



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

Appeal Number: IA/12549/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27th January 2015**

**Decision & Reasons
Promulgated
On 16th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**EHTSHAMUL HAQ
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer

For the Respondent: Miss B Poynor, Counsel, instructed by Windfall Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State from the decision of First-tier Tribunal Judge Chamberlain to allow the Respondent's appeal against the refusal of his application for leave to remain on the basis of his relationship with a female in the UK and upon family and private life grounds.
2. For reasons of exposition and clarity I propose hereafter to refer to the parties according to their status in the First-tier Tribunal; that is to say, I

shall refer to the Secretary of State as the Respondent and Mr S Ehtshamul Haq as the Appellant.

3. The Appellant is a citizen of Pakistan who was born on 5th February 1977. He appealed to the First-tier Tribunal against a decision of the Respondent which was made on 21st February 2014. The Secretary of Stats refused his application for leave to remain on various grounds. However, only one of these is relevant for present purposes. That reason can be found in paragraphs 10 and 11 of the Reasons for Refusal Letter, which is also dated 21st February 2014. In view of its centrality to the Respondent's appeal to the Upper Tribunal, I will quote those paragraphs in full:

10. In your client's representations, he [the Appellant] maintains that a fax from the Home Office dated 7 April 2011 confirms that the Home Office confirms his grant of indefinite leave to remain in the United Kingdom. The fax was sent in response to a telephone conversation, it is a general response based on the assumption that client holds valid documentation regularising his stay in the United Kingdom. The person responding refers to 'our caseworkers' so the response is not from a caseworker who has consulted the applicant's file held by the Home Office. The fax refers to the high volume of applications being dealt with by caseworkers and is highlighting possible delay. It is clear from other responses from the Home Office dated 6 September 2010, 17 September 2010, 8 December 2011, 23 March 2012 and 17 September 2012 plus the fact that your client's passport had been returned to the Pakistani Embassy as notified in the Home Office letter dated 6 September 2010, that the Home Office did not accept that your client was eligible for ILR. Furthermore to quote from the Home Office letter dated 17 September 2012, 'On 10 June 2012 your client made an application for No Time Limit stamp to be placed in their current Pakistani passport. As evidence to support the application your client provided their previous Pakistani passport number KB833066 with a stamp on page 8 of that passport purporting to give your client No Time Limit in the UK. That stamp was found to be a counterfeit stamp by the National Forgery Unit and the passport was therefore returned to the Pakistan Embassy. Your client's application was refused on 6 September 2010. In addition it should be noted that your client's Home Office file, a file that was only created in 2010 in response to your client's initial NTL application and on our electronic records, there is no evidence that your client has ever been granted ILR in the UK at any time. Hence the further refusal of your client's second NTL application on 6 October 2011 on 8 December 2011 on the basis of the counterfeit stamps and there being no evidence on file or electronically of your client having ILR in the UK.

11. Your client has therefore provided false information in support of his claim to remain in the United Kingdom. Your client fails to satisfy the suitability requirements at S-LTR.2.2 and consequently fails to qualify for leave under Article 8 family and private life of the Immigration Rules.

4. At the outset of the hearing in the First-tier Tribunal, the Respondent's Presenting Officer made application for an adjournment. She submitted

that the Appellant's bundle had been received on 22nd April 2014 and that there were serious counter allegations in the Appellant's bundle regarding the position of the passport stamp and in a letter from the Respondent. The Presenting Officer accepted that the Respondent had not produced a document verification report and, because she relied on the fact that the passport stamp and letter were false, fairness required an adjournment in order that the Respondent might obtain a document verification report and a section 9 statement from the author of such a report. That application was opposed by the Appellant's representative and was refused by the judge. The judge concluded that, having regard to the history of the proceedings, the Respondent had had ample time to provide evidence to substantiate her claim and that it was far too late to seek an adjournment on the morning of the hearing. The judge also found that the health of the Appellant was relevant because he is said to suffer from memory loss. Finally he bore in mind that some three witnesses had taken the trouble to attend the hearing and that it would cause them considerable inconvenience if they were required to attend on another day. Having had regard to the overriding objective, he decided that the fair and just way was to proceed with the appeal.

