



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/22737/2013  
IA/22744/2013

**THE IMMIGRATION ACTS**

Heard at : Field House  
On : 14 July 2014

Determination Promulgated  
On : 16 July 2014

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MRS MST SUMI KHATUN  
MD NAWFAL ISLAM NEWTON

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr C Mannan of Temple Court Chambers  
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. Both parties are appellants in this appeal. The Secretary of State for the Home Department (SSHD) appeals against the decision of the First-tier Tribunal allowing Ms Khatun's and Mr Newton's appeals against the decision to remove them from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006. Additionally, Ms Khatun and Mr Newton appeal against the

decision of the First-tier Tribunal dismissing their appeals against the respondent's decision to refuse their respective applications for leave to remain as a Tier 1 (Entrepreneur) Migrant and a Tier 1 Partner.

2. For the purposes of this decision, I shall hereafter refer to the Secretary of State as the respondent and Ms Khatun and Mr Newton as the appellants, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellants, wife and husband, are citizens of Bangladesh born on 10 December 1990 and 1 November 1986 respectively. The first appellant entered the United Kingdom on 22 January 2011 with entry clearance as a Tier 4 General student valid until 30 September 2012. The second appellant, her husband, first entered the United Kingdom on 19 October 2011 with entry clearance as a Tier 4 General dependent partner valid until 30 September 2012. On 6 August 2012 the first appellant applied for further leave as a Tier 1 (Entrepreneur) Migrant and the second appellant applied for leave to remain as the partner of a Tier 1 Migrant.

4. The first appellant's application was refused by the respondent on 17 May 2013 on the grounds that she had submitted false documents, namely a letter and bank statement from Agrani Bank Limited dated 15 July 2012, relating to an account held in the name of Ms Selim Ahmed, proprietor of M/S Selim & Brother. The respondent refused the application under paragraphs 322(1A) of HC 395 and was satisfied that the first appellant had used deception in her application. As a result she was also unable to acquire the required points under Appendix A and her application was accordingly also refused under paragraph 245DD of HC 395. The second appellant's application was refused as a consequence of that decision.

5. The appellants appealed against those decisions in general terms and, at their request, their appeals were considered on the papers by the First-tier Tribunal. In a determination promulgated on 18 September 2013, First-tier Tribunal Judge Phull dismissed the appeals under the immigration rules, upholding the allegation as to deception. However she allowed the appeals against the removal decisions as being not in accordance with the law.

6. Permission to appeal was sought by the Secretary of State on the grounds that the section 47 removal decisions were lawful, having been made after 8 May 2013 following the amendments made by section 51 of the Crime and Court Act 2013. Permission was granted on 18 December 2013.

7. Permission to appeal was also sought by the appellants, on the grounds that there were deficiencies in the document verification report such that it ought not to have been relied upon by the judge. The grounds also mentioned that the appellant was pregnant at the time of the application for permission and had been unable to do many things as a result. Permission to appeal was granted on 21 March 2014 on the grounds that the appellant's pregnancy arguably explained her failure to engage with the appeal and that the second appellant's presence had been neglected.

8. In a rule 24 response, the respondent opposed the appellants' appeals.

### **Appeal hearing and submissions**

9. The appeal came before me on 14 July 2014. Mr Mannan submitted that the document verification report was unreliable as it was not supported by evidence and did not give details of the identity of the parties making and receiving the enquiries. The judge should have adjourned the proceedings to enable the appellant to produce further evidence, given in particular that the account-holder and the account details were correct and that the report relied upon only two entries in the bank statement in concluding that the document was false. Furthermore the appellant was not involved in any deception herself and the bank documents related to a third party. The judge ought also to have considered the impact of the decision on the second appellant. Mr Mannan had no submissions to make with respect to the Secretary of State's grounds of appeal.

10. Mr Avery submitted that there was nothing wrong with the document verification report which had not been challenged in the grounds of appeal before the judge. With regard to the Secretary of State's appeal, the removal decision was lawful.

11. I advised the parties that in my view there were no errors of law in the judge's determination with respect to the variation decisions, but that her decision to allow the appeals with respect to the removal decisions was clearly wrong in law. My reasons for so concluding are as follows.

### **Consideration and findings.**

12. In support of her application for leave to remain as a Tier 1 (Entrepreneur) Migrant the first appellant produced a letter from Agrani Bank Limited purporting to confirm that funds of £200,000 were available to her and her business partner from a third party, Md Selim Ahmed, the proprietor of M/S Selim & Brother. A bank statement was also produced for the bank account of Md Selim Ahmed. The respondent relied upon a document verification report (DVR) in concluding that the bank letter and statement were false. The report referred to a conversation between the caseworker and the bank representative in which the latter confirmed that the bank records showed that the account existed in the relevant name but that the balance amounts in the statement were not consistent with the actual account balances on two chosen dates.

13. Mr Mannan submitted that the judge was wrong to rely on the DVR as it was deficient, since it did not give the name of the bank representative and relied upon two entries only whilst the account details were otherwise correct. However I do not consider that the DVR is in any way deficient, given that all relevant reference numbers were given in it and that the relevant financial documentation was clearly annexed to the enquiry. It seems to me that the judge was perfectly entitled to rely upon the document.

14. That is not, in any event, the point in issue so much as the fact that there was no challenge to the DVR before the judge. The grounds of appeal made no mention of it and

were extremely general in terms. The appellants did not elect to have an oral hearing at which they could attend and provide explanations and neither did they produce any documentary evidence to address the DVR. There was no explanation before the judge as to why a papers determination was preferred and no application for further time to produce additional documentation. The judge was perfectly entitled, in such circumstances, to rely upon the DVR as adequately discharging the respondent's burden of proving falsity. She properly identified that the burden lay upon the respondent and that it was a high one. She applied the relevant principles in AA (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 773 and properly recognised that, contrary to Mr Mannan's assertion, the fact that the document related to a third party was irrelevant for the purposes of the mandatory refusal under the rules. The judge was, accordingly, entitled to conclude that the respondent had made out the allegation of deception and that the first appellant, and as a result the second appellant, could not meet the requirements of the immigration rules.

15. With regard to the Secretary of State's appeal, Mr Mannan did not challenge the grounds and clearly it is the case that the judge erred in concluding that the section 47 removal decision was unlawful. In that respect, the judge's decision has to be set aside and re-made by dismissing the appeal against the removal decision.

16. It is relevant to add that I raised the fact that Article 8 had not been considered by the judge and invited Mr Mannan to make further submissions but he had nothing to add. On the evidence before the judge it is clear that the appellants could not succeed on an Article 8 claim and I would also dismiss the appeals on Article 8 grounds.

## DECISION

17. With respect to the appeals under the immigration rules, the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and the decision to dismiss the appeals accordingly stands.

18. With respect to the removal decision, the making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and has to be aside. The decision is re-made by the dismissing the appeals against the removal decision.

Signed

Date

Upper Tribunal Judge Kebede