



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

Appeal Number: IA/22654/2014

THE IMMIGRATION ACTS

**Heard at : Field House
On : 11 November 2014**

**Determination
Promulgated
On : 12 November 2014**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SHAPLA BEGUM CHOWDHURY

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person

For the Respondent: Ms L Kenny, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Bangladesh, born on 23 February 1987. She has been given permission to appeal against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse leave to enter the United Kingdom.

2. The appellant arrived in the United Kingdom on 25 May 2014 with a visitor visa valid from 8 May 2014 until 8 November 2014. When questioned upon arrival by a Border Force Officer (BFO) she claimed that she was visiting a

cousin for four weeks and had a return ticket for 25 June 2014. She said that her husband was in Bangladesh. She was unable to give full details about her sponsor and the BFO was therefore not satisfied that she qualified for the leave conferred by her entry clearance. Her leave to enter was suspended and she was required to submit to further examination.

3. Further to telephone contact with the appellant's cousin, a search of her baggage which was found to contain a number of letters, greetings cards and photographs and an unsuccessful attempt to contact her husband in Bangladesh, the appellant was interviewed again by a different BFO. Following the interview, in which the appellant was asked about the whereabouts of her husband, Sheikh Mohammad Delowar Hussain, the BDO was satisfied that she had employed false representations in order to gain entry clearance and her entry clearance was accordingly cancelled.

4. The appellant was refused leave to enter under paragraph 321A of the immigration rules on the basis that false representations had been employed or material facts were not disclosed for the purpose of obtaining the leave, or that there had been such a change of circumstances in her case since the leave had been granted that it ought to be cancelled. The reason given for that decision was that, contrary to the information provided in her visa application and on arrival that her husband was in Bangladesh, the appellant had admitted at further interview that her husband was in the United Kingdom. It was noted further that her husband had been issued with a Tier 4 general student visa on 27 September 2009 valid until 28 October 2012 and had no current leave to remain in the United Kingdom. The respondent was satisfied that the appellant had employed deception and accordingly any future applications for entry clearance or leave to enter the United Kingdom would be refused under paragraph 320(7B) of the immigration rules.

5. The appellant appealed against that decision, asserting in her grounds of appeal that her husband was in Bangladesh and that the person considered by the respondent to be her husband must be another person with the same name. The fact that the appellant's marriage certificate confirmed their marriage to have taken place in Bangladesh on 20 December 2011 indicated that her husband was in Bangladesh at that time. The respondent had failed to produce any evidence to show that he had returned to the United Kingdom thereafter and had failed to produce any evidence that he was currently in the United Kingdom.

6. In response to the grounds of appeal, the respondent noted that evidence in the form of correspondence sent by the appellant's husband to the appellant from the United Kingdom, UK visa records relating to him and the appellant's own statements admitting his presence in the United Kingdom, confirmed that her husband was in the United Kingdom. A card sent by him to the appellant containing his photograph, which matched the photograph on his visa application forms, confirmed that the respondent was considering the correct person. The fact that the appellant and her husband were married in Bangladesh in December 2011 did not detract from the claim that he was

currently in the United Kingdom as he had leave which allowed him to return to Bangladesh and re-enter the United Kingdom. The correspondence held by the appellant from her husband, from a United Kingdom address, confirmed his presence in the United Kingdom after his leave had elapsed.

7. The appellant's appeal was heard in the First-tier Tribunal on 28 August 2014 by First-tier Tribunal Judge Juss. The appellant appeared unrepresented before the judge, who noted that she had in fact elected to have her appeal considered "on the papers" although the appeal had, for some unknown reason, been listed for oral hearing. The appellant gave oral evidence before the judge. She claimed that her husband had been in the United Kingdom but had returned to Bangladesh via France and was running a business there. She could not remember having said at her interview that he was currently in the United Kingdom. The judge did not believe the appellant. He concluded that there had been a change in circumstances since the grant of entry clearance to the appellant and found that she had made false representations and exercised deception in her application. He dismissed the appeal.

8. Permission to appeal was sought by the appellant. In her grounds she claimed that her husband was in Bangladesh and that she was a genuine visitor.

9. Permission to appeal was granted on 26 September 2014 on the grounds that the judge had erred in his reference to the provision of the immigration rules under which the applicant was refused leave to enter and in his reference to the party bearing the burden of proof. It was considered to be arguable that the judge had failed to turn his mind to whether the respondent had shown that the appellant had fallen foul of paragraph 321A and that it was unclear what evidence was relied upon to show that deception had been exercised.

Appeal hearing and submissions

10. For the hearing, the appellant produced written grounds in which she claimed that the immigration officials had twisted her words and that she had always maintained that her husband was in Bangladesh. Since she was detained she had not been able to produce proof that he was in Bangladesh. However she was producing evidence in the form of a copy of her husband's passport showing his arrival in Bangladesh on 10 December 2011. She claimed that her husband was in the UK as a student from 2009 until 10 December 2011 and then returned to Bangladesh. They were married in Bangladesh on 20 December 2011 and the marriage certificate confirmed that. The respondent's claim that her husband had been issued with a Tier 4 student visa valid until October 2012 and had thereafter overstayed was fabricated and false. She had not exercised any deception and had complied with the requirements of the immigration rules as a visitor. She had no intention of remaining in the United Kingdom but wished only to visit relatives and friends before returning to Bangladesh.