5. The Judge of the First-tier Tribunal dealt with the issue of the false documents allegation at paragraphs 16 to 18:

“16. It is not in dispute that the Respondent had not provided any DVR or other evidence in support or allegation that the passport stamp in the 2003 letter were false. The Respondent had not provided the passport itself or even a copy of the relevant page of the passport showing the stamp which she alleges is false. I find that the Respondent has failed to substantiate her claim that the passport stamps in the 2003 letter are false.

17. I find on the balance of probabilities the Appellant applied for asylum in 1998 and was granted ILTR in 2003. The Appellant's representatives made an application under the Data Protection Act in connection with this application. As a result of this they received from the Respondent the documents found at C1 to C7 of the Appellant's bundle. This includes the letter dated 18 April 2003 in which the Respondent states ‘I am writing to say that there are no longer any restriction on the period for which you may remain in the United Kingdom You can now remain indefinitely in the United Kingdom.’”

18. I find that while there is no evidence to show how this letter was generated, and where it came from originally, it is for the Respondent to show that this is a false letter. She provided it to the Appellant's representative as part of the Data Protection Act application and there is no indication in the Respondent's covering letter that she considered the 2003 letter to be false. This covering letter refers to the Appellant by name. It states ‘We have processed your request and confirm that the data held at UKBA on the above named subject confirms that he is currently subject to no restrictions’.”

Having made those findings, the judge then went on at paragraph 20 to note that the mere making of a bare assertion that the passport stamp and letter of the 18th April were false was not sufficient to discharge the burden of proof. He thereafter allowed the appeal.

6. Many months later, and long after the time when permission to appeal ought to have been lodged, the Respondent sought permission to appeal out of time. The Appellant's Rule 24 response takes issue with whether the judge who granted permission to appeal should have admitted the application so far out of time. However, Miss Poyner realistically conceded that that is not a matter that I can deal with in my capacity as a Judge of the Upper Tribunal hearing a statutory appeal. It may be subject to judicial review, but that is another matter.
7. In view of the way that Mr Whitwell has put his case today, it is I think worth reciting the Grounds of Appeal.

- “1. The First-tier Tribunal allowed this appeal because it was found that the Secretary of State had not satisfied the burden of proof to make out the assertion that the Appellant had relied upon false documents and that no evidence had been served on this point. It is respectively submitted that the Tribunal erred in reaching this conclusion.

2. As part of the Home Office bundle before the Tribunal there are two references to the evidence before the court.

- At page 2 of the PF1 bundle there is a reference in the index of documents: '(g) copy of NDFU forgery report'.
- At page G1 of the bundle is the NDFU forgery report which notes that the relevant document contained a false Home Office stamp and was accompanied by a false Home Office letter.

3. The Tribunal had no regard to this evidence in its findings on this case even though the document was clearly before the Tribunal. It is therefore submitted that the Tribunal determination is unsafe because of incomplete findings. [Emphasis added]

8. I next refer to the document at G1 to which specific reference is made in the Grounds of Appeal. It is headed “NDFU Forgery Report”. Mr Whitwell made the point, and I think that this was accepted by Ms Poyner, that in the case of an in-country application such as this, any allegation of forgery or false document would usually be supported by something called an ‘NDFU Forgery Report’. ‘NDFU’ stands for National Document Fraud Unit. However, the document to which the judge referred and which the Presenting Officer sought an application to obtain, was a so-called ‘document verification report’. This latter title is given to a similar report prepared in respect of out-of-country applications. It may therefore be

that the judge was misled into thinking that there should also have been something called a 'document verification report'. However, as the Secretary of State says in her Grounds of Appeal, G1 was plainly referred to in the list of contents of the Respondent's bundle of documents. It was thus there to be read, and I simply cannot believe that a conscientious Presenting Officer, the Appellant, and the judge, all managed to overlooked its existence.

