



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

Appeal Number: IA/40723/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 14 January 2015**

**Decision & Reasons Promulgated
On 22 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AURANGZEB AURANGZEB
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

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

For the Respondent: Miss M Niama, Legal Representative, Berkshire Law Chamber

DECISION AND REASONS

1. The appellant respondent is as citizen of Pakistan and his date of birth is 26 August 1977. I shall refer to him as the appellant as he was before the First-tier Tribunal.
2. The appellant made an application to vary his leave under Tier 1 of the points-based system on 12 December 2012. His application was refused by the Secretary of State in a decision of 27 September 2013. It was noted in the decision that the appellant had been here legally as a student

since 2009. His application was refused on the basis of a letter that that was submitted by the appellant from Faysal Bank Limited of 11 April 2013. It was asserted by the Secretary of State that the letter was false on the basis and this had been confirmed by the issuing authority. The application was refused under Rule 322(1A) of the Immigration Rules. This is a mandatory ground of refusal which reads as follows:

“(1A) Where false representations have been made or false documents or information have 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, or in order to obtain documents from the Secretary of State or a third party required in support of the application.”

3. The appellant appealed against the decision of the Secretary of State. He asserted that there is no evidence that the document produced is false and that the Secretary of State cannot discharge the burden of proof. The appeal was allowed by Judge of the First-tier Tribunal P A Grant Hutchinson following a hearing on 13 September 2014. The determination is dated 19 October 2014. The Judge found that the Secretary of State had discharged the burden of proof and allowed the appeal under the Rules.
4. Permission to appeal was granted to the Secretary of State by Judge of the First-tier Tribunal Saffer in a decision of 4 December 2014. Thus the matter came before me.
5. There is a rule 24 response from the appellant in which it is asserted that there is no error of law and it was open to the Judge to make findings in the appellant's favour. The appellant opposes the appeal and it is argued that the Judge gave cogent reasons to justify his decision and that his finding is rational.

The Evidence before the FtT and the Findings Made by the FtT.

6. The appellant in support of his application submitted a letter from Faysal Bank Limited of 11 April 2013 (F of the respondent's bundle). The author of the letter is Danish Hadi, a relations manager from Faysal Bank Limited and it is from an address in Karachi. In the letter it is asserted that the appellant and Mr Quereshi are joint account holders of an account which ends in the numbers 51. Mr Hadi gives the balance of the account.
7. The appellant submitted a bundle that was before the First-tier Tribunal and which was received by the Tribunal on 26 September 2014 (one day before the hearing). It is asserted in the appellant's witness statement that the letter is genuine and the appellant relies on a further letter from Faysal Bank of 7 July 2014 (page 3 of the appellant's bundle). The letter is from Faysal Bank in Karachi and it is addressed “To Whom It May Concern” and it refers to the joint account of Mr Quereshi and the appellant which ends in the numbers 51 and it states as follows:

“This certificate is being issued on the specific request of the customer without any risk or responsibility on the part of the bank or any of its officers.”

8. It certifies that the account holders have been maintaining an account since 6 December 2012 and the certificate is signed by two individuals. No typed names appear and the status of the individuals who signed the letter is not clear.
9. The Secretary of State relies on a DVR (document verification report) which refers to the letter from Faysal Bank Limited of 11 April 2013. The contact is Mr Irfan Ali who is the assistant manager at the account maintenance unit of Faysal Bank Limited at an address in Lahore. According to Mr Ali the account number written on the letter does not exist and the bank statement is not genuine. He refers to email correspondence between the bank and the immigration liaison officer in Islamabad.
10. The material findings of the Judge are contained at paragraphs 17 and 18 of the determination and are as follows:

“17. The only reason that this application [h]as been refused is that the respondent does not accept that the bank letters from Faysal Bank Limited were genuine. If they were genuine then the appellant would [have] been entitled to the required points. Essential to the respondent’s position is how much weight can be given to the Verification Report. Said report is based on information provided for a Mr Irfan Ali, Assistant Manager, accountant maintenance unit of a department based in Lahore. The emails lodged in support of said support are brief in the extreme. The appellant made the point that his account is in Karachi and has lodged letters in support of the maintenance of the existence of the account. In these circumstances I cannot find the verification report persuasive and accordingly the appeal is successful.

