



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

Appeal Number: IA/39884/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd May 2015**

**Decision & Reasons
Promulgated
On 9th June 2015**

Before

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER
DEPUTY UPPER TRIBUNAL JUDGE SAINI**

Between

IMMIGRATION OFFICER - HEATHROW

Appellant

and

**ARATI KOTHARI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr A Otchie, Counsel instructed by Shri Venkateshwara Solicitors

DECISION AND REASONS

1. The Respondent, Ms Kothari, is a citizen of India whose date of birth is recorded as 10th March 1956. On 17th October 2014 she arrived with a visa permitting entry to the United Kingdom at Terminal 3, Heathrow Airport

but in the view of the Immigration Officer there had been a change of circumstances. The visa was cancelled.

2. Ms Kothari appealed and on 2nd January 2015 her appeal was heard by Judge of the First-tier Tribunal Woolf sitting at Hatton Cross. The relevant paragraph of the Immigration Rules relied upon by the Immigration Officer was 321A. The relevant part provides as follows:

“Grounds on which leave to enter or remain which is in force is to be cancelled at port or while the holder is outside the United Kingdom

321A. The following grounds for the cancellation of a person’s leave to enter or remain which is in force on [her] arrival in, or whilst [she] is outside, the United Kingdom apply;

(1) there has been such a change in the circumstances of that person’s case since the leave was given, that it should be cancelled.”

3. Quite properly the judge recognised that the burden of proof was upon the Secretary of State. The judge came to the view that the Immigration Officer had failed to discharge that burden. The judge noted that the evidence was limited; that there was no interview record to examine; no Visa Application Form; and no evidence of what enquiries were made of the Entry Clearance Officer by the Immigration Officer.
4. Not content with that decision, by Notice dated 5th February 2015 the Immigration Officer made application for permission to appeal to the Upper Tribunal. The grounds set out the history relating to Ms Kothari. There had been a number of visits starting from July 2011. She had on occasions stayed longer than she had said that she would but on no occasion had she overstayed the six month period permitted by the visa. It is right to observe, however, that there were times when she went back to her home country only to return to the United Kingdom after a short period, indeed measured in weeks. In the circumstances the Immigration Officer complains in the grounds that Ms Kothari was in breach of the Immigration Rules and makes reference to Rule 41(ii). That is a provision which requires an applicant to evince an “intention to leave the United Kingdom at the end of the period of the visit as stated by him [or her] and does not intend to live for extended periods in the United Kingdom through frequent or successive visits”.
5. We observe permission having been granted by Judge of the First-tier Tribunal Hollingworth on 18th March 2015, that the Immigration Rule referred to in the grounds does not appear to have been specifically referred to in the First-tier Tribunal but rather 321A. Be that as it may, Mr Tufan was somewhat embarrassed when he appeared before us because he had a bundle of documents which might have been capable of establishing for the Immigration Officer that which was contended for.

However it is perfectly clear from the notes of the judge that that bundle of documents was not before the judge, and we so find.

6. Insofar as the Immigration Officer now complains, it is of note that so far as Mr Tufan could discern, that bundle was in fact in the Presenting Officer's bundle at the time of the hearing so that if there were any cause for complaint from the Immigration Officer then it should be directed towards the Presenting Officer and not the judge. The judge cannot be criticised for failing to take into account evidence that was not placed before her; all the more so when it would seem that the matter of the evidence was raised at the hearing with an entry appearing in the judge's notes, yet still the bundle was not placed before the judge. In the circumstances in relation to grounds referring to rule 321A we find no error.
7. We should record the fact that Mr Tufan did make application to us pursuant to rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, to admit the bundle but given the late application, with no sufficient explanation why the bundle was not placed before the Judge, we refused.
8. However we should say that given the guidance in the case of **Sawmynaden (Family visitors - considerations) [2012] UKUT 00161** had we admitted the bundle we may very well have come to the view that the eventual decision made by the judge was one that was open to her. As it was we need not trouble ourselves with that particular point.
9. We invited the representatives at the conclusion of our statement of reasons to add any observations which they had. Neither representative wished to add to what we have concluded. In the circumstances the appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal is affirmed.

Notice of Decision

The appeal to the Upper Tribunal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Zucker