



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

Appeal Number: VA/10657/2013

THE IMMIGRATION ACTS

Heard at Field House

On 15 July 2014

Determination

Promulgated

On 1 August 2014

Before

**THE HONOURABLE MR JUSTICE LEWIS
UPPER TRIBUNAL JUDGE SOUTHERN**

Between

MISS GIFTY KOOMSON

and

ENTRY CLEARANCE OFFICER (Accra)

Appellant

Respondent

Representation:

For the Appellant: Mr T Oke, Counsel

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who is a citizen of Ghana born on 23 January 1987, has been granted permission to appeal against a decision of First-tier Tribunal Judge Perry who by a determination promulgated on 1 March 2014

dismissed her appeal against a decision of the Entry Clearance Officer to refuse an application for entry clearance as a family visitor.

2. Although a number of concerns were expressed by the Entry Clearance Officer in refusing the application the issue at the heart of the appeal before the First-tier Tribunal Judge was a narrow one. The Entry Clearance Officer refused the application under paragraph 320(7B)(d) of the Immigration Rules on the basis that the applicant had used deception in a previous application for entry clearance made in 2007.
3. The applicant asserts that this is simply incorrect and in fact the application in 2007 was refused under paragraph 320(3) simply on the basis that she had failed to produce to the Entry Clearance Officer a valid passport.
4. The deception alleged in the 2007 application was said to be the submission of a passport containing a different name or a name expressed differently and a different date of birth from that which appeared in the passport presented by the appellant in support of an earlier application in 2005.
5. The respondent's position is that the appellant changed the way in which her name appeared in the 2007 passport so that she would not have to disclose the refusal in 2005 and that she dishonestly changed the date of birth to enable an application of settlement in the United Kingdom to succeed, which it could not have done if she presented a passport disclosing the date of birth declared in the earlier passport.
6. The appellant accepts that it was unlawful for her to be in possession of two Ghanaian passports and there is no dispute that she was prosecuted in 2007 in Ghana and was fined.
7. Much turns on which of those positions is bound to be the correct one. A refusal under paragraph 320(7B) carries with it a finding of deception and dishonesty on the part of the applicant and means that future applications fall to be refused on that basis alone. There is no such continued consequence for a person whose application is refused under 320(3) although the facts and the circumstances of the refusal would of course be taken into account when any future application is considered.
8. The judge dismissed the appeal because he found as a fact that the 2007 application had been refused on the basis of deception under paragraph 320(A) on account of the fact that deception had been used in the earlier application. In making that finding he placed reliance on what was said by the Entry Clearance Officer in the notice of refusal of the earlier application:

"You were refused entry clearance for using deception on 07/08/2007 for presenting passport H1969214 which showed a change in your

name and date of birth from the previous application on 12/09/2005. On that occasion you used passport number H1587641... You also failed to declare that you made the previous application and that it had been refused. The ECO was satisfied that you had changed these details in order to conceal this refusal and qualify for settlement.”

9. The grounds for seeking permission to appeal in respect of this key issue may be summarised as follows. It was said that the judge failed to give adequate reasons for his findings; wrongly reversed the burden of proof, failing to recognise that it was for the respondent to prove the alleged deception and not for the appellant to refute it; failed to recognise that a bare assertion by the respondent did not and was not capable of discharging the burden of proof of proving the alleged deception and finally that the judge failed to appreciate that the respondent acted unfairly in not producing the 2007 decision.
10. A First-tier Tribunal Judge granted permission to appeal saying that the burden of proof for establishing the deception was on the respondent but he could not find in the papers before him any documentary evidence of that earlier refusal from 2007.
11. In our judgment there is an air of unreality about the appellant’s position. She complains that the respondent has not produced the 2007 decision but, as pointed out during discussion at this hearing, of course she would have had a copy of that also but she has not produced it. She does not dispute that she unlawfully obtained a second passport in 2007 stating a different date of birth, a fact which she must have known to be incorrect, and that that was for the purpose of making the unsuccessful settlement application. She did not appeal against that refusal and, as we have seen, she was prosecuted and convicted for having two passports.
12. At the time of the 2007 application the facts before the Entry Clearance Officer would have included the failure to disclose the earlier refusal to grant entry clearance and the production of a different passport from that which was presented in support of the earlier application in which the date of birth was incorrectly stated so as to make her appear to be younger and therefore qualifying for settlement.
13. Mr Oke submits that a bare assertion of the Entry Clearance Officer as to these facts was not sufficient but, as explained, this was not a bare assertion but a statement of facts gleaned from official records kept on file. In those circumstances refusal under 320(7A) was the obvious disposal of the application and it was plainly open to the judge to reach the conclusions he did.
14. We do not accept that the judge reversed the burden of proof in respect of the alleged deception. On the contrary, he accepted that the respondent had established that and nothing offered by the appellant raised any doubt at all about that. The material facts were not in dispute nor in any

way challenged. Even if the situation were as the appellant asserts it to be and the 2007 application had been refused under 320(3) without a specific allegation of deception, the outcome would inevitably have been the same.

15. Mr Wilding points out that it is not a precondition of a refusal under paragraph 320(7A) that an earlier application has been refused under paragraph 320(7A). It was enough if there was evidence of deception before the decision-maker in respect of the earlier application, and that quite plainly was the case here.
16. It seems to us inconceivable that entry clearance would have been granted to a person with a history of failing to disclose relevant facts in previous applications and who had been convicted of an offence relating to passports and who had submitted one of those passports containing a false date of birth to enable her to make an application that otherwise would not have been open to her if the true date of birth had been stated.
17. For those reasons we are satisfied that the judge made no error of law and that the decision reached was open to him.
18. The appeal to the Upper Tribunal will be dismissed and the decision of the First-tier will stand.

Signed

Date 25 July 2014

Upper Tribunal Judge Southern