



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Numbers: IA/16235/2014

IA/16446/2014

IA/16458/2014

IA/16466/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10th December 2015**

**Decision & Reasons Promulgated
On 3rd February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

**MRS DIPALBEN BIRENBHAI PATEL (FIRST APPELLANT)
MR BIRENBHAI RAMANLAL PATEL (SECOND APPELLANT)
A P (THIRD APPELLANT)
R P (FOURTH APPELLANT)
(ANONYMITY NOT RETAINED)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Waheed of Counsel

For the Respondent: Ms Isherwood

DECISION AND REASONS

Introduction

1. The first Appellant was born on 12th December 1975, the second Appellant on 17th August 1968, the third on 12th December 2005 and the fourth on 29th December 2002. They are all citizens of India and are related as husband and wife and children and the latter three Appellants are all dependent upon the first Appellant.

Substantive Issues under Appeal

2. The Appellant was granted leave to enter the United Kingdom in 2009 as a Tier 4 Migrant and thereafter had leave to remain as a Tier 1 (Post-Study) Migrant until 9th February 2014. She made application for leave to remain as a Tier 2 Migrant and that was refused by the Respondent on 21st March 2014.
3. The Appellant appealed that decision and her appeal was heard by First-tier Tribunal Judge Mace sitting at Hatton Cross on 13th February 2015. The judge dismissed her appeal on all grounds.
4. The Appellant made application to appeal that decision and leave to appeal was granted by First-tier Tribunal Judge Hollingworth on 20th July 2015 on the basis that it was arguable the judge failed to refer to the standard of proof. Directions were issued for the Upper Tribunal to firstly decide whether or not an error of law had been made and the matter comes before me in accordance with those directions.

Submissions on behalf of the Appellant

5. Mr Waheed submitted in terms of the Grounds of Appeal within the application. He noted that the burden of proof shifted to the Respondent because of assertions of forgery and said that the judge had failed to explain what standard of proof was applicable.

Submissions on behalf of the Respondent

6. Ms Isherwood said no error of law had been made. It was submitted that a false document had been placed in and accordingly such document is more than likely to demonstrate dishonesty and it did not matter whether that was on the part of the Appellant or someone else.
7. At the conclusion I reserved my decision to consider the submissions raised. I now provide that decision with my reasons.

Decision and Reasons

8. This case was granted permission on the basis that it was arguable that the judge while stating the burden of proof had not identified the standard of proof required.
9. The Respondent's refusal of the Appellant's application had firstly been pursuant to paragraph 322(1A) of the Immigration Rules. At paragraph 7

the judge had properly identified that it was for the Respondent to establish that that ground was made out and that if that was done, then a mandatory Ground for Refusal under the Rules was established. The basis of the evidence in respect of this matter concerned false documentation. The judge had considered the documentation before him and the oral evidence that had been provided. The judge had noted that the first Appellant, who was the key Appellant in this matter, did not attend the hearing nor had filed a Statement of Evidence despite directions from the Tribunal.

10. In terms of the evidential standard of proof the judge had reminded himself of the case of **AA Nigeria [2010] EWCA Civ 773** in which the meaning of the word dishonesty was used in connection with mandatory refusals and noted that the term false required dishonesty although not necessarily that of the applicant himself. The judge noted at paragraph 9 that dishonesty or deception was needed to render a false representation a ground for mandatory refusal. In examination of the evidence at paragraph 10 the judge had found clearly on the evidence before him factors noted within paragraph 10 in respect of the document presented. It is clear when looking at the judge's findings and reasons that he was aware the burden of proof lay with the Respondent and that in terms of mandatory refusal it was necessary to prove dishonesty or deception although it was not necessary to prove the Appellant had been dishonest or had practised deception. I am satisfied that when reading the decision as a whole the judge was aware and implemented the appropriate burden and standard of proof and was aware that the concept of "false" required proof of dishonesty or deception on the part of someone, even if not necessarily the Appellant. I am satisfied therefore that in concluding that the Appellant fell for refusal under paragraph 322(1A) of the Immigration Rules there was no material error of law made by the judge.
11. Thereafter the judge had considered the appeal under the substantive Rule and at paragraphs 12 to 26 had looked at matters properly under both the Immigration Rules and for the sake of completeness under Article 8 of the ECHR. It is not submitted that that consideration discloses any error nor was permission granted in respect of that consideration.
12. Accordingly it could be said that even if the judge had erred in his conclusions under paragraph 322(1A) of the Immigration Rules, he had nevertheless considered the matter properly and appropriately under the substantive Immigration Rules and under Article 8. That consideration discloses no material error of law.
13. In conclusion therefore, in respect of all the considerations made by the judge under the Immigration Rules including the mandatory refusal, I do not find that the decision discloses any material error of law made by the judge.

Notice of Decision

14. I find no material error of law made by the judge and uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

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

Signed

Date

Deputy Upper Tribunal Judge Lever