



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

Appeal Number: IA/22081/2013

THE IMMIGRATION ACTS

**Heard in Birmingham (video link
at Field House)
On 22 May 2014**

**Determination
Promulgated
On 5 June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

MR VENU MALINENI

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mahmood, Counsel, Fountain Solicitors
For the Respondent: Mr N Smart, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India and his date of birth is 25 August 1987.
2. On 11 December 2012 he made an application to vary his leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant. His application was refused by the Secretary of State in a decision of 21 May 2013.

3. The reasons given by the respondent for refusing the application are that the appellant submitted false documents in support of his application; namely, bank documents from HDFC Bank relating to sponsors Mr A Prabhakar and Mr V A R Kasinath.
4. The appellant appealed against the decision of the Secretary of State and his appeal was dismissed by First-tier Tribunal Judge Lloyd in a determination promulgated on 6 February 2014 following a hearing at Birmingham on 27 January 2014. The appeal was dismissed under the Immigration Rules. The appellant was granted permission to appeal by Upper Tribunal Judge Chalkley in a decision of 1 April 2014. Thus the matter came before me.

The Hearing Before the First-Tier Tribunal ("the FtT")

5. In support of his application the appellant submitted a letter addressed to the sponsor Mr V A R Kasinath from HDFC Bank dated 16 November 2012. This letter shows a reference number used by the bank of 162816112012/006 and it confirms Mr Kasinath's accounts. The appellant with his application submitted an affidavit from Mr Kasinath of 7 December 2012, a copy of Mr Kasinath's passport and deposit confirmations relating to each account held by him. The appellant also submitted with his application a letter to Mr Prabhakar from HDFC Bank of 16 November 2012. The letter shows a reference number used by the bank is 1628/16112012/007 and it confirms Mr Prabhakar's account with the bank. The appellant also submitted with his application an affidavit of 1 December 2012 from Mr Prabhakar confirming his account with HDFC bank and his telephone number.
6. At the hearing before the FtT the appellant relied on the documents that were submitted with his application. In addition he submitted further documents including his witness statement and a second affidavit from Mr Prabhakar of 3 October 2013 in which he indicates that he has not been contacted in relation to the application. He also relied on a second letter from HDFC Bank to Mr Kasinath of 1 October 2013 confirming his bank accounts and the bank uses the reference 1628/01102013/013.
7. The respondent relied on two DVRs (document verification reports). The first DVR is dated 22 April 2013. The report refers to an account number 16285930000174 in the name of Mr Prabhakar. It refers to five accounts in the name of Mr V A R Kasinath and the reference number given is 1625/161120112/006. It refers to each of the five accounts quoting account numbers. It discloses a current balance of Rs1.25 lakhs in FD and it goes on to describe the contact history indicating that on 26 April 2013 the branch manager of the bank confirmed that the account numbers are invalid.
8. The second DVR is dated 25 April. Mr A Prabhakar's account number is identified as 16285930000174 and his balance is indicated as Rs 67 lakhs in FD. The contact history indicates that on 26 April 2013 the bank was

contacted and the telephone number of Mr Prabhakar obtained. The author of the report goes on to state that the account holder Mr Prabhakar stated that the appellant was not a family friend and he was not sponsoring anyone. The second report repeats the contact history in relation to Mr Kasinath in the first DVR.

9. At the hearing before the FtT the appellant gave evidence. The grounds of appeal before the FtT argue that the decision maker had made an error in "jumping to conclusions". It was further argued that the verification process was unclear and that the bank was able to provide a letter explaining the existence of the sponsors.

10. The Judge made the following findings:

"18. I did not find the appellant credible and I do not accept his evidence. His answer to the complaint about Mr Prabhakar's sponsorship was that he did not know the telephone number given under 'contact history' in the DVR and the respondent must have spoken to the wrong Mr Prabhakar on the wrong number.

19. I do not accept this. It is perfectly possible that the sponsor had more than one telephone number but it appears from the DVR that the number called was supplied by the bank and so I think it is likely to be the correct number and in any event there was no evidence that the person called denied he was Mr Prabhakar. I do not find that the appellant has rebutted the evidence in the DVR about this financial sponsor. The only additional evidence was another updated copy of the bank balance confirmation certificate which gave the same information all over again but with a new date. There was no letter from the bank or evidence from the financial sponsor to take matters any further.

20. The position with Mr Kasinath's financial sponsorship was less clear as his accounts were described as incorrect or invalid. The appellant's representative submitted that the respondent had used the wrong account, ending 0174 when enquiring about Kasinath but I think this misrepresented a misreading of the DVR-0174 related to the Prabhakar enquiry to the same bank recorded on the DVR. I find that the bank was given the correct account numbers for Kasinath's accounts - they were listed correctly in the DVR. In any event, the bank did not confirm that Kasinath had those accounts nor the funds and I find that the paperwork was not genuine."

