



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

Appeal Numbers: IA/30732/2013
IA/30734/2013

THE IMMIGRATION ACTS

Heard at Field House

On 21 July 2014

**Determination
Promulgated**

On 26 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MRS ANOMA DAMAYANTHI KUMARI THUPPAHI
MR THUSHARA NIROSHANA HERATH MUDIYANSELAGE GEDARA
(NO ANONYMITY DIRECTION)**

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Kannagara, Law Direct Immigration Solicitors
For the Respondent: Ms A Holmes, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are wife and husband born on 5th August 1979 and 27th July 1976 and are Sri Lankan citizens. They appealed against the decision of the respondent dated 8th July 2013 to refuse to vary their leave to remain in the UK as a Tier 4 Migrant and dependent and to remove them by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.
2. The first appellant was granted leave to enter the UK as a Tier 4 (General) Student until 30th August 2012. On 30th August 2012 the appellant submitted a Tier 1 Entrepreneur application for further leave to remain in the UK. On 30th August 2012 her dependant partner and the second appellant submitted a Tier 1 Dependant application for further leave to remain. Both these applications were withdrawn on 26th June 2013 at the appellants' request.
3. Fresh applications for Tier 4 and dependent status were made on 5th April 2013 and refused by the respondent on 8th July 2013 under paragraph 322(1A) paragraph 322(2). The first appellant therefore also failed to meet the requirements of 245ZX(A) of the Immigration Rules.

Reasons for Refusal by the Respondent

4. It was stated that with the previous Tier 1 Entrepreneur application the first appellant had submitted a bank letter and a fixed deposit certificate from the Regional Development Bank but the documents submitted in support of the Tier 1 application had been checked with the issuing body which confirmed it had not issued the documents and confirmed they were forged.
5. In addition the current Tier 4 application had failed to disclose the previous deception. Question 16 on the application form stated "Have you ever knowingly used deception when seeking leave to enter or remain, entered the UK illegally or worked in the United Kingdom without immigration permission to do so contrary to your conditions of stay?" and to this the appellants replied "no".
6. As material facts were not disclosed in relation to the application it was refused under paragraph 322(1A) of the Immigration Rules.
7. Thus the application was refused further to paragraph 245ZX(A), paragraph 322(1A) and paragraph 322(2) of the Immigration Rules.
8. For the above reasons the Secretary of State was also satisfied that the appellants had used deception in the current application.
9. First-tier Tribunal Adio heard the appeal on 26th March 2014 and dismissed the appeals in respect of the Immigration Rules.

10. An application for permission to appeal was made by the appellant because it was said although the judge accepted the letter from the Sri Lankan Savings Bank was genuine he refused to accept the appellants' explanation and the further letter issued by the Regional Development Bank. The discrepancies the judge found between the two Regional Bank letters [24th August 2012 and 24th March 2014] were not correct. The judge should have given weight to the appellant's explanation that the difference in amounts in the letters was due to interest. Further the judge had not identified that the letter of 24th March 2014 noted that the Head Office of the Regional Bank had moved to a new building.
11. Application for permission to appeal was granted by Judge Heynes on the basis only that the grounds of appeal complain that the judge made an error of law in his treatment of the evidence.
12. The Home Office submitted a Rule 24 response that the grounds advanced no material arguable error of law. The appellant knew of the 322(1A) refusal since July 2013 when the refusal was made but failed to put in any form of rebuttal until the production of letters from the Regional Bank dated 24th March 2014 those only being photocopies and this was recorded at paragraph 10 of the determination as the appellant claimed the original was with her father. The respondent submits that based on the evidence before him and in the inherent contradictions in the rebuttal evidence as identified by the learned judge. At paragraph 18 and 19 it was reasonable and open to the judge to find that the respondent had judged the burden of proof to the requisite standard.

