



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

Appeal Numbers: VA/11112/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24 September 2015**

**Decision and Reasons  
Promulgated  
On 30 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR MOSHIN YUSUF DUDHARA  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation**

For the appellant: sponsor in person

For the respondent: Mr D Clarke, Senior Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant is the Secretary of State for the home Department and the respondent is a citizen of India born on 30 January 1986. However, for convenience, I refer below to Mr Dudhara as “the appellant” and to the Secretary of State as “the respondent” which are the designations they had before the First-tier Tribunal.

2. The appellant appealed to the First-tier Tribunal against the decision of the respondent to refuse his application for entry clearance as a visitor pursuant to paragraph 41 of the Immigration Rules. First-tier Tribunal Judge R Callender Smith allowed the appellant's appeal. On 12 May 2015, Upper Tribunal Judge Hollingworth granted the Secretary of State permission to appeal saying that it is arguable that the First-tier Tribunal erred in allowing the appellant's appeal in the absence of a finding with specific reasons as to the relationship between the sponsor and the appellant. A further arguable error of law arises in the context of the consideration but the Judge of paragraph 320 (7A). It is arguable that insufficient analysis has been set out as to the findings of fact in respect of this.

### **The First-tier Tribunal's findings**

3. The determination of the First-tier Tribunal found as follows. The sponsor confirmed that the appellant was his nephew and was a genuine visitor. The money placed in the appellant's bank account came from deposits by his father in respect of work already done on the family farm, to which he would return, the money had not been previously deposited because there had been no reasons to do so until the proposed travel and visit. There are other documents such as his finance details and a letter from the appellant's employers confirming the appellant's leave from his employers for a period of two months after he has worked, full-time, as an electrician since July 2011 at a salary of Rs.7000 per month. The appellant's application is genuine and his appeal was allowed under the Immigration Rules.

### **The respondent's appeal**

4. The respondent appealed against this decision. Her grounds of appeal are in summary the following.
  - i. The respondent refused the appellant's application as a visitor to the United Kingdom because the Entry Clearance Officer was satisfied that a full stock and had been submitted in support of the application.
  - ii. At paragraph 15, the Judge refers to a letter from the appellant's employer. However he has failed to make a finding on the outcome of the checks made by the Entry Clearance Officer which found that the employer could not be contacted using on the contact details provided. The Judge does not adequately explain how the letter addresses the concerns of the Entry Clearance Officer in relation to the appellant's claimed employment.
  - iii. At paragraph 10 the sponsor confirms that the appellant is his nephew. However on the application form the appellant stated that he is visiting his brother. The Judge has failed to make findings on this discrepancy. If the appellant is visiting his uncle the appellant's appeal is restricted to residual grounds contained in section 84 (1) (b) and (c) of the 2002 Nationality Immigration and Asylum Act by the

Immigration Appeals (Family Visitor) Regulations 2012. The Judge has therefore erred and the decision should be set aside.

### **The appeal hearing before the Upper Tribunal**

5. At the hearing, someone who calls himself Mr Zahid Akhtar said he was the appellant's Legal Representative. Mr Akhtar did not have a letter of authority from Ebrahim and Co, the solicitors, representing the appellant as stated in correspondence between the Tribunal and the solicitors. The Usher informed me that a letter had been received by the Tribunal from Ebrahim and Co stating that they would not be able to attend the hearing today because of the Muslim religious festival Eid. There was no letter from Ebrahim and Co to say that Mr Akhtar would be representing the appellant. I also took into account that in his Section 84 form, Mr Akhtar said that his address is Wembley HA0 2AL while the Ebrahim and Co's address is in Hazel Hare building. Mr Akhtar had no knowledge of this building. I excused Mr Akhtar and said that I do not recognise him as the appellant's legal representative and he left without saying anything more.

### **Finding whether there is an error of law in the determination**

6. There is no dispute that the appellant made an application for entry clearance pursuant to paragraph 41 of the Immigration Rules. The appellant in his application form said that he is coming to visit his nephew. At the hearing his sponsor, Mr Yusuf Ali said that the appellant is his brother.
7. I find that given the inconsistency in the evidence as to the appellant's relationship with the sponsor, the appellant's claim that he is visiting a family member within the category of relationships set out in the Immigration Appeals (Family Visitor) Regulations 2012. A nephew is not amongst the relationships that is not captured in the Regulations.
8. Section 88A(1) of the 2002 Act, as in force from 25 June 2013, sets out the limitations on an appellant's rights of appeal. It states that "A person may not appeal under section 82(1) against refusal of an application for entry clearance unless the application was made for purposes of ... entering as the dependant of a person in circumstances prescribed by regulations for the purpose of this subsection". Subsection (1) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c) of the Act, that is to say, on grounds under section 19B of the Race Relations Act 1976 and section 6 of the Human Rights Act 1998 (see section 88(3)). Therefore the appellant right of appeal is limited to human rights and race discrimination grounds, as set out in section 84(1)(b) and (c) of the 2002 Act. No such ground has been raised in this appeal.

9. There is no evidence before me that the decision is discriminatory on grounds of race, and that the appellant had not identified any breach of his human rights but simply challenges, in essence the basis of the refusal. There is no evidence that the refusal interferes with the appellant's private or family life and therefore the appellant cannot succeed. My jurisdiction is limited to these two grounds.
10. I also find that there is an error of law in the determination because the Judge did not resolve the conflict in what is set out in the respondent's refusal letter that checks carried out on the appellant's employer, on the telephone number provided by the appellant did not yield any results and his application was also refused pursuant to paragraph 320 (7A) of the Immigration Rules. There is no reasoning by the Judge, in his findings for why he has accepted that the appellant is employed as claimed given the concerns of the respondent.
11. The burden is now on the respondent to show that the appellant has used deception in his application. The document verification report dated 28 May 2013 stated the following in respect of the "contact history". "Tried searching contact details of Royal Electricals through (address given-information satisfied under DPA Act 1998) however no details found. Tried searching details through the address mentioned on the letterhead but no details found. Also tried searching details through the company's name, Royal Electricals and found that it is situated (address given-information satisfied under DPA Act 1998) and was informed that they do not have a branch in Palej. Called (the number) (number mentioned on letterhead) and asked for the appellant but was informed it is a wrong number and he disconnected the call".
12. The respondent has demonstrated by the Document Verification Report that the appellant has given false information about his employment. The burden of proof now shifts onto the appellant to show that his employment is genuine. There is no evidence other than the appellant's own evidence and a letter from his employer that he is employed in India. I place no reliance on the letter of employment and instead placed reliance on the document verification report that the appellant has not been truthful about his employment.
13. I therefore find that the appellant's application stands also to be refused in line with paragraph 320 (7A) of the Immigration Rules.
14. I find that there is an error of law in the determination of the First-tier Tribunal. I dismiss the appellant's appeal for the reasons given above. I remake the decision and dismiss the appellant's appeal.

## **DECISION**

In the circumstances the Secretary of State's appeal is allowed and the decision of the First-tier Tribunal is set aside.

The appellant's appeal is dismissed

Signed by

Mrs S Chana  
A Deputy Judge of the Upper Tribunal

Dated this 25<sup>th</sup> day of October 2015