



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/15906/2012
OA/15905/2012

THE IMMIGRATION ACTS

Heard at Field House
On 30 October 2013

Determination Promulgated
On 26 November 2013

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

ISHWOR BAHADUR GURUNG (FIRST APPELLANT)
BISHAL GURUNG (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellants: Mr M Blundell of Counsel
For the Respondent: Miss A Holmes, Presenting Officer

DETERMINATION AND REASONS

1. The first appellant is the father of the second appellant. They applied on 28 March 2012 for leave to enter the United Kingdom for settlement. Their applications were

refused by decisions dated 30 July 2012. They appealed but First-tier Tribunal Judge Bryant dismissed their appeals in a determination promulgated on 13 May 2013.

2. The appellants sought permission to appeal but that was refused as the judge found that the application was received out of time. Upon a renewed application an Upper Tribunal Judge found that the appeals were made in time and granted permission. In so doing he had this to say:-

“The grounds of appeal claim that the Judge of the First-tier Tribunal was wrong to find that the appellants were caught by the provisions of paragraph 320(7A). That Rule had been invoked because the ECO believed that the appellants had submitted false evidence in relation to the claim that the second appellant was under 18.

The conclusions of the Judge of the First-tier Tribunal are set out in paragraphs 46 onwards. He finds that both appellants are caught by the provisions of paragraph 320(7A) although the first appellant meets the requirements of paragraphs 281.

While I consider that the grounds of appeal as drafted are, just, arguable I am concerned that as a claimed false documentation benefits only the second (appellant) there is an issue as to whether or not the first appellant is caught by the provision of paragraph 320(7A).”

Documentation

3. I had before me all the documentation that was before the First-tier Tribunal Judge which comprised an original bundle, a supplemental bundle and skeleton argument and also the respondent’s refusal bundle.

Mr Blundell’s submissions

4. Mr Blundell representing the appellants submitted that the judge failed to balance all the evidence before him. He took one piece of evidence as a fixed point – the discharge papers of the first appellant from the Indian Army – and from there viewed all the other evidence from that fixed point.
5. The starting point regarding the discharge certificate was that all the dates of birth of the first appellant and his family are incorrectly recorded. The first appellant was obliged to give some dates at the time of discharge and did his best to do so and there was no reason to attempt to mislead. (I comment that it is unclear to me what evidence, if any, there was before the judge about this assertion). The judge at paragraph 40 refers to the first appellant’s service record as being the only documentary evidence which is indisputable and at paragraph 41 that accepting the service record as a correct document has the effect of casting doubt on all the other documents relied upon as giving the date of birth of the second appellant as 7

October 1994. The service record was the prism through which the judge viewed all the other evidence.

6. There were other documents available to the judge such as the passport, birth certificate and letters from the second appellant's school to which the judge failed to give weight. Consideration of the second letter from the school that confirms the second appellant's date of birth could have been highly persuasive. The judge also took notice of the fact that the appellant's brother did not give evidence and seems to have held that against the appellant. However, any evidence that the appellant's brother could have given would have been marginal.

Miss Holmes's submissions

7. Miss Holmes on behalf of the respondent submitted that the judge had not placed undue weight on the army discharge record. The first appellant signed the service record which was endorsed to the effect that the entries on that record were correct. Therefore the judge was entitled to place weight on that document. The judge commented on the sponsor's evidence that her details and the second appellant's details are incorrectly recorded in the service sheet and found that the sponsor has been consistent with her own date of birth as being different to that on the army record. The judge also had before him a Document Verification Report ("DVR") relating to the educational certificate that was produced in support of the applications. The findings made by the judge were open to him on the evidence produced.

My Deliberations

8. Although not comprising an exhaustive list of evidence the judge had before him the certificate of army service, the district level examination sheet and DVR, the second appellant's birth certificate, letters from the second appellant's school and the sponsor's witness statement. In addition the judge heard oral evidence from the sponsor.
9. What is not in issue is that the details of family members' dates of birth shown in the army service record, or at least some of them, are incorrect. The second appellant's date of birth is given as 28 January 1988 which is many years earlier than the purported date of birth of 7 October 1994. The judge in paragraph 37 of the determination makes the comment that the information given to the Indian Army about the first appellant's family members can only have come from him. The judge states that either the dates of birth on that record are correct, as certified by the first appellant by his signature on 1 April 2003 or, for some reason, they are incorrect. The judge then considers the possible explanations. Later in the same paragraph he says that certainly if the army record details are correct the sponsor (the first appellant's wife and the second appellant's mother) would have used an incorrect date of birth, for whatever reason, during her time in the United Kingdom.

10. From that record the judge understands why the respondent was concerned as to the claimed date of birth of the second appellant. The judge comments earlier in that paragraph that the incorrect army record caused the respondent to doubt the second appellant's date of birth as given in the submitted Nepali birth certificate and as shown in the district level examination mark sheet. I see nothing wrong with the judge's approach. He looked at the examination mark sheet numbered 57007 in the name of the second appellant which gives the date of birth (from the Nepali calendar) that equates to the claimed date of birth as 7 October 1994. The examination mark sheet is clearly an important document and it is that document that is verified as false, leading to the mandatory refusal under 320(7A) of the Immigration Rules.
11. The judge was entitled to comment that the only indisputable documentary evidence before him was a copy of the first appellant's service record. I find that he is saying no more or less than that it is not in issue that that document was signed by the first appellant, has been produced to the Tribunal and contains incorrect details.
12. Furthermore the judge was entitled to say that he did not find it credible that there was no evidence from the second appellant's brother and to comment further as he did earlier in the paragraph in relation to the sort of evidence that the brother could have given. That comment of itself is not damaging to the appellants' appeals and appears to be nothing more than stating that additional supporting evidence was not before him that might have persuaded him to come to a different conclusion. The birth certificate produced was of extremely limited weight because it was not issued contemporaneously with the birth of the second appellant. Although this is usual practice, I understand, in Nepal it is bound to affect the weight the judge would be able to give to it as evidence of a date of birth.
13. In paragraph 41 the judge fully reasons why he finds proved to the necessary standard - reminding himself that it is for the respondent to prove forgery - that the district level examination mark sheet produced is false. He makes a further finding that it would have been known to both appellants to have been false when submitted with the applications and that they were therefore dishonest in so doing.
14. Also in paragraph 41 the judge has taken into account the contents of the letter purporting to be from the school accepting the error in the certificate in giving a different name of the pupil but the judge does not accept the explanation and gives reasons.
15. The judge has looked at all the evidence in the round and decided that other documentation produced in an attempt to avoid the finding of forgery cannot be relied upon.
16. Viewed overall the judge's findings were open to him and were not made through the prism of the army records. There has been full consideration of the other evidence before him.

Conclusion

17. The judge did not err in the ways submitted and he was entitled to conclude that it would have been known to both appellants that the district level examination mark sheet produced was false and that they were therefore dishonest in so doing. His decision to dismiss the appeals of both appellants is therefore upheld.
18. There was no application for an anonymity direction and in the circumstances of these appeals I can see no good reason why such a direction should be made.

Signed

Date

Upper Tribunal Judge Pinkerton