



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

Appeal Number: IA/13907/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 July 2015**

**Decision & Reasons Promulgated  
On 11 August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**MISS AMRITPAL KAUR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K Reid, Counsel instructed by Charles Simmons  
Solicitors

For the Respondent: Mr C Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Young. The Appellant is a citizen of India. She had entered the United Kingdom on 16 February 2010. There is quite a procedural history but the decision appealed against is one dated 16 January 2013 but which it appears the parties agree was not served on the Appellant until a letter had sent that out on 20 May 2013. Therefore there was a delay of service of some four months.
2. To add to the relatively unusual background to the case, the Respondent states that the Appellant appears to have sought to make an application in

connection with immigration as long as in December 2011. The Respondent says that the application was rejected and it was said to be invalid. By way of a letter dated 19 January 2012 further matters were addressed. In that letter there is a section which says in part as follows:

“Reasons why the Application is Invalid

Where an application form has been specified in accordance with the Immigration Rules (HC 395), the application must comply with the requirements set out in paragraph 34A of these Rules and the Immigration (Biometric Registration) Regulations. The relevant requirements are listed below and a cross in the box indicates that a requirement is not met.”

There are various boxes, but the second box is crossed and it says as follows:

“Any section of the form which is designated as mandatory in the application form and/or related guidance notes must be completed as specified. (We have highlighted the relevant specified parts on the form that have not been completed).”

3. The difficulty in trying to decipher what has happened in this case is that neither of the parties has produced the actual application form or of a copy it that the Appellant had completed in respect of the application that she submitted in December 2011. It is said that the Appellant did not retain a copy and the Respondent is not able now after the years which have elapsed to be able to get it either. I am told that the matter is complicated because other applications were made between December 2011 and 2013.
4. In any event, it was against that complex background that the matter had come before First tier Tribunal Judge Young for consideration. The First-tier Tribunal Judge considered the evidence and the submissions. There was extensive reliance by the Appellant upon a decision of the Upper Tribunal comprising the President, Mr Justice Blake and an Upper Tribunal Judge in **Basnet (validity of application - respondent) [2012] UKUT 00113 (IAC)** and there was also reference in the determination to the Administrative Court’s decision in the case of **R (on the application of Kisuule) v Secretary of State for the Home Department [2011] EWHC 2966 (Admin)**. Those cases are referred to and dealt with by the First tier Tribunal, for example at paragraphs 23, 31, 38, 41, 46, 49 as well as paragraph 51.
5. This appeal really comes to this. The Appellant says that the form submitted by the Appellant ought to be produced by the Respondent because the issue which arises in this case is one which is raised by the Respondent. The Appellant in her grounds of appeal, which are in some detail, says in part as follows.
6. Ground 1, that the judge had erred in law in placing the burden of proof on the Appellant, this was said to be an error of law because it was the

Respondent who had asserted that information which was mandatory was missing from the application form. That there was reliance on the case of **Basnet** and that therefore the burden lay upon the Respondent but the Respondent was not able to demonstrate that there was any missing information absent from the Appellant's application form and it is said: *"The Respondent cannot even explain what the allegedly missing information was. Accordingly the application should have been accepted as having been validly made."*

7. Ground 2 states that the judge erred in law in failing to distinguish between a "mistake" in the application and "missing mandatory information" and that the Tribunal had reached a conclusion of the facts which was not open to it.
8. It is said in the grounds that the relevant question for the First tier Tribunal was not whether there was a mistake in the application form but whether there was mandatory missing information rendering the application invalid, and it is said in summary that the Tribunal had conflated the issues of mistake and missing mandatory information.
9. Having considered the respective submissions on behalf of the Appellant and on behalf of the Respondent and having considered the Rule 24 reply I conclude that there is no material error of law. I come to this decision for the following reasons.
10. Firstly, it is quite clear that the Appellant accepts she made a "mistake" and that is why she had returned the application form to the Respondent. This is not a case in which the Appellant states no mistake was made. It is therefore to have at the forefront that it is accepted that a mistake was made. As to what sort of mistake that might have been, well the letter of 19 January in my judgment makes it quite clear. That states in the box which is ticked and which I have quoted from earlier that any section of the form which is designated as mandatory in the application form and/or the related guidance notes must be completed as specified. Therefore it is clear in my judgment that the mistake which the Appellant refers to was pointed out to her as being a mandatory part of the form and/or the related guidance. Therefore it follows that it was indeed a mandatory information that was missing. The Appellant knew that because she had the tick box form telling her that.
11. Whilst of course it would be best evidence if the actual form was available, I have ventured to consider why there ought to be any expectation that the Secretary of State ought to produce the application form and not the Appellant. I accept that in the ordinary case where there is a single relatively straightforward procedural history that the Tribunal usually sees the application form as part of the Respondent's bundle. However there has been a lot of water under the bridge in terms of the years which have elapsed since that form was lodged with the Secretary of State and there have been other further numerous applications which the Appellant had made. So in those circumstances there is an explanation as to why the