The Hearing

13. At the hearing Mr Kannangara relied on the written grounds for permission to appeal. He stated that the appellant had submitted a new application. Her friend and business partner had been reluctant to give evidence in relation to having had his appeal accepted. He did confirm that the judge had received no documentary evidence to show that he had his application accepted. The documents were genuine. Unfortunately, the first appellant was unable to produce original documentation as she had sent her father to withdraw the sums and the documents were still in Sri Lanka.
14. The judge had accepted the appellant's evidence with regard to the Sri Lankan documentation but has concluded that the Regional Development Bank documentation was forged on the basis of the differing maturity dates and the discrepancy in the funds between 1,500,000 rupees and 1,700,000 rupees as indicated on the documentation.
15. Further the judge had relied on evidence that the Entry Clearance Manager had clearly gathered in a previous application mainly that the RGB Bank did not have a branch named City Service Point. The judge had given the appellant the benefit of the doubt with regards to the Sri Lankan Savings Bank account but not with regards the Regional Development

Bank because this document was in the name of the appellant alone. This was incorrect thinking on behalf of the judge. There had not been sufficient time to have obtained the originals.

16. Miss Holmes submitted that there was no error of law. Just because the judge accepted some evidence there is no reason for him to accept evidence in relation to the Regional Development Bank document. The findings were open to the judge. There was no error of law.

Conclusions

17. The appellant with her dependant partner made an application for a Tier 1 Entrepreneur Migrant on 30th August 2012. On 5th April 2013 she wrote to the respondent stating

"I would like to inform you that I no longer want to apply for a Tier 1 Entrepreneur instead applying for Tier 4 Student visa. Please be kind enough to withdraw my application and pass my relevant documents to the relevant department".

18. However with that application she submitted a letter from the Regional Development Bank dated 24th August 2012. The Secretary of State then proceeded to refuse the current application on the basis that she had previously submitted a bank letter and a fixed deposit certificate from the Regional Development Bank which were forged.
19. The refusal letter made no mention of the Sri Lankan Savings Bank documentation but did refer to the appellant submitting a bank letter and a fixed deposit certificate from the Regional Development Bank.
20. Judge Adio noted the letter from the Sri Lankan Savings Bank related to a joint account and the appellant and her business partner a Mr Mudiyansele who had now been granted leave to remain in the UK on the basis of the same documents that were submitted in this case. He was prepared to give the appellant the benefit of the doubt with regards to the Sri Lankan Savings Bank letter.
21. Although the judge made reference to the Sri Lankan Savings Bank and indeed there is a reference to in the document verification report to such a document also being false the judge centred his findings and his reasons for refusing the appeal on the basis of the Regional Development Bank letter.
22. However the judge rightly scrutinised the contents of the letter the letter from the Regional Bank dated 24th August 2012 and also compared that letter dated 24th August 2012 with a further letter submitted by the appellant at the appeal hearing and dated 24th March 2014 and identified differing maturity dates and differing amounts of funds held. He made the following findings:

- “18. With regards to the second letter from Regional Development Bank the issue here is that the date of withdrawal is given as 28th December 2012. However the date of maturity on the Regional Development Bank letter submitted to the Respondent gives a date of maturity of 15th November 2012. I therefore find there is a contradiction between the newly received letter from the Regional Development Bank dated 24th March 2014. This gives the date of withdrawal as 28th December 2012 and gives the reason for withdrawal as upon maturity. However the Regional Development Bank letter dated 24th August 2012 which was submitted to the Respondent with the Appellant’s application gives the date of maturity as 15th November 2012.
19. There has been no explanation for the discrepancy in the maturity date given on both documents. This affects the weight I attach to this letter and confirms that this document is therefore not a genuine document in view of the contradiction of the very important date of maturity put there. Furthermore the fixed deposit amount is given as 1,500,000 rupees whereas in the body of the letter dated 24th August 2012 it states that the funds of 1,700,000 rupees is held more than 90 days in the above account. I note the Appellant could not provide an explanation for the difference other than thinking that it may well be the interest. This is not obvious for the body of the letter.
20. I also note in the Document Verification Report that on 3rd January 2013 a Mr Siriwardhan who is the general manager of the Regional Development Bank stated that the RGB does not have a branch named City Service Point at the address stated at 46 Naz Building Chamber, Hospital Street, Colombo 01. This is quite significant and this was not addressed by the Appellant in her evidence. Whilst I am prepared to give the Appellant the benefit of doubt with regards to the letter from the Sri Lankan Savings Bank more or less on the basis that this involved a business partner and the Respondent does not deal with this adequately in the reasons for refusal letter and the business partner has also been granted leave to remain as a Tier 4 Student, the same benefit of doubt cannot be applied to the letter from Regional Development Bank because this document is in the name of the Appellant alone and therefore, her business partner would not have used this for his own application. Secondly there has been no explanation to the discrepancies I have found above.
21. I therefore find that the Appellant used a false document namely the letter from Regional Development Bank dated 24th August 2012 when she was making her application and it does not matter in this case that the investigation had been made after because there are other issues surrounding that letter which have not been dealt with by the Appellant. For those reasons I

