Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers:
VA/14763/2013

VA/14765/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 13th June 2014	**On 17th June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

ENTRY CLEARANCE OFFICER - GUANGZHOU

Appellant

and

MR CHANGFA YU (1)
MRS LANGFANG YU (2)

Respondents

Representation:

For the Appellant: Mr T Wilding , Home Office Presenting Officer
For the Respondent: Mr P Richardson, Counsel, instructed by Kothala & Co Solicitors

DETERMINATION AND REASONS

Introduction

1. This is an appeal by the Secretary of State but I will refer to the parties as they were before the First-tier Tribunal.

2. The first appellant is a citizen of China born on 28th July 1951. The second appellant is his wife, and is a citizen of China born on 21st May 1955. They applied for family visits to come to the UK to visit their son, Mr Zhaoyan Yu who has indefinite leave to remain in the UK. They were refused on 26th April 2012 because the entry clearance officer found that they could not satisfy paragraph 41 of the Immigration Rules and also because they fell to be refused under paragraph 320(7A) of the Immigration Rules. They did not appeal this decision but reapplied and were again refused on 20th June 2013 as family visitors on the basis that they could not satisfy paragraph 41 of the Immigration Rules and paragraph 320(7B) of the Immigration Rules because of false documents it was said were submitted with the previous application. The appeals against the decisions of 20th June 2013 were allowed by First-tier Tribunal Judge Coutts in a determination promulgated on the 24th March 2014.

3. Permission to appeal was granted to the Secretary of State by Judge of the First-tier Tribunal Colyer on 28th April 2014 on the basis that it was arguable that the First-tier judge had erred in law in failing to give sufficient reasons in his consideration of whether false documents had been used and also because the respondent contended that a refusal under paragraph 320(7B) of the Immigration Rules was mandatory when one had been made under paragraph 320(7A) of the Immigration Rules, and had not been appealed.

4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions

5. Mr Wilding submitted that the Judge Coutts had no power to go behind the unappealed 320 (7A) decisions of the entry clearance officer and once satisfied that such decisions had been made in relation to these appellants must therefore find that the appellants were to be refused under paragraph 320(7B) of the Immigration Rules and dismiss the appeal. He accepted that the only authority on a similar point was the case of SD (paragraph 320(11):Forgery) India [2010] UKUT 276, but said that this was not conclusive as it concerned paragraph 320(11) which was not a mandatory ground of refusal. I indicated that I was not with him on this argument.

6. Mr Wilding therefore submitted that Judge Coutts erred in law as he had failed to show that he had considered the Document Verification Reports at paragraph 9 of his determination. The first of these reports showed differences in opinion as to the first appellant's place of work and where he was on that day. Mr Wilding accepted that the First-tier Tribunal had not been provided with the document which was said

therefore to be false, so the First-tier Tribunal could not be criticised for failing to engage with the argument as to why the document itself was false however the Tribunal did need to look at the internal discrepancies presented in that Document Verification Report, and it was a material error for the First-tier Tribunal to have failed to do this.

7. Mr Richardson submitted that it was being argued that paucity of findings in the determination of Judge Coutts could have led to a different outcome, and was therefore material, but this was not possible on the evidence before the First-tier Tribunal. The document said to be false was not before the First-tier Tribunal, or indeed before the Upper Tribunal, so it could not be compared with what was said in the Document Verification Report. The first appellant does claim that he worked at the Fujian Huaxiang Supermarket Co Ltd at the time of the first and second applications, and indeed to date. The Document Verification Report consists of various telephone conversations with a number of people who say that he worked at that supermarket. There are some internal consistencies about where he was on that day and a mobile telephone number, but these are dealt with in the first appellant's statement and evidence from the sponsor, and they are not capable of showing that the first appellant submitted a false document. It is also of note that the entry clearance officer conducted further telephone enquiries into the first appellant's employment with the Fujian Huaxiang Supermarket Co Ltd when the second application was made, and this time they were said to be "inconclusive". The information given when the enquiries were made in 2013 was said to be consistent with the first appellant being employed as claimed but the landline numbers could not be verified from an "open source". If considered this evidence could not satisfy the burden of proof on the respondent to show the first appellant had made false representations or submitted a false document.

8. At the end of the hearing I informed the parties that I found that there was no evidence that Judge Coutts had made a material error of law in his determination of the appeal for the reasons set out below, but that I would put my reasons in writing.

Conclusions

9. I find that the guidance in SD (paragraph 320(11): Forgery) India is that in cases where the entry clearance officer says the forged documents were submitted with a previous application and there has been no judicial determination of the issue or relevant admission that the burden of proof remains on the entry clearance officer to show that documents in the previous application were forged. I can see no reason why this does not apply to paragraph 320(7B) of the Immigration Rules. This provision requires the applicant to have previously breached the UK's immigration laws, which can be by using deception in an application for entry clearance. It does not say that the applicant is to be mandatorily refused under paragraph 320(7B) because he has

previously be refused under paragraph 320(7A) of the Immigration Rules. The burden of proof to show the use of forged documents or made false representations in the 2012 application by the appellants was therefore on the respondent. Judge Coutts therefore proceeded correctly in this regard at paragraph 9 of the determination.

10. Judge Coutts should have set out the evidence on the issue of the allegation of use of false documents in a more fulsome fashion. He did not set out the respondent's reasons for refusal or outline the evidence from the respondent on the issue.

11. However I agree with the submission of Mr Richardson that even if this had been done the outcome of the appeal would not have been different. There was no admission by the appellants that they had submitted a false employment letter for the first appellant or made false representations on this issue. The letter itself was not provided by the respondent, and there is no evidence in the Document Verification Report conversations that it was a false document. The conversations of 19th April 2012 with Ms Wei and Ms Yu of Fujian Huaxiang Supermarket Co Ltd confirmed that the appellant was employed by them as he had claimed. The first appellant's daughter also said that he was at work. There was confusion as to where the appellant was precisely on that day, and the entry clearance assistant was not happy that some of the numbers called were not listed or were private numbers. In response the first appellant has provided an explanation as to why he attended work for a period that day when actually he was listed to be on holiday, and as to why the various telephone numbers appeared as they did. A further document verification report of 14th June 2013 also has the appellant's employer confirming he was employed as claimed, but is said to be inconclusive because the entry clearance assistant could not find the telephone number "in open source". This evidence was rightly found by Judge Coutts to be insufficient to show that the respondent had shown on the balance of probabilities that the appellants had previously breached the UK's immigration laws by using deception in their application for entry clearance in 2012.

Decision

12. The decisions of the First-tier Tribunal did not involve the making of a material error on a point of law.

13. The decisions of the First-tier Tribunal allowing the appeals are upheld.

Deputy Upper Tribunal Judge Lindsley
13th June 2014