11. Ms Kenny submitted that the respondent had discharged the burden of proof on the evidence before the First-tier Tribunal, which consisted of the record of the appellant's interview at the airport, the refusal of leave to enter report, the notice of refusal and the appellant's own admission at interview. The appellant had been dishonest about her husband's whereabouts. The judge found the appellant devoid of credibility and noted that she had not intended to give evidence before the Tribunal, having requested a papers consideration of her appeal. No evidence had been submitted to the Tribunal to rebut the respondent's allegations. Ms Kenny submitted further that the judge's reference to paragraph 320(7B) rather than paragraph 321A was immaterial as it involved the same evidence, considerations and conclusions. There was no error of law.

12. The appellant, in response, claimed to have told the truth when stating that her husband was in Bangladesh and said that the interpreter at the interview must have misunderstood her. She asked if she could submit photographs of her husband as proof that he returned to Bangladesh via France, but I declined to consider the documents as they had not been before the First-tier Tribunal.

Consideration and findings

13. In my view there are no errors of law in the judge's decision such that it ought to be set aside. My reasons for so concluding are as follows.

14. As is noted in the grant of permission, Judge Juss referred in error to paragraph 320(7B) as the provision by which the decision had been made to refuse the appellant leave to enter the United Kingdom. Reference was indeed made to paragraph 320(7B) in the respondent's decision, but in relation to the basis upon which future applications would be refused as a result of the employment of deception in the current application. The decision to refuse the appellant leave to enter was made on the basis of paragraph 321A. However it is plain from the judge's observations at paragraph 3 of his determination that he was perfectly aware of the correct basis upon which the decision had been taken, namely false representations having been made and a change in circumstances since the grant of entry clearance. It is also plain that his findings were made on the basis of the correct provision, and that in any event both provisions involved the same evidence and the same considerations, and accordingly I do not consider that anything material arises out of the reference to paragraph 320(7B).

15. The grant of permission also indicates an arguable error in the judge's consideration of where the burden of proof lay. Indeed, it is the case that the judge referred, at paragraph 13 and 15 to the burden of proof to be discharged by the appellant. However it is clear from the judge's findings overall that he was aware that it was for the respondent to make out her case. That much is clear from his conclusion at paragraph 13, following a detailed consideration of the evidence in support of the allegations of false representations and changed circumstances, that "paragraph 320(7B) stands to be applied". It is also

apparent from his conclusion at paragraph 15 that “the reasons given by the respondent do justify the refusal”. Accordingly it seems to me that, whilst the judge could have been more specific in his statement as to where the burden of proving the allegations lay, he was plainly aware of the requirement upon the respondent to justify the allegations and thus to discharge the burden which lay upon her to prove her case. Therefore, again, I find that no materiality arises in any arguable error in that respect.

16. Turning next to the evidence justifying the allegations made against the appellant, I consider that there was ample, and that the judge properly referred to and relied upon that evidence. At paragraph 13 he referred to the appellant’s lack of credibility and to her own evidence at her interview, where she repeatedly contradicted herself as to her husband’s whereabouts but then went on to specifically confirm that her husband was currently in the United Kingdom (questions 22 and 27). He noted that she had not intended to give oral evidence in support of her appeal but had in fact requested a papers consideration. He referred to the evidence before the respondent which was contrary to the appellant’s claim that her husband was in Bangladesh and which confirmed that he had remained in the United Kingdom beyond the expiry of his visa. Such evidence included correspondence sent from him to her, from the United Kingdom, after the expiry of his leave to remain.

17. On the basis of the appellant’s own evidence at interview confirming that her husband was in the United Kingdom, as opposed to her contradictory claim that he was in Bangladesh and had remained there after returning in December 2011, and the evidence relied upon and produced by the respondent, the judge was perfectly entitled to conclude that there was sufficient evidence to justify the conclusion that she had made false representations and exercised deception in her application for entry clearance and that there had been a change in circumstances since that time.

18. Whilst the appellant now relies upon further evidence, namely a copy of her husband’s passport, to the effect that he returned to Bangladesh on 10 December 2011, that evidence was not before the judge at the time he determined the appeal. In any event, in the absence of the complete passport, the evidence does not show that he remained in Bangladesh and did not return to the United Kingdom, whereas the correspondence relied upon by the respondent and the appellant’s own admission at interview clearly indicated that that was the case.

19. In the circumstances it seems to me that the judge gave adequate and cogent reasons for concluding that the respondent was justified in the allegation of deception and in making the decision to refuse leave to enter on the basis that she did. The grounds of appeal disclose no errors of law in his decision.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed
Upper Tribunal Judge Kebede
2014

Dated: 11 November