



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

Appeal Number: OA/16387/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 9 January 2015**

**Decision & Reasons
Promulgated
On 14 January 2015**

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Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MERFA ZYKA
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

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

For the Respondent: Mr S Kerr, Counsel, of Karis Law

DECISION AND REASONS

1. This is an appeal that was allowed at the First-tier, and the appellant before the Upper Tribunal is therefore the Secretary of State. For clarity and convenience, however, I will refer to the parties as they were at the original appeal.
2. The appellant, a citizen of Albania, applied for entry clearance to join her husband in the UK. At the time of the application her husband was a British citizen, but he has subsequently been deprived of his British

citizenship on the basis that he attained it by pretending to be Kosovan, when he was in fact Albanian. The entry clearance application was submitted in 2007, but was not refused until February 2013. The refusal included an allegation that false representations had been made, through reliance on the sponsor's British passport (paragraph 320(7A) of the Immigration Rules).

3. The appeal was allowed by First-tier Tribunal Judge Metzger, in a determination promulgated on 1 October 2014. Permission to appeal was granted by First-tier Tribunal Judge Levin, on 2 December 2014.
4. At the start of the hearing it was agreed, by the parties, that there was a misunderstanding of the findings made by the judge that allowed the appeal, at paragraph 4 of the permission decision. The judge granting permission suggested that the judge who allowed the appeal had made a finding that the appellant was unaware of the deception when the application was made in 2007. As was agreed at the hearing this was not the case. In fact the judge's finding had been that both the appellant and the sponsor were not only aware of the history of deception, but had decided to be open about the sponsor's background in the application, whatever the consequences of this might be.
5. The grounds seeking permission to appeal had referred to the judge failing to provide adequate reasoning for his findings. The actions of the couple were said to demonstrate a reliance on false representations.
6. At the hearing before me Mr Avery, for the Secretary of State, put forward his challenge on a somewhat different basis, namely that these were circumstances in which no reasonable judge could have allowed the appeal. The whole basis of the application was deceptive. This was because the act of presenting the British passport, which had itself been obtained by deception, in itself amounted to deception, even if the couple were being open about the sponsor's origins.
7. Mr Kerr, for the appellant, referred to the words "in relation to the application" in paragraph 320(7A). The judge had been clear in his findings that in the course of this particular application there had been no deception. By that time the couple had decided to come clean about the sponsor's background. They provided evidence showing that the sponsor had been born in Albania, and by the time of the entry clearance application there was no deception involved. The passport was submitted, but the sponsor and appellant both disclosed that the sponsor had obtained it by falsely claiming to be a Kosovan. The judge was clear in his findings on this point.

Error of Law

8. I have decided that the judge did not err in law in his approach to paragraph 320(7A). The reasoning at paragraphs 15 and 16 appears to me to be clear. The judge addressed himself correctly to the test in **A [2010] EWCA Civ 773**. The key finding was that the couple, by the time of the application, had admitted the sponsor's previous deception. As the judge noted this had rendered the sponsor potentially liable to losing his

British citizenship. The submission put forward by Mr Avery, that no reasonable judge could have made this finding, does not appear to me to be made out. Given the unchallenged finding that the decision had already been taken by the couple to admit to the sponsor's past deception, it appears to me that it was certainly open to the judge to make the finding that he did, namely that there was no false representation in the course of this entry clearance application.

9. The determination appears to me to have dealt with the facts in detail; to have dealt with the submissions put forward by both sides; to have given full consideration to relevant authorities; and to have reached factual findings that were open on the evidence, and were adequately reasoned.
10. Whether the challenge is on the basis of inadequate reasoning, as in the grounds, or on the basis of perversity, as at the hearing and in the decision granting permission to appeal, it does not appear to me that a material error of law has been made out. As a result there is no basis to interfere with the judge's decision allowing the appeal under the Immigration Rules.
11. I was informed at the hearing that matters have moved on since the First-tier hearing that took place in September 2014. At that stage the sponsor had not yet been deprived of his British citizenship. He now has been. In addition a decision has been made to remove him from the UK. This decision attracted a right of appeal, and there is due to be a hearing in May 2015. As a result of these developments the outcome of this appeal will not be of benefit to the appellant. No direction was made, and the Entry Clearance Officer is in any event entitled to consider the current circumstances. These are that the sponsor is no longer a British citizen, and neither does he have settled status. It is likely that the overall position as far as the appellant is concerned will now have to await the outcome of the sponsor's appeal process, which may lead to him being required to leave the UK, or leave him without settled status if allowed to stay at all. Only if his appeal is allowed and he is granted settled status will there be a basis for entry clearance for the appellant.
12. Neither side mentioned anonymity or a fee award. The fee award made by the First-tier Judge remains undisturbed, along with the rest of the decision. I see no basis for any anonymity order.

Notice of Decision

The Secretary of State's appeal is dismissed.

No error of law having been shown, the judge's decision allowing the appeal (but with no direction made) stands.

No anonymity order is made.

Signed

Date **14 January 2015**

Deputy Upper Tribunal Judge Gibb