The Grounds Seeking Permission to Appeal and Oral Submissions

11. The grounds seeking leave to appeal can be summarised. The reference number on the DVR relating to Mr Kasinath is incorrect. The reference used on the DVR of 22 April 2013 is 1625/16112012006; however, the

letter of 16 November 2012 from HDFC Bank shows a reference of 1628/16112012/006.

12. It is also raised in the grounds that the FtT did not take into account the evidence from Mr Prabhakar namely the affidavits. It is argued that the DVRs are undermined as a result of the decision maker having failed to produce written information to confirm the details of the telephone conversations that took place. The telephone number that the bank used to call Mr Prabhakar's was not his number which is recorded on the affidavit of 1 December 2012.
13. I heard oral submissions from both Mr Mohammed and Mr Smart. Mr Mohammed expanded on the grounds seeking permission to appeal and argued that the DVR was further undermined because it refers to a balance (Mr V A R Kasinath's account) of 1.25 lakh. This is an error because the balance was in INR. It was further argued that the DVRs do not refer to the customers' identification numbers and the respondent would need these in order to obtain the information from the bank.
14. Mr Smart conceded that the FtT made an error of law in seemingly having failed to take into account the second affidavit from Mr Prabhakar. However, the error was not material. The Judge was entitled to attach weight to the DVRs which are not flawed.

Conclusions

15. The ground of appeal relating to the discrepancy between the reference number used by the bank in the letter of 16 November 2012 relating to Mr Kasinath was not an issue that was raised before the FtT. There was an issue before the FtT in relation to discrepancies in numbers and the Judge made findings about this at [20]. In any event, it is clear to me that the account numbers relating to Mr Kasinath are correctly documented in the DVRs. I note the reference in the letter from the bank of 16 November 2012, but it is not clear what this number refers to. I note that it begins with the same digits as the number used by the bank in the letter of the same date to Mr Prabhakar. The ground is an attempt to reargue the appellant's case and it has no merit.
16. There is no merit in the argument that the wrong telephone number was used by the bank in order to make contact with Mr Prabhakar. This issue was satisfactorily dealt with by the FtT at [18] and [19]. In relation to the issue of currency, this was not raised before the FtT. It was raised for the first time by Mr Mahmood before me. In any event, if there is such an error in the DVR it is minor and not material.
17. There was no protocol brought to my attention (or to the attention of the FtT) that insists on the respondent seeking written confirmation from the bank relating to the telephone conversation with Mr Prabhakar. I appreciate that the DVRs indicates "written confirmation is required;" however, in my view the DVRs amount to written confirmation of the respondent's case and the telephone conversations are detailed in them.

There is no persuasive argument before me that there have been any “internal breaches of procedure” as referred to in Mr Mahmood’s skeleton argument of 22 May 2014 (because there is no confirmation in writing of the claimed contact with the bank and individuals by the caseworker acting for the SSHD). There is no evidence that the bank would not disclose information to UKBA without a customer identification number.

18. The Judge did make an error of law because it appears that the affidavits from Mr Prabhakar were not taken into account and I refer to [19] where the Judge notes that there was no evidence from the financial sponsor. The affidavit of 3 October 2013, at page 81 of the appellant’s bundle, from Mr Prabhakar, states that he has not been contacted regarding the appellant. The document was produced by the appellant in order to prove that the evidence he submitted with his application was genuine and was thus admissible (section 85A(4)(c) of the Nationality, Immigration and Asylum Act 2002). The issue is whether this error was material to the outcome and in my view it was not. There was no persuasive evidence before the FtT that there were material errors contained in the DVRs. The FtT was entitled to attach significant weight to them. In addition there was also the issue of the five bank accounts held by Mr Kasinath. Having heard him give oral evidence, he found the appellant to be lacking in credibility and that the documents produced by him in support of his application were not genuine. It is clear to me that had the Judge turned his attention to the affidavits he would have reached the same conclusion. The respondent’s evidence was contained in the two DVRs and the weight to be attached to this evidence was a matter for the FtT which properly identified the standard and burden of proof in relation to the properly identified Immigration Rule paragraph 322(1A). There is no suggestion that the FtT did not direct itself properly on the law.
19. If I were to set aside the decision on the basis of the error, in my view considering the evidence as a whole (including that submitted by the appellant under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (which amounts to two further affidavits from Mr Kasinath and Mr Prabhakar both dated 8 May 2014 and a further letter from the HDFC Bank relating to Mr Kasinath’s accounts of 7 May 2014)), I would reach the same conclusion as the FtT. The covering letter from the solicitors enclosing the additional evidence indicates that it is “not materially different to the evidence provided to the First-tier Tribunal. It purely elaborates the fact that the investors were not contacted by any Home Office official and that the funds are still available.” Having considered the evidence, as a whole, the respondent has discharged the burden of proof. The Judge made an error of law, but in the circumstances this error was not material.
20. The appeal is dismissed and the decision of the FtT to dismiss the appeal under the Immigration Rules is upheld.

Signed

Joanna McWilliam

Date 4 June 2014

Deputy Upper Tribunal Judge McWilliam