18. I do not accept the reasons given by the respondent in the refusal to allow entry clearance to the appellant. The respondent has not discharged the burden of proof and the reasons given by the respondent do not justify the refusal. Therefore the respondent's decision is not in according with the law and applicable Immigration Rules.”

The Grounds Seeking Leave to Appeal and Oral Submissions

11. The grounds seeking leave to appeal argue that the Judge failed to give adequate reasons why he gave no weight to the DVR and why he preferred the appellant's documents. The Judge did not take into account the Presenting Officer’s submissions regarding the new bank letter provided by the appellant and has provided no reasoning in relation to those submissions.
12. I heard submissions from both parties at the hearing before me. Mr Walker relied on the grounds of appeal and Miss Niama made submissions. She argued there is no error of law and that the Judge was entitled to

reach the conclusion that he did. The actual branch in Karachi was not contacted by the respondent at any point and there was no reasonable explanation for this. The document verification report as a result is inadequate. She reminded me that the burden of proof is to the higher end of the balance of probabilities. In her view the failure to contact the branch in Karachi is an inconsistency in the Secretary of State's evidence. The appellant's account was in Karachi and not Lahore.

Error of Law

13. In my view the Judge made a material error of law. He gave inadequate reasons for finding that the Secretary of State had not discharged the burden of proof. I have taken on board the submissions made by Miss Niama but in my view there is no substance in them.
14. That the branch in Karachi was not contacted by the ECO does not undermine the veracity of the DVR. Contact was made with the account maintenance unit in Lahore which appears to me to be entirely appropriate. There is no reason why the ECO should have contacted the branch in Karachi. There is no reason given by the appellant why the information given by the account maintenance unit would not be accurate. It is not suggested that there was any misunderstanding as to where the appellant's account was held. It is clear from the DVR that it was understood by the ECO and the contact that the appellant's account is held at the branch in Karachi.
15. I set aside the decision pursuant to Section 12(2A) Tribunals, Courts and Enforcement Act 2007. I remake the decision. No further evidence was produced by the appellant in accordance with the directions of the Upper Tribunal which were issued with the grant of permission.
16. At the hearing before me Miss Niama submitted a series of statements relating to telephone calls made by the appellant which according to the appellant show that he contacted the Faysal Bank in Karachi on several occasions by telephone between May 2014 and November 2014. Mr Walker objected to the admission of the evidence. It was not before the First-tier Tribunal and it had not been served and filed in accordance with the directions of the Upper Tribunal. There was no reason given by Miss Niama for the late production of this evidence and I do not admit it. In any event, considering the evidence in the context of the evidence as a whole, it is not reliable in accordance with **Tanveer Ahmed [2002] UKAIT 00439** and does not further the appellant's case.
17. There is a detailed DVR report in which the conclusions of the Secretary of State are clearly set out. The appellant denies the allegation but his evidence in my view is inadequate and lacking in detail. The letter produced by the appellant from the bank of 7 July 2014 does not adequately address the issues. The author of the letter is not clearly identified and it does not refer to the letter submitted by the appellant

with his application and there is no reference to Danish Hadi. There is no reference to the assertions made by the ECO and the allegation contains in the DVR. There is no statement from the joint account holder or from Danish Hadi.

18. In my view ECO has (at least on the balance of probabilities) discharged the burden of proof and I dismiss the appeal under Section 322(1A) of the Immigration Rules.

Notice of Decision

The appeal is dismissed under the Immigration Rules.

No anonymity direction is made.

Signed Joanna McWilliam

Date 21 January 2015

Deputy Upper Tribunal Judge McWilliam

Fee Award

I have dismissed the appeal and therefore there can be no fee award.

Signed Joanna McWilliam

Date 21 January 2015

Deputy Upper Tribunal Judge McWilliam