



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/18807/2014  
IA/20908/2014  
IA/20910/2014  
IA/20911/2014

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 7<sup>th</sup> November 2014

Decision and Reasons Promulgated  
On 20<sup>th</sup> November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

(1) MRS WAHEEDA BEGUM  
(2) MR MOHAMMED GROUSE MOINUDDIN  
(3) MISS SARA  
(4) MASTER ABDALLAH  
(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms L Mair, Counsel instructed on a direct access basis  
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of India who were born on the (i) 2<sup>nd</sup> February 1981, (ii) 10<sup>th</sup> August 1959, (iii) 26<sup>th</sup> January 2005, and (iv) 6<sup>th</sup> July 2007. The

first and second appellants are respectively wife and husband, and the third and fourth appellants are their children. As anonymity was not directed in the First-tier Tribunal, I consider that there is no purpose in ordering it now.

2. The appellants appeal with permission against the decision of First-tier Tribunal Judge Henderson, who dismissed their appeals against the respondent's decision to refuse the application of the first appellant for leave to remain as a Tier 1 (Entrepreneur) Migrant and to refuse the applications of the other appellants for leave to remain as her dependents. Unless the context otherwise admits, all further reference to "the appellant" is to the first appellant.
3. The respondent refused the appellant's application, on the 21st February 2014, under paragraph 39B(c) of the Immigration Rules. This reads as follows:
  - (c) If the Entry Clearance Officer or Secretary of State has reasonable cause to doubt the genuineness of any document submitted by an applicant which is, or which purports to be, a specified document under these Rules, and having taken reasonable steps to verify the document is unable to verify that it is genuine, the document will be discounted for the purposes of this application.
4. The critical passage from the respondent's letter to the appellant, explaining the reasons why her application had been refused, reads as follows:

You have claimed 25 points for access to funds under paragraph 245DD(b) and Appendix A of the Immigration Rules. You have stated that you have access to funds of £50,000 being made available to you by Mr Israr Ul Haq.

As evidence of this you have provided:

1. a letter from Habib Bank dated 18 December 2013;
2. a declaration from Israr Ul Haq;
3. a letter from Mr Syed Raza Mehdi of United Solicitors

However, the letter from Habib Bank supplied to support your claim for points against access to funds has been discounted for the purpose of this application, in line with paragraph 39B(c) of the Immigration Rules, as having taken all reasonable attempts to verify the documentation with Habib Bank we have been unable to verify that it is genuine.

5. As evidence that she had "taken reasonable steps to verify the document", the respondent relied upon an email that her official had sent to the relevant branch of the Habib Bank, on the 4th February 2014, asking it to verify the authenticity of the letter in question and to confirm whether it had issued it. There had been no reply to this email by the date of the decision.

6. At paragraph 21 of her determination, the judge commented upon the respondent's evidence as follows:

The evidence of reasonable steps therefore consists of one email. There is no written evidence regarding the two telephone chasers. There is no evidence of further emails to follow the lack of response. The Respondent's representative made reference to a further email in August but this was not provided and I am unclear as to why this was not in the Respondent's bundle. I have dealt with many applications made from Pakistan which are also subject to verification with the Habib Bank and in those applications there is clear documentation to show this. However, the Respondent is not stating that the letter is false but simply that there is inconclusive evidence regarding the letter and therefore the funding after reasonable steps have been taken to make enquiries about the letter.

7. The judge thereafter noted that the appellant had testified to having subsequently telephoned Mr Ul Haq. However, he had "effectively washed his hands of the situation by stating that he had done as much as he could in providing a letter from his bank". Thereafter, the appellant had been unable to contact him any further. The judge concluded from this that "the level of funds being offered is not proportionate with the level of co-operation now being denied". This in her view added "weight to the doubts concerning the specified document produced and lack of verification" [paragraph 22]. Finally, the judge concluded that the respondent had taken reasonable steps to verify the letter in question, and that there was "insufficient evidence" to show that this document could be relied upon as evidence that the appellant had access to the funds that were necessary in order for her to succeed in her application.
8. There are four grounds of appeal against Judge Henderson's decision which, when placed in a logical order, may be summarised as follows:
- (i) the respondent had failed to show "reasonable cause" for doubting the genuineness of the document;
  - (ii) the tenor of the judge's remarks concerning her the respondent's efforts to verify the document ran counter to her conclusion that these amounted to "reasonable steps" to do so;
  - (iii) by asserting that there was "insufficient evidence" to show that the letter could be relied upon as evidence of access to funds, the judge had wrongly placed the burden of proof upon the appellant;
  - (iv) Section 85A of the Nationality, Immigration and Asylum Act 2002 prohibited the judge from having regard to the sponsor's testimony concerning her subsequent enquiries of Mr Ul Haq in relation to his failure to respond to the respondent's email and his refusal to provide her with any further assistance in the matter.

9. The second ground clearly has merit in view of the contents of paragraph 21 of the judge's determination, cited in full at paragraph 6 (above). The third ground also has merit, albeit for a slightly different reason from that which is pleaded. Whilst the underlying purpose of paragraph 39B(c) is to ensure that unreliable documents are excluded from consideration under the Immigration Rules, the reliability or otherwise of the document in question is not an issue which is directly engaged by it. Assuming that the stage has been reached where it is in fact appropriate for the respondent to take "reasonable steps" to verify the authenticity of a document, a finding that such steps have been taken will require the Tribunal to discount the questioned document when making its assessment of the application. The reliability or otherwise of the document will thus be immaterial, and the question of who bears the burden of proving it does not therefore arise for consideration. The fourth ground is misconceived. This is because Section 85A(4) does not provide an absolute bar to the admission of post-application evidence in 'points-based system' cases. Rather, the submission of evidence with the application is but one of four alternative conditions for admissibility. Two of the four alternative conditions for admissibility were arguably met in the present case; namely, that the evidence was being "adduced by the appellant" in order "to prove that a document is genuine or valid", or is being adduced "in connection with the Secretary of State's reliance on discretion under immigration rules" [Section 84A(4)(c) and (d)].
10. However, the merits of the second, third, and fourth grounds are ultimately immaterial to the outcome of this appeal. This is because the requirement for "reasonable cause" to doubt the genuineness of a document is a precedent condition to it being discounted for the purposes of the application, and neither the respondent nor the judge appears to have addressed their mind to this issue. It would not require much to satisfy the requirement for "reasonable cause". Evidence that gives grounds for reasonable suspicion will suffice. There must however be some evidence before the Tribunal that is capable of justifying the respondent's questioning of the document; otherwise, as Ms Mairs pointed out, it would leave it open to the Secretary of State or Entry Clearance Officer to question an applicant's documents upon an entirely capricious basis. In this case, there was no evidence at all to show that the respondent had "reasonable cause" to question the document before she made her enquiries of the institutions that had purportedly issued it. The lack of response to those enquires was thus incapable of informing the issue of prior "reasonable cause". As the absence of access to funds was the sole basis for refusing the application, it follows that the decision of the First-tier Tribunal to dismiss the appeal must be set aside and substituted by a decision to allow the appeal on the ground that the decision is not in accordance with immigration rules.

Notice of Decision

11. The appeal is allowed.
12. The First-tier Tribunal's decision to dismiss the appeal is set aside and is substituted by a decision to allow the appeal on the ground that the decision is not in accordance with immigration rules.

Anonymity not directed

Signed

Date **20<sup>th</sup> November 2014**

Deputy Judge of the Upper Tribunal