find that the Respondent's decision is correct. No other issue is dealt with in the Grounds of Appeal other than the issue pertaining to the falsity of document. I therefore find that the Appellant's appeal fails on grounds that the Respondent has made out the case under paragraph 322(1A) on grounds that false representations have been made or false documents used in relation to an application and 322(2) on grounds that the Appellant failed to disclose any material facts for the purpose of obtaining leave in the United Kingdom. The appeal of the second Appellant is dismissed in line with that of the first Appellant."

23. As the judge recorded the appellant produced *no original bank* letter dated 24th March 2014 and this later letter which purported to be from the Regional Development Bank gave a different maturity date as at 28th December 2012. Further the original letter dated 24th August 2012 referred not only to a fixed deposit of 1,500,000 rupees but also in the body of the letter to sums of 1,700,000 rupees. The judge identified that these were anomalies which was not adequately explained by the appellant by way of interest.
24. I find the judge was entitled to come to the conclusions that he did at paragraphs 18, 19 and 20 of his determination and these were adequate reasons to find that the document was false.
25. The judge also relied on the document verification report dated 25th January 2013 which stated that the documents were verified as false because RDB "*does not have a branch near City Service Point at the address stated above*". The appellant complained that the Judge had not taken into account the fact that the letter of 24th March 2014 had referred to the Regional Bank moving.
26. No original letter dated 24th March 2014 was produced by the appellant either at the hearing before the Judge or at the hearing before me and the judge was entitled to rely on the Verification Report which referred to a letter dated 21st December 2012 which confirmed that the RGB did not have such a branch. Not least the judge recorded that the appellant gave evidence that the funds were withdrawn on 5th January 2013 [10] of the determination. This date was *after* the confirmation that there was no such branch.
27. There is an email chain within the documentation which the judge did not refer to. Even if this was an omission by the judge which I do not accept this could only work against the appellants. The email from the Tier 1 Entrepreneur verifications of the Home Office dated 14th May 2013 to GM-RDB the General Manager Mr Siriwardhane at the Regional Development Bank itemised the documentation submitted by the appellant not least the fixed deposit certificate and the letter from the Regional Development Bank dated 24th August 2012 and the fixed deposit certificate dated 15th May and referred to its "*attached scanned copy*" and requested information as to whether this was genuine. The reply received from a Mr

R Siriwardhane general manager CEO of the Regional Development Bank and dated 15th May 2013 confirmed

“This refers to your email on the above named and wish to confirm that we have not issued any of these documents and all of these are forged documents and we have already handed over to Sri Lanka Police Department to investigate and take legal action. Therefore please do not process these applications”.

28. It was open to the judge to rely on this email chain and he did not. Nonetheless the judge’s findings were open to him and he gave adequate reasoning for finding the documentation submitted in the appellants’ previous application, albeit withdrawn, was false and therefore I find there is no material error of law and the determination shall stand.

Signed

Date 21st August 2014

Deputy Upper Tribunal Judge Rimington