Respondent had not retained the application form. In any event that does not take away from the Appellant the burden of proof which is placed upon her. She continues to have the burden of proof and in my judgment she too therefore had an obligation to produce a copy of the application form. She had failed to do that and therefore she had failed to make out her case to the required standard that the missing information was not the mandatory missing information that the Respondent had referred to.

12. Returning to the determination of the First tier Tribunal, it is quite clear that the Tribunal dealt with these matters in a detailed and comprehensive manner. The Tribunal noted the documentation and the history at paragraphs 2 to 9 of the determination. The Tribunal carefully noted the submissions of the parties from paragraphs 19 to 30. Whilst it is true that directions were provided for further documentation from the Respondent, I agree with Mr Avery that requests for compliance with directions does not somehow shift the burden of proof which remained at all times with the Appellant.
13. The letter of rejection of 19 January that I have quoted from is specifically referred to at paragraph 34 of the First tier Tribunal's decision. The First tier Tribunal in its conclusions at paragraph 38 onwards correctly identified the cases of **Basnet** and **Kisuule** and had correctly referred to what those cases have decided. The Tribunal then applied the law and came to sustainable decisions in respect of them. I shall quote the following, first of all from paragraph 46:

"46. The difference between this case and the **Basnet** case is that in **Basnet** the payment detail was shredded before the application was returned to the Appellant. So there was no way in which the Appellant could point to the fact that the Respondent was wrong. In **Basnet** the fact that the onus was on the Respondent was based on the proposition that the party that asserts a fact should normally be the one who demonstrates it; and because the Respondent is responsible for the procedure to be used in postal cases, and the features noted above prevent both the issue of a prompt receipt and an opportunity to understand why payment was not processed. However in this case the Appellant is given the opportunity to know why the application has been rejected because it is returned to her with the particular passage highlighted.

47. Similarly in **Kisuule** there was able to be made a factual finding that the photographs had become detached in the Respondent's offices. Thus the Appellant in that case could point to the Respondent being wrong.

48. It seems to me that these cases are fact-sensitive. If the Respondent asserts a failure and it is found that the information for rejection can only be demonstrated by the Respondent then the evidential onus will be on the Respondent. Alternatively if there is an assertion of failure which can be shown on the balance of probabilities to be wrong then the application will be deemed valid.

49. In those circumstances I could not conclude that the onus was on the Respondent in this case to demonstrate the reason for rejection when the information is in the hands of the Appellant. As is stated in **Basnet** 'normally' he who asserts a fact needs to prove it. However where the information is in the hands of the Appellant i.e. in the application form that was returned to her then it seems to me that the onus would still rest with the Appellant to demonstrate that contrary to the Respondent's view all mandatory sections had in fact been complete in the form."
14. In the circumstances and having considered the Court of Appeal's judgment in **R (Iran)** this application amounts to no more than a mere disagreement with the First tier Tribunal's determination. That was a thorough and careful assessment of the case law, the factual matrix and the relevant principles. In the circumstances despite the best efforts of Ms Reid, who has said everything that could be said on behalf of the Appellant, this application is rejected. Accordingly therefore the determination of the First-tier Tribunal stands.

### **Notice of Decision**

The decision of the First tier Tribunal did not contain an error of law and therefore the appeal remains dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Mahmood