



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/16868/2013

**THE IMMIGRATION ACTS**

Heard at Stoke on Trent  
On 22 April 2015

Determination Promulgated  
On 23 April 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Entry Clearance Officer - Abu Dhabi

and

Haleeman Bi  
[No anonymity direction made]

Appellant

Claimants

**Representation:**

For the claimants: Mr Akhtar, instructed by Kenneth Johnson Solicitors  
For the appellant: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appeal of the Entry Clearance Officer against the determination of First-tier Tribunal Judge Landes promulgated 29.7.14, allowing the claimants' appeal against the decision of the Entry Clearance Officer to refuse entry clearance to the United Kingdom as family visitors. The Judge heard the appeal on 16.7.14.

2. First-tier Tribunal Judge Macdonald refused permission to appeal on 24.9.14 but when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Kekic granted permission to appeal on 5.1.15.
3. Thus the matter came before me on 22.4.15 as an appeal in the Upper Tribunal.

### **Error of Law**

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Landes should be set aside.
5. The relevant background can be summarised as follows. The claimants applied for entry clearance as family visitors pursuant to paragraph 41 of the Immigration Rules, for a period of 2 months. The application was refused on 9.7.13. In addition to concerns relating the financial circumstances of the sponsor, leading the Entry Clearance Officer to be not satisfied that the application was genuine and that the claimant intended only a short visit to the UK, the application was refused on the basis of 320(7B), because deception had been used in a previous application in 2009, when a false property inspection report had been submitted and the claimants had signed the application form declaring that all information submitted was correct.
6. The grounds of appeal to the First-tier Tribunal asserted, as the judge in due course found, that neither claimant nor the sponsor knew that the property report submitted in 2009 was false. The elderly claimants were illiterate.
7. The narrow issue the subject of the appeal to the Upper Tribunal is the interpretation of paragraph 320(7B) of the Immigration Rules and whether reference therein to the "applicant" means the applicant personally, or whether it incorporates the use of deception by another, or without the applicant's knowledge, as is the case in paragraph 320(7A).
8. At §21 Judge Landes acknowledged that in AA (Nigeria) [2010] EWCA Civ 773, the Court of Appeal held that deception in 320(7B) had to involve dishonesty. But drawing a distinction between the wording of 320(7A), which makes it clear that the applicant's knowledge is irrelevant, and 320(7B), which does not so specify, the judge considered that 320(7B) required the claimant to have been personally dishonest. The judge also relied on Ozoghina and Tarasova [2011] UKUT 00197 (IAC), which pointed out the potentially draconian consequences of the application of paragraph 320(7B) and held that the applicant must be shown to have made the false statement with the deliberate intent of securing an advantage in immigration terms.
9. Judge Landes did not accept the sponsor's claim of innocence in the use of a false document and noted that Judge Hollingworth was sceptical as to the sponsor's involvement in the production of the false accommodation report. However, at §27 she found that the fact that a family member may have been dishonest does not mean that the claimants acted dishonestly, the burden of showing that they did lie with the Entry Clearance Officer. The judge was not satisfied that the claimants

deliberately produced a false property report in order to gain an immigration advantage. The judge was not satisfied that the application should have been refused under 320(7B) and went on to also find in the claimants' favour on the remaining issues under paragraph 41, and thus allowed the appeals.

10. Judge Kekic granted permission to appeal, finding it arguable that the judge had misdirected herself in that her approach to paragraph 320(7A) contradicts AA (Nigeria).
11. Paragraph 320(7A) provides for mandatory refusal of an application, "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."
12. Paragraph 320(7B) provides for mandatory refusal of an application, "where the applicant has previously breached the UK's immigration laws (and was 18 or over at the time of his most recent breach) by: ... (d) "using deception in an application for entry clearance, leave to enter or remain, or in order to obtain documents from the Secretary of State or a third party required in support of the application (whether successful or not); unless..." None of the unless exceptions apply to the facts of this case.
13. For the reasons set out herein, I find that the Entry Clearance Officer has failed to demonstrate that there is any error of law in the decision of the First-tier Tribunal. The interpretation of paragraph 320(7B) is one which is consistent with the wording of the provision. The judge's distinction between 320(7A), which specifically states that it does not matter whether the applicant is aware of the false statement, etc., is also consistent. I do not find the decision perverse or irrational.
14. The two cases, both cited by both parties in submissions to me, do not directly answer the issue in the appeal to the Upper Tribunal. In Ozhogina and Tarsova the Upper Tribunal held that where 320(7B) is relied on to refuse an application because of the use of deception in an application for entry clearance it is necessary to show that a false statement was deliberately made for the purpose of securing an advantage in immigration terms. Deception is defined in paragraph 6 as "making false representations or submitting false documents (whether or not material to the application) or failing to disclose material facts." The Upper Tribunal noted that 320(7b) does not include the phrase "whether or not to the applicant's knowledge." At §22 the Tribunal stated, "There is therefore not in 320(7B) the proviso that deception as defined can arise whether or not the falsity, and indeed its materiality, was to the applicant's knowledge."
15. The Court of Appeal decision in AA v SSHD preceded and was considered by the Upper Tribunal in Ozhogina and Tarsova. However, that decision was addressing a slightly different issue, finding at §76 that "false" requires dishonesty or deception,

although not necessarily that of the applicant himself. Mr McVeety relied on this in his submissions that Judge Landes had misdirected herself in law.

16. AA was in fact considering a different, though similar provision, of paragraph 322(1A). At §27 Lord Justice Rix noted that there is no reference to the applicant's knowledge in 320(7B), as there is in 320(7A). He also found that deception, as defined requires dishonesty, but went on at §28 to state that if so, "then paragraph 320(7B) contains nothing to say about how an applicant who may have previously breached immigration rules by making a false representation other than dishonestly, for instance because the false representations were false without the applicant's (or anyone's) knowledge, should be treated, where he falls within none of the conditions (a) to (d) above," (ie of 320(7B)). These findings are, in my view, entirely consistent with the conclusion of Judge Landes that 320(7B)(d) requires, by the very wording, the use of deception by the applicant. To that extent, with all due respect to the Court of Appeal, the statement in §76 referred to above may have been too sweeping and is misleading if interpreted to suggest that 320(7A)(d) can be met without the participating knowledge of the applicant.

### **Conclusions:**

17. In the circumstances and for the reasons set out herein, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains allowed.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

### **Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable for responding to an appeal in the Upper Tribunal and thus there can be no fee award.

A handwritten signature in black ink, appearing to read 'J. Pickup', is centered on the page.

**Signed**

**Deputy Upper Tribunal Judge Pickup**