



IAC-AH-LEM-V1

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

Appeal Number: OA/08762/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 22 September 2015**

**Decision & Reasons Promulgated
On 5 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR IMTIAZ AHMED
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer

For the Respondent: No appearance

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department who was the respondent in the proceedings before the First-tier Tribunal. For the sake of convenience I shall refer to the appellant in this matter as “the Secretary of State” and to Mr Imtiaz Ahmed as “the Claimant.”
2. The Secretary of State appeals a decision made by First-tier Tribunal Judge (Judge Bart-Stewart) (“FtT”) who allowed the appeal against a decision to cancel entry clearance as a family visitor from Pakistan on the grounds

that the Claimant's passport contained a fraudulent stamp. The decision was promulgated on 1 May 2015.

Grounds

3. The grounds of appeal contend that the FtT made a material misdirection of law in failing to fully consider paragraph 41(ii) which was the Statement of Changes to the Immigration Rules HC1039 coming into effect on 6 April 2013 which included the provision .. "does not intend to live for extended periods in the United Kingdom through frequent or successive visits."
4. It was further contended that the FtT erred by failing to resolve how an incorrect stamp was placed in the Claimant's passport and in considering the issue of deception the FtT applied the wrong standard of proof.

Permission to Appeal

5. Permission to appeal was granted by Judge Nicholson on 30 June 2015.
6. The grant referred to **R re B (children) [2008] UKHL 35** and **R (N) v Mental Health Review Tribunal Northern Region [2005] EWCA Civ 1605** as to the burden and standard of proof for deception which clarified that the Tribunal required the production of cogent evidence of an allegation and the standard of proof is a balance of probabilities.
7. First-tier Tribunal Judge Nicholson found it arguable that the FtT had applied a wrong standard to the allegation that a fraudulent stamp was contained in the Claimant's passport but qualified the grant of permission stating "although, for other reasons, it is questionable whether this will materially affect the outcome of the appeal, permission is nonetheless granted on ground 5. I do not refuse permission on the remaining grounds."

FtT decision and reasons

8. In a decision and reasons the First-tier Tribunal allowed the appeal. The Claimant's sponsor attended the hearing to give evidence.
9. The Claimant's passport contained a visa endorsed C family visit which gave him leave to enter from 21 June 2012. It was accepted and the Claimant admitted during interview, that he travelled to the UK from Pakistan for the period 27 March 2013 to 15 September 2013. It was accepted that he had a history of frequent visits to the UK, never breached Immigration Rules and had a large family in the UK that he visits. The Claimant was stopped when re entering the UK because of the exit stamp dated 7 May 2013 in his passport. He claimed to have no knowledge of the alleged false stamp in his passport or how it came to be in his passport. The FtT considered the evidence which included a photocopy of the stamp in the passport, a copy of the handwritten Immigration Officer's notes recording that the Claimant stated that his last visit was for three months and he returned again on 14 April for a wedding. The wedding

invitation showed a date for 6 August 2014. There was documentation from the Airline showing that the Claimant travelled to Pakistan by air on 15 September 2013.

10. The FtT took into account evidence that the Claimant was a frequent visitor to the UK to see many family members and would always return within six months. He generally stayed for five months. He was not a well man and wanted to spend as much time as possible with his children. [5, 6, 7]
11. In its decision the FtT [9] had in mind that the effect of refusal of leave to enter was also to cancel continuing leave and entry clearance. However, there was no reference in the notice of refusal to particular provisions of the Immigration Rules. The FtT found that the Claimant did not dispute that the passport contained the endorsement dated 7 May 2013 as the date he returned to Pakistan. The FtT found that the Immigration Officer agreed that the Claimant returned to Pakistan on 15 September 2013 which was confirmed by the airline. The FtT found that as the period of the visit was within six months, the Claimant was lawfully entering and visiting as per his visa and that it could be “no more than a suspicion” that the stamp was fraudulently obtained. The FtT concluded “The burden of proof on an allegation of dishonesty or forgery is on the respondent and the standard high. I find that burden is not discharged.”

Error of Law Hearing

12. At the hearing before me Ms Isherwood represented the Secretary of State. There was no appearance by or on behalf of the Claimant in this matter. I heard submissions from Ms Isherwood who relied on the grounds of appeal and argued that paragraph 321 of the Immigration Rules ought to have applied as it was clear there had been a fraudulent stamp placed in the Claimant’s passport whether or not he was aware that it had been dishonestly or fraudulently obtained. And, that the FtT ought to have considered paragraph 41(ii) of the Immigration Rules.
13. Ms Isherwood confirmed that there had been no evidence produced by the Secretary of State to show that the date stamp was false. There was no examination or documentary verification report produced. It had been accepted that the Claimant entered and remained in the UK for a visit and returned to Pakistan on 15 September 2013.
14. Ms Isherwood further confirmed that the immigration decision was a refusal of leave to enter and curtailment of leave. There had been no reference to either paragraph 41(ii) or paragraph 320 and/or 321 in the notice or reasons for refusal. Accordingly Ms Isherwood conceded that she could not properly raise any concerns as to the Tribunal’s failure to deal with these issues when they had not in fact been raised in the refusal decision.

Findings and Conclusion

15. I am satisfied that the decision made by the FtT discloses no material error of law. The Tribunal made brief reference to the burden and standard of proof as regards deception in its decision and reasons. The reference made to a high standard certainly indicates that the Tribunal applied a standard of proof higher than the balance of probabilities, which would be an error in law. However, I find that any error is not material to the outcome of the determination. The Tribunal considered the evidence before it and found that it amounted to “a suspicion” that the passport may have been falsified. This finding cannot meet the required standard of balance of probabilities. The Tribunal also took into account the additional material and considered the evidence in the round, and made proper findings and conclusions having regard to the evidence before it.
16. Furthermore in view of the fact that the immigration decision made no reference to the Immigration Rules under paragraph 41 and/or paragraph 320, there can be arguable material error of law in the Tribunal’s failure to consider the same.

Notice of Decision

I dismiss the appeal.

The grounds disclose no material errors of law in the determination which shall stand.

No anonymity direction is made.

Signed

Date 2.10.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award.

Signed

Date 2.10.2015

Deputy Upper Tribunal Judge G A Black