeit innocently as he claimed, submitted false crop receipts.
15. It followed, submitted Mr Kandola, that the First-tier Judge was not in error in dismissing the appeal.
16. I invited Miss Kaur to respond if she wished and she simply responded that as before her brother had made a mistake but it was not meant.

Assessment

17. I have had no difficulty in concluding that the determination of the First-tier Judge did not disclose an error on a point of law.
18. My starting point is the decision in Adedoyin (Formerly AA (Nigeria) [2010] EWCA Civ 373). In that case and in terms of the circumstances of the present appeal before me, it was clearly held that the term “false” in the relevant Rules was to be given the meaning “dishonest”.
19. A false document was one that told a lie about itself. In such a case a mandatory refusal under 320(7A) or paragraph 322(1A) was entirely understandable where a person had made use of a false document even in ignorance of its falsity.
20. A false representation stated in all innocence might be simply a matter of mistake or an error short of dishonesty. It did not necessarily tell a lie about itself. In such a case there was little reason for a requirement of a mandatory refusal.
21. However if on the other hand, a dishonest representation had been promoted by another party, then the Rule should require a mandatory refusal, irrespective of the personal innocence of the applicant. Thus a

false representation required dishonesty, although not necessarily that of the applicant.

22. Indeed Rix LJ in giving the leading judgment was clear at paragraph 76 inter alia that:

“Dishonesty or deception is needed, albeit not necessarily that of the applicant himself, to render a ‘false representation’ a ground for mandatory refusal’.”

23. In the present case the First-tier Judge was not dealing with a false representation such as, for example, an answer entered into an entry clearance application form that was false in some material way, but with a false document.
24. It follows that there is nothing about the judge’s decision on the facts of this case that could even arguably be said to be out of kilter with the decision in Adedoyin.
25. Whilst I understand the heartfelt plea of the Appellant's sponsor and sister Miss Kaur, it is clear to me and so I find, that the First-tier Judge’s conclusion that the appeal could not succeed was thus proper and appropriate.

Conclusion

26. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and I order that it shall stand.

Signed

Date 28 July 2014

Upper Tribunal Judge Goldstein