



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: VA/07430/2012

THE IMMIGRATION ACTS

Heard at Bradford
On 16 July 2013

Determination Promulgated
On 30 August 2013

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

PERVAIZ HUSSAIN

Appellant

and

ENTRY CLEARANCE OFFICER ABU DHABI

Respondent

Representation:

For the Appellant: Mr Mushtaq Sarwar (Sponsor)

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Pervaiz Hussian, was born on 12 July 1974 and is a male citizen of Pakistan. On 12 January 2012, the appellant's application for entry clearance to the

United Kingdom as a visitor was refused by the Entry Clearance Officer (ECO) Abu Dhabi. The appellant appealed to the First-tier Tribunal (Judge Fisher) which, in a determination promulgated on 18 September 2012, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the appeal hearing on 16 July 2013, Mr Mushtaq Sarwar, the appellant's United Kingdom sponsor, attended. Mr M Diwnycz, a Senior Home Office Presenting Officer, appeared for the respondent.
3. Judge Fisher had proceeded to hear the appeal in the absence of the sponsor. He noted that the appellant had indicated (when he had filed his notice of appeal) that he wished to have the matter determined at an oral hearing. The sponsor had not attended. The sponsor and appellant claim that they had requested an adjournment of the hearing because the sponsor would not be available but that no action appears to have been taken by the Tribunal in response to their request. I accept what they say and, in the circumstances, I set aside the determination and have remade the decision. For reasons which will become apparent, however, there was no flaw in the analysis or the outcome of Judge Fisher's determination. I set aside his determination for procedural irregularity (which had been beyond Judge Fisher's control) only.
4. Leave to enter the United Kingdom had been refused to the appellant under paragraphs 320(7B) and paragraph 41 of HC 395. The appellant had been refused entry clearance for using deception on 19 December 2010, having submitted false documents in support of his application. There is in the papers a document verification report concerning that previous application and I have also seen the determination of Judge Hague who heard the appeal in Manchester in January 2011. Judge Hague had found that false documents had been submitted in support of the application. His determination was not appealed by the appellant. At [9] Judge Fisher wrote:

"The appellant must understand that paragraph 320(7B) of the Immigration Rules is mandatory in its application. It affords me no discretion. Where an applicant has previously breached the UK's immigration laws by using deception in an application (whether successful or not), future applications will be refused for ten years. It is clear that deception was used in the last application which was within ten last ten years, and so the current appeal cannot succeed. The issues of whether the appellant is a genuine visitor for a limited time and whether he intends to leave the UK at the conclusion of his visit are, therefore, purely academic, and I am satisfied that I need not deal with them in view of my conclusion under paragraph 320(7B)."

5. I endorse that analysis entirely. Indeed, the Court of Appeal in **AA (Nigeria) [2010] EWCA Civ 773** held:

First, "false representation" is aligned in the rule with "false document". It is plain that a false document is one that tells a lie about itself. Of course it is possible for a person to make use of a false document (for instance a counterfeit currency note, but that example, used for its clarity, is rather distant from the context of this discussion) in total ignorance of its falsity and in perfect honesty. But the document itself is dishonest. It is highly likely therefore that where an applicant uses in all innocence a false document for the purpose of obtaining entry

clearance, or leave to enter or to remain, it is because some other party, it might be a parent, or sponsor, or agent, has dishonestly promoted the use of that document. The response of a requirement of mandatory refusal is entirely understandable in such a situation. The mere fact that a dishonest document has been used for such an important application is understandably a sufficient reason for a mandatory refusal. That is why the rule expressly emphasises that it applies "whether or not to the applicant's knowledge".

6. Although I am grateful to the sponsor for attending the Tribunal hearing on this occasion, it follows from the above that I must dismiss the appeal.

DECISION

7. This appeal is dismissed.

Signed

Date 31 July 2013

Upper Tribunal Judge Clive Lane