9. The documents that are referred to in the NDFU Forgery Report are a document numbered KB83306 and a letter of the 18th April 2003. The former document was the Appellant's 'old' passport containing the questioned Home Office stamp. The material part of the report reads as follows:

The National Document Fraud Unit examined the above document on 22nd June 2010.

It was found to contain (an) altered stamp(s) /counterfeit stamp(s).

Paragraph 4 of the report is headed "Comments". This reads as follows:

Page 8 of the document contains a counterfeit Home Office personal date stamp number 276ADE dated 18.4.2003. The application is accompanied by a purported Home Office letter which is also false as it bears the same false Home Office stamp.

10. Thus, whilst the judge did not explicitly refer to the report by the title that appears in the list of documents, it is clear to me that his reference at paragraph 20 to the Respondent having made "a bare assertion that the passport stamp and letter of 18th April were false" was intended to be a reference to the NDFU forgery report that I quoted in the previous paragraph (above). It is equally clear to me that the Presenting Officer at that time accepted that that report failed to provide any explanation or supporting evidence for its assertion that the documents bore false Home Office stamps, and was thus seeking an adjournment in order to obtain the same.
11. On behalf of the Respondent, Mr Whitwell accepted that he was, so to speak, 'stuck' with the rather limited report that was before the First-tier Tribunal. He nevertheless argued that there had been circumstantial evidence which the First-tier Tribunal ought to have taken into account as supporting the bare assertion of forgery that had been made by the author of the report. Firstly, he submitted that a person who had presented precisely the same identity details as this Appellant (date of birth and so forth) had applied for entry clearance on 8 March 2002, and yet it was the Appellant's case that he had been in the UK at that time. Secondly, he drew attention to the fact that the Home Office had no record of the Appellant having been granted indefinite leave to remain, whether in 2003 as stated in the questioned document, or at all. Finally, he claimed that the reference number on the Home Office letter is not one that is used by the Home Office.

12. So far as Mr Whitwell's first argument is concerned, namely the fact of an entry clearance application being made by a person who shared the details of the Appellant, Mr Whitwell was right to say that this had been referred at paragraph 20 of the letter explaining the reasons for refusal:

The existence of these refused entry visas dated 1998, 2002 together with the lack of any evidence of entry to the United Kingdom or any asylum application casts further doubt on your client's claim to have been resident in the United Kingdom since 1999 and to have been granted ILR in 2003.

However, casting doubt upon the veracity of a document is not the same thing as proving that it is false. It was for the Respondent to adduce cogent evidence to prove, on a balance of probabilities, that it was false. In a sense, Mr Whitwell's second argument was similar to his first in that it was essentially based upon the lack of evidence to support the hypothesis that the document might have been genuine. However, the absence of a Home Office record to show that the appellant had been granted indefinite leave did not suffice, in my view, to establish that no such grant had been made. In relation to Mr Whitwell's last point, I do not have any evidence that the reference number that appears upon the questioned document is not one that is used by the Home Office, and neither did the First-tier Tribunal. I do not therefore accept the substance of Mr Whitwell's arguments.

13. Moreover, and in any event, I am persuaded by Miss Poynor that Mr Whitwell's arguments go well beyond those that were put to the judge in the First-tier Tribunal and, for that matter, those that are contained within the grounds of appeal to the Upper Tribunal. Until the arguments that were put before me today, it has always been the position of the Respondent that these documents were not merely of doubtful authenticity but that they were forgeries. The Respondent had singularly failed to submit any direct evidence of forgery to the First-tier Tribunal. It was the claim that the Appellant's documents bore false Home Office stamps which had provided the sole basis for contending that the Appellant's documents were false, and the First-tier Tribunal was right to conclude that the Respondent had not submitted any evidence at all to support the basis for that contention.
14. This appeal is accordingly dismissed.

Notice of Decision

The appeal is dismissed

Anonymity is not directed

Signed

Date **16th February 2015**

Deputy Upper Tribunal Judge Kelly