



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

Appeal Number: OA/14070/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15th August 2014**

**Determination
Promulgated
On 20th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MS JYOTSNA UPENDRA KAMAT
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER MUMBAI INDIA

Respondent

Representation:

For the Appellant: Ms Ofie-Kwatia counsel, instructed by Malik Law
For the Respondent: Mr Jarvis, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Ms Jyotsna Upendra Kamat, date of birth 21st November 1982, is a citizen of India. In the circumstances I do not make an anonymity direction.

2. This is an appeal by the appellant against the determination of First-tier Tribunal Judge Molloy promulgated on 20th February 2014. The judge dismissed the appeal of the appellant against the decision of the respondent dated 5th July 2013. The decision was to refuse the appellant entry clearance to the United Kingdom as the spouse of a person present in the United Kingdom as a migrant under the point based system. The application was made under paragraph 319C and was refused initially under paragraphs 319C and 320(7B).
3. The decision by the Entry Clearance Officer gives a number of grounds for refusing this application including a refusal under paragraph 320(7B) of the Immigration Rules.
4. The decision was reviewed by the Entry Clearance Manager and the only ground under which the refusal was maintained was under paragraph 320(7B).
5. The basis for the 320(7B) refusal is:
 - (i) Prior to 2011 the appellant had been granted entry clearance to and leave to remain in the United Kingdom.
 - (ii) In or about January 2011 the appellant made application for further leave to remain.
 - (iii) By decision taken on the 31st January 2011 that application was refused.
 - (iv) The reason for the refusal was based on the allegation that the appellant had in either that application or a previous application submitted "*a false document*" namely a Post Graduate Diploma in Hospitality Management awarded by Hammersmith and West London College. The grounds for refusal included an assertion that the appellant had breached the provisions of paragraph 322 with reference to paragraph 320(7A & 7B) of the Immigration Rules.
 - (v) The appellant appealed against the refusal, appeal number IA/15651/2011.
 - (vi) Prior to any hearing the appellant withdrew the appeal. The appellant claims that her mother was ill in India and she had to return to India.
 - (vii) On the 5th August 2011 the appellant at her own expense voluntarily returned to India. A material fact which appears not to have been considered or put before Judge Molloy.
 - (viii) The appellant made the present application to enter the United Kingdom as the spouse of a migrant under the points-based system. That application was refused as set out above.

(ix) In the present application it is asserted that the consequence of the appellant having been refused under 322 and 320(7A & 7B) previously is that she is to be refused in respect of this application on the mandatory grounds set out in paragraph 320(7B).

6. Before the Judge Molloy this appeal was determined on the papers. The judge was concerned that there was little or no documentation from the IA/15651/2011 appeal before the Tribunal including no reference to the facts in paragraph 5(vii) above. The judge on the papers upheld the decision and dismissed the appeal under paragraph 320 (7B) as a mandatory ground for refusal. The judge went on to dismiss the appeal on Article 8 grounds.
7. There was much about the documentation that left a lot to be desired. The grounds of appeal to the First-tier Tribunal concentrate on Article 8, as do the grounds of appeal to the Upper Tribunal. Little is said about the mandatory ground of refusal under paragraph 370(7B).
8. The grant of leave by the Upper Tribunal deals in the main with the issue of dishonesty and who bears the burden of proving the same and to what standard.
9. The only ground for refusing this application and appeal under the rules was the refusal under paragraph 320(7B). The relevant parts of paragraph 320(7B) provide:-

320 In addition to the grounds of refusal of entry clearance or leave to enter set out in Parts 2-8 of these Rules and subject to paragraph 321 below, the following grounds for refusal of entry clearance or leave to enter apply:

Grounds on which entry clearance or leave to enter the United Kingdom is to be refused;

....

(7B) where the applicant has previously breached the UK's immigration laws and was 18 or over at the time of the most recent breached by:

...

d) using deception in an application for entry clearance, leave to enter or remain or in order to obtain documents from the Secretary of State or a third party required in support of the application (whether successful or not):

unless the applicant:

..

(iii) left the UK voluntarily, not at the expense (directly or indirectly) of the Secretary of State, more than 12 months ago.

10. By reasons of the provisions set out where an applicant has left the United Kingdom voluntarily and at his/her own expense, the applicant is only prevented from making an application for entry clearance for a period of 12 months and the mandatory ground of refusal applies only for 12 months.
11. The appellant left the UK on the 5th August 2011 at her own expense. A fact confirmed by the respondent. The present application was made on the 24th July 2013 by which time the provisions of 320 (7B) were no longer applicable to the appellant as a mandatory ground for refusal.
12. The ECM had conceded that the only ground upon which this application was refused was paragraph 320(7B). The other grounds raised by the ECO had been considered and it was accepted the appellant met all the substantive requirements of paragraph 319C.
13. The judge in maintaining the refusal under paragraph 320(7B) has made a material error of law. The mandatory ground was not applicable in the circumstances.
14. The representatives accepted that the appeal could be re-determined on the basis of the evidence before the Tribunal without hearing any further evidence.
15. On the basis of the evidence presented the appellant meets all the requirements of paragraph 319C as accepted by the ECO and the ECM. I find that the parties are validly married; the parties have met; the parties have sufficient funds to maintain the appellant and sponsor; there is sufficient accommodation; the parties are intending to live together permanently; the spouse is a relevant point based migrant; and the parties do not intend to remain in the UK in contravention of the Immigration Rules and Law. The appeal is to be allowed by reason thereof.
16. In the circumstances there is a material error of law in the determination. I substitute the following decision
 - a) The appeal is allowed on the Immigration Rules grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure