



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

Appeal Numbers: VA/13806/2013
VA/13748/2013
VA/13754/2013
VA/13751/2013

THE IMMIGRATION ACTS

Heard at Field House

On 29 April 2015

Decision & Reasons

Promulgated

On 22 May 2015

Before

**THE HONOURABLE MRS JUSTICE MCGOWAN
UPPER TRIBUNAL JUDGE CLIVE LANE**

Between

ENTRY CLEARANCE OFFICER - ABU DHABI

Appellant

and

**MUHAMMAD SHAFIQUE
ROOHI SHAFIQUE
NIMRA SHAFIQUE
IMAN SHAFIQUE
(ANONYMITY DIRECTIONS NOT MADE)**

Respondents

Representation:

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

For the Respondents: Mr Falak Sheraz Rama (Sponsor)

DECISION AND REASONS

1. We shall refer to the Entry Clearance Officer as the respondent and to the respondents as the appellants, as they appeared respectively before the First-tier Tribunal. The appellants are citizens of Pakistan. The second

appellant is the wife of the first appellant and the third and fourth appellants are their children. They had applied for entry clearance to the United Kingdom as visitors. Their applications were refused by decisions of the Entry Clearance Officer, Abu Dhabi, on 17 July 2013 and the appellants appealed to the First-tier Tribunal (Judge Hussain) which, in a determination promulgated on 13 August 2014, allowed the appeals under the Immigration Rules. The Entry Clearance Officer now appeals, with permission, to the Upper Tribunal.

2. These appeals turn on the application of paragraph 320(7A) of the Immigration Rules:

(7A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application.

3. As Judge Hussain noted, the appellants had claimed that the first appellant was;

a business executive with Prince Auto Store where he had a monthly income of 350,000 rupees. To support his claimed employment, he has provided various documents including membership of the Lahore Chambers of Commerce and Industry... However, verification checks conducted by the respondent showed this document not to be genuine.

The parties do not dispute that the Lahore Chambers of Commerce document was false insofar as it contained information about the first appellant which was not true.

4. The judge recorded that the first appellant had,

applied for membership of the Lahore Chambers of Commerce and Industry through an agent called Rizwan who was working for that institution. He provided him with all the documentation and a fee and in return received a certificate.

The appellant had attempted to bring a prosecution against Rizwan but the police had refused to act. The judge noted that Prince Auto Store bearing the reference number shown on the Chamber of Commerce certificate was owned by one Mohammad Nadeem. The judge went on to observe that;

There is voluminous documentation suggesting that the appellant is connected to a business called Prince Auto Store. I am inclined therefore to the view that there may be two businesses of that name with different proprietors.

The judge commented that “it appears that the ‘agent’ simply issued [the first appellant] a false certificate with a number that belonged to the other Prince Auto Store owned by Mohammad Nadeem” [14].

5. At [15] the judge wrote:

I direct myself that the law requires the Entry Clearance Officer to demonstrate that any false statement/document was submitted, whether by himself or through a third party, with dishonest intent. In this case the question of a third party submitting the impugned document does not arise because the third party simply procured the certificate on the instructions of the appellant and that third party was no way connected with its submission to the ECO. The main question therefore is whether the appellant attached it with his application with a dishonest intent.

6. In the grounds of appeal, the respondent asserts that there was “no dispute that a false document was submitted in support of the application” [6]. The respondent relies on *AA (Nigeria)* [2010] EWCA Civ 773, in particular at [67]:

First, "false representation" is aligned in the rule with "false document". It is plain that a false document is one that tells a lie about itself. Of course it is possible for a person to make use of a false document (for instance a counterfeit currency note, but that example, used for its clarity, is rather distant from the context of this discussion) in total ignorance of its falsity and in perfect honesty. But the document itself is dishonest. It is highly likely therefore that where an applicant uses in all innocence a false document for the purpose of obtaining entry clearance, or leave to enter or to remain, it is because some other party, it might be a parent, or sponsor, or agent, has dishonestly promoted the use of that document. The response of a requirement of mandatory refusal is entirely understandable in such a situation. The mere fact that a dishonest document has been used for such an important application is understandably a sufficient reason for a mandatory refusal. That is why the rule expressly emphasises that it applies "whether or not to the applicant's knowledge".

7. At [18], the judge wrote:

Looked at in its totality, I am not satisfied that the appellant submitted the certificate with knowledge and if there was no knowledge on his part, then any intention to use it could not have been with dishonesty.

Both in that paragraph and also at [15] (see above) we consider that the judge has erred in law. We say that for the following reason. Central to the judge’s reasoning at [15] appears to be his belief that paragraph 320(7A) should not apply in this case because the “third party [had] simply procured the certificate on the instructions of the appellant and that third party was no way connected with its submission to the ECO.” The judge appears to have been influenced by the fact that the first

appellant had taken “prompt action” in reporting the matter to the police and also that he had “no obvious reason for procuring a false statement.” [18]. However, the judge’s reasoning was based on error. Paragraph 320(7A) requires only that false documents “have been submitted”; it is not disputed in this instance that a false certificate was submitted to the ECO. Further, the paragraph is drafted widely enough to include the submission of false documents which may not be “material to the application [for entry clearance]”. We consider that, on its proper construction, the rule is wide enough to cover documents which may not affect the outcome of an application in any way but which are (i) false and (ii) submitted with the application; whether the applicant or another person created the document or whether its submission to the ECO was or was not accompanied by dishonest intent on the part of the appellant or any third party will make no difference to the outcome. Moreover, paragraph 320(7A) does not require that a false document is submitted with the intention of obtaining a visa; the expression used is “in relation to the application”; that is a term, in our view, which is wide enough to include the facts of the present appeal. Judge Hussain appears to have believed that, to fall within the provisions of 320(7A), the agent who created the false document had to be connected to or, at the very least, have been aware that the document would be submitted to the ECO in support of a visa application. That belief is based on a false construction of paragraph 320(7A) and, in consequence, we find that the judge erred in law such that his determination falls to be set aside.

8. We have proceeded to remake the decision. Following the proper construction of paragraph 320(7A) which we have outlined above, the fact that the document was (i) false and (ii) submitted in relation to the application for entry clearance is sufficient to justify the refusal under that paragraph. We acknowledge that the first appellant may have had no dishonest intent in submitting the document and that he was not aware of the false nature of the document until after his application for entry clearance had been refused. However, for the reasons which we have given, we dismiss the appellants’ appeals against the decisions of the Entry Clearance Officer.
9. There is, of course, nothing to prevent these appellants from making further applications for entry clearance. We are well aware that a refusal under paragraph 320 may have a negative impact but it is our hope that an Entry Clearance Officer will have regard to the particular facts of this appeal when considering any future applications.

DECISION

10. The determination of the First-tier Tribunal Judge promulgated on 13 August 2014 is set aside. We have remade the decision. The appeals of the appellants against the decisions of the Entry Clearance Officer dated 17 July 2013 are dismissed under the Immigration Rules.

No anonymity direction is made.

Signed

Date 5 May 2015

Upper Tribunal Judge Clive Lane