



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

Appeal Number: VA/18458/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court

**Decision & Reasons
Promulgated**

On 16th January 2015

On 29th January 2015

Prepared 16th January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR MUHAMMAD SOHAIL IQBAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, ABU DHABI

Respondent

Representation:

For the Appellant: Mr Imran Hussain (LR)

For the Respondent: Mr N Smart (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Hawden-Beal, promulgated on 26th June 2014, following a hearing at Birmingham on 11th June 2014. In the determination, the judge dismissed the appeal of Muhammad Sohail Iqbal. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 22nd November 1984. He applied for entry clearance as a family visitor and on 16th April 2013 the Entry Clearance Officer rejected his application because false representations had been made or false documents had been submitted, and the Entry Clearance Officer was not satisfied that the Appellant was a genuine visitor who would leave the UK at the end of the visit.

The Judge's Findings

3. The judge heard evidence from the Appellant's sponsoring father, Mr Javed Iqbal and in his opening statements set down the burden of proof and the standard of proof, explaining that, "in immigration appeals the burden of proof is upon the Appellant and the standard of proof required is upon a balance of probabilities" (see paragraphs 4 to 5). The judge then set down the relevant Immigration Rules pointing out that, "the relevant Immigration Rules are set out in paragraphs 40-43 and 320(7A) of HC as amended" (paragraph 6).
4. The judge then went on to consider the basis of the ECO's refusal. This was that in a previous application, which went to appeal and was dismissed in 2011, the Appellant had said that he was unemployed. In this application he now claims to have been employed since 2005. The judge held that there is no evidence of the Appellant's income in his bank statements. There are only random cash deposits. He owned no property. He had no assets. He had no dependants. Therefore the ECO had refused the application (paragraph 10).
5. Having examined the evidence, the judge concluded that "on the totality of the evidence before me" he was satisfied that "the Appellant did make a false statement by purporting to have been employed since 2005." This is because question 107 of his application form notes that, "previously my application was refused because the ECO objected that, I was unemployed, and now I am employed and I have presented letters from Union Council ..." But the Appellant also claimed to be running his own business. He claimed to have agricultural land and a house. The letter from the Union Council, however, said that he had been running his own business since 2005. The letter from the employer now said that he was employed as a furniture polisher since 2005. As the judge exclaimed, "what exactly does the Appellant do? Does he have his own business or is he an employee?" (paragraph 14). The judge heard evidence from Mr Javed Iqbal, the Appellant's father, that he had made a mistake. The judge did not accept this holding, "I am satisfied that in 2011 he was unemployed and reliant upon his father."
6. The judge then went on to dismiss the appeal under paragraph 320(7A) on the basis that it was clear that false representations had been made (see

paragraph 16). Additionally, however, the judge also dismissed the appeal under paragraph 41 of HC 395 as well. As the judge explained,

“The submission of conflicting evidence from the Union Council and his employer and his claim in his Grounds of Appeal to now own agricultural land and a house is at such complete odds to the information in his application form, that I do not find his evidence to be credible and therefore must doubt that he is a genuine visitor who will leave the UK at the end of his visit” (paragraph 16).

Grounds of Application

7. The grounds of application state that the judge erred in law in placing the burden of proof on the Appellant as far as an allegation of misrepresentation was concerned relevant to paragraph 320(7A) of the Immigration Rules.
8. On 5th August 2014 permission to appeal was granted on the basis that the judge’s reference to the burden of proof being upon the Appellant at paragraphs 4, 5 and 6 of the determination “may have influenced the outcome of the appeal.”
9. On 13th August 2014 a Rule 24 response was entered by the Secretary of State to the effect that, notwithstanding what the judge had said,

“It was not material to the outcome of the appeal. The judge factually describes what is wrong with the Appellant’s evidence and it is obvious in the determination that he does not find the Appellant’s evidence satisfactory. This would have been the same outcome had he correctly addressed the burden of proof thus is immaterial to the outcome” (see paragraph 3).

