



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/43912/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 24 July 2014  
Prepared 24 July 2014

Determination Promulgated  
On 12 August 2014

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

KAMRAN ARIF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, a citizen of Bangladesh born on 12 September 1982 appeals, with permission, against a decision of Judge of the First-tier Tribunal Herlihy who in a determination promulgated on 25 April 2014 dismissed the appellant's appeal

against a decision of the Secretary of State made on 8 October 2013 to refuse to vary his leave to remain as a Tier 1 Entrepreneur and to seek his removal from the United Kingdom.

2. The application had been refused under paragraph 322(1A) of HC 395 because two documents dated 28 May 2013 issued by the Brac Bank, on which the appellant wished to rely and which purported to show that a Mr Moazzam Hussain Khan who held the sum of £238,014 with the bank intended to invest £200,000 for the appellant's business had been found not to be genuine. The letters, from the Tongi branch of the bank had claimed that the sums available were held in the Gulshan branch of the Brac Bank in two accounts being account numbers 1501301954802005 and 1501301954802004 been issued by the bank.
3. When these certificates were sent to the Brac Bank the had confirmed that they had not been issued from the Tongi branch.
4. At the hearing before Judge Herlihy the appellant asserted that the document verification report was wrong and that the documents were genuine. The appellant had explained that his sponsor was initially to be his uncle. He had changed sponsor to get a new sponsor who was a friend of his father. The appellant said that he discussed the refusal letter with the sponsor and with his father and that they had quarrelled. He has stated that he hoped the sponsor would sponsor him again. The appellant was asked why the sponsor did not provide a letter from the bank to confirm the statement had been issued by the Tongi branch and that it was the correct account. The appellant said that he had not asked the sponsor to obtain such a letter but the sponsor would be able to provide it. He confirmed that he had not obtained any evidence from the bank but said that he had spoken to someone from the bank who had confirmed that everything was OK and that the sponsor had a fixed deposit account.
5. The judge noted the terms of the determination of the Tribunal in **RP (Proof of Forgery) [2006] UKAIT 00086** and **JC (Part 9 HC 395 - Burden of Proof) China [2007] UKAIT 00027** and the Court of Appeal judgment in **AA (Nigeria) [2010] EWCA Civ 773**. She noted that the burden of proof lay on the respondent to prove that the documents were false. She concluded that the respondent had discharged the burden of proof. Having considered the issue of the appellant's rights under Article 8 of the ECHR in the light of the Supreme Court decision in **Patel [2013] UKSC 27** the judge found that the appeal should be dismissed on both immigration and human rights grounds.
6. The appellant appealed. Permission to appeal was granted by Judge Osborne on 11 June 2014. In granting permission to appeal Judge Osborne stated that it was arguable that the evidence relied on by the respondent amounted any more than a prima facie case in the respondent's favour and it was incumbent upon her to make further enquiries in order to establish the position to the necessary standard.

7. At the hearing of the appeal before me the appellant protested that the bank had been prejudiced against him, that the judge should not have taken into account the terms of the letter from the Brac Bank which stated that “the attached certificates and statements have NOT BEEN ISSUED from Tongi branch” and indicated that he might now be able to produce further evidence to show that the account was genuine. He confirmed that he had told Judge Herlihy that he had not asked the sponsor to produce any further evidence when he had given evidence before her.
8. Ms Holmes stated that the judge had reached conclusions which were fully open to her on the evidence.
9. I find there is no material error of law in the determination of the judge who correctly set out the burden of proof in a case where forgery is alleged. She had considered the evidence both of the appellant and that on which the Secretary of State relied and reached conclusions which were open to her – she was entitled to find having taken into account the letter from the bank that the accounts were not genuine.
10. I therefore find that there is no material error of law in the determination of the Immigration Judge and I dismiss this appeal on both immigration and human rights grounds.

Signed

Date

Upper Tribunal Judge McGeachy