Submissions

10. At the hearing before me on 16th January 2015, Mr Hussain, appearing on behalf of the Appellant, relied upon the Grounds of Appeal. He submitted that he was particularly concerned that, even if there was evidence which eventually would have led to the refusal of this appeal in any event, the use of paragraph 320(7A) to effect such a refusal would shut this Appellant out from the possibility of ever being able to apply for a visitor’s visa for the next ten years, and given this draconian impact, it behoved the judge to exercise greater care in the way that he set down the considerations of burden of proof.
11. For his part, Mr Smart submitted that there was no error of law because the judge had started the determination at paragraphs 4 to 6 by placing the burden of proof upon the Appellant in a way that had no actual consequence. This is because the burden upon the Secretary of State is to show evidence of misrepresentation. The Secretary of State did do so. The Respondent here pointed to the 2007 application. In that the

Appellant had said he was unemployed. The burden was discharged by the Respondent.

12. The judge looked to the Appellant's side for an explanation, and did so at paragraph 12, taking evidence from the Appellant's father, and observed that, "he said at the time of the last application the Appellant was working but took time off to help build the family home. He said that he is still working for the same employer as he had been in 2011 and said that he had been to his place of work ..." (paragraph 12). Having considered the evidence, the judge concluded that, "I am satisfied that the Appellant did make a false statement ..." (paragraph 14). Therefore, there was no consequence to the judge saying that the burden of proof was upon the Appellant. What one had to do was to look at the judge's approach. This could not be faulted.
13. In the alternative, Mr Smart submitted that if I was to decide that the judge had erred, then I should make a finding of error of law, and determine the appeal myself. To that end, I should have regard to the earlier determination of Judge Telford on 10th November 2011 (which Mr Smart handed up). In this determination (VA/27949/2011) Judge Telford records that the Appellant

"Claimed in the appeal grounds to have begun work on 20th June 2011 some eight days before the decision on 20th June 2011 but his father has blown that claim 'out of the water.' The father was adamant that work began only in July 2011." (see paragraph 15).

14. Mr Hussain submitted that if regard was to be had to the determination of Mr Telford in 2011 then I should adjourn the hearing in order to enable the Sponsor, Mr Javed Iqbal, to give evidence, following advice from his legal representatives, so that it can be explained exactly why these statements were made in the way that they were made.

Error of Law

15. I am satisfied that the decision of Judge Hawden-Beal is not one that amounts to an error of law. What the judge has done here is to set down the burden of proof in standard and conventional terms for visitor appeals, as is often done by judges. He states, "in immigration appeals, the burden of proof is upon the Appellant and the standard of proof required is upon a balance of probabilities." It is only in the next paragraph (at paragraph 6) that he goes on to say that, "the relevant Immigration Rules are set out in paragraphs 40-43 and 320(7A) of HC 395" (paragraph 6).
16. Thereafter, however, the analysis of the judge in no way suggests that the burden of proof is placed upon 320(7A) of HC 395 as amended (see paragraph 6). Thereafter, the analysis does not suggest that the judge has placed the burden of proof upon the Appellant with respect to paragraph 320(7A).

17. This is because the judge states (at paragraph 10) that, “the Entry Clearance Officer refused the application because, in previous application, which went to appeal and was dismissed in 2011, he said that he was unemployed and in this application claims to have been employed since 2005” (see paragraph 10). In the body of the determination the judge proceeds then to analyse the evidence (see paragraphs 11 to 13), with respect to the Appellant’s explanation, which includes the giving of the evidence by his father, Javed Iqbal, for these anomalies. The judge eventually concludes that, “on the totality of the evidence before me,” that he would be “satisfied that the Appellant did make a false statement by purporting to have been employed since 2005” (paragraph 14). Accordingly, what appears to be an error of a statement in law is not a material error. An examination of the body of the determination does not bear this out.
18. Second, and in any event, the judge proceeded to refuse the appeal under Section 41 anyway because he held, “I would not have been satisfied that the Appellant met all the requirements of paragraph 41 anyway” (paragraph 16).
19. I reject Mr Imran Hussain’s submission before me, though it was put forward with his customary elegance, that there should be an adjournment of these proceedings to enable an explanation to be given for these discrepancies. There has been ample opportunity taken for this, both in 2011, and now in 2014, and the fact remains that the judge was entitled to conclude, on a balance of probabilities, that matters fell to be determined as they were indeed determined.

Notice of Decision

There is no material error of law in the original judge’s decision. The determination shall stand.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

28th January 2015