



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

Appeal Number: VA/12579/2013

THE IMMIGRATION ACTS

**Heard at Stoke
on 5th June 2014**

**Determination
Promulgated
On 12th Aug 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**MD HABIBUL ISLAM
(Anonymity direction not made)**

Appellant

and

ENTRY CLEARANCE OFFICER - (DHAKA)

Respondent

Representation:

For the Appellant: Mr Hasan of Kalam Solicitors.

For the Respondent: Mr Lister – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Herbert promulgated on the 14th January 2014, following a hearing at Taylor House on 23rd December 2013, in which the Judge dismissed the appeal against the refusal of an Entry Clearance Officer (ECO) to grant to the Appellant leave to enter the United Kingdom for the purposes of a family visit.
2. The Appellant is a citizen of Bangladesh born on the 31st December 1989. The ECO reviewed the documents provided in support of the application and noted a number of trade licences had been produced at least one of which, based upon information set out in a document verification report, was found not to be genuine and not to have been issued by the appropriate authorities in Bangladesh. The application

was therefore referred to an Entry Clearance Manager and refused under the provisions of paragraph 320 (7A) of the Immigration Rules.

3. The evidence before the Judge from the UK-based sponsor was that other trade licences had been prepared and that in the sponsor's view none of those were false and that they wanted the ECO to contact the trade license organisation who would then provide a written reply [4]. The Judge found the document verification report provided clear evidence that the licensing authority had no records of any trade licences being issued over a stated reference number. The clothing licence relied upon by the Appellant in relation to Islam Cloth Store was outside the issued serial number and there was no information before the Judge that since this was brought to the Appellant's attention that any mistake had been remedied by the licensing authority. The Judge concluded that on the basis of the available information the appeal should be dismissed.
4. The application for permission to appeal alleges legal error in relation to the burden and standard of proof which is said to lie upon the ECO, an assertion that the Respondent's own guidance states that independent evidence needs to be obtained to corroborate the allegation and that the failure to follow their own published guidance amounts to legal error, that the Judge erred as the document verification report indicates verification following a telephone conversation rather than the documents physically being submitted for verification, failure by the Judge to consider the evidence "in the round", the failure to make credibility findings in respect of the Appellants evidence, inadequate reasoning, and a perverse conclusion.
5. Permission to appeal was granted by another judge of the First-tier Tribunal on the basis the Judge had made an arguable legal error by failing to indicate expressly or otherwise that the onus of proving falsity or deception falls upon the Respondent.

Error of law

6. It is not necessary for permission to appeal to be granted to the Upper Tribunal on the basis of an alleged failure to refer to the appropriate burden and standard of proof if a reading of the determination clearly shows that that correct burden standard were applied by the Judge in reaching his or her decision.
7. In the determination under challenge the Judge states in paragraph 5 that "The burden of proof rests on the appellant and the standard of proof is on a balance of probabilities". Whilst that may be correct in relation to the question of whether an individual applicant is able to satisfy the requirements of the immigration rule they seek to rely upon, where it is the Respondent who is asserting that the documents

are forged the burden passes to them. It is arguable therefore that the Judge may appear to have misdirected himself in law. Even if this is the case, I do not find it has been established before this Tribunal that the Judge proceeded to apply the wrong test. What the Judge states in the determination is that the assertion the documents are forged/false is corroborated by the document verification report provided by the ECO. That report, a copy of which has been made available, clearly states that an official of the relevant union body confirmed that the trade license is not genuine, that it does not exist, and that the trade license number 1190 does not appear in their registry book. The Judge was satisfied, based upon the information provided, that the Respondent had discharged the burden of proof to the required standard. No legal error is proved.

8. Before the Tribunal Mr Hasan also submitted legal error by the ECO failing to follow policy guidance by reference to a flowchart providing guidance to decision makers when considering a paragraph 320 (7A) deception case. It is accepted that when an allegation of forged or false documents is made the nature of the evidence to be provided needs to be good evidence upon which the appropriate weight can be placed. The flowchart indicates that where false documents are suspected the decision maker can either call the applicant in for interview or send the document for verification and prepare a verification report. The next stage, if there is positive evidence of deception, is that the decision maker has to consider whether it is demonstrated to a high standard and possibly discuss this with an Entry Clearance Manager and consider whether there could be non-disclosure by "innocent mistake".
9. The document relied upon in support of this submission is not a policy document which creates a legally binding obligation upon the decision maker to follow but merely guidance provided to caseworkers as to the practical steps they need to follow to ensure that the decision made is correct. I find no arguable merit in the submission that as the procedural guidance to caseworkers suggests that a suspected document should be sent for verification, there is arguable legal error in the decision maker telephoning the appropriate authority to whom the document would be sent rather than actually sending it, and obtaining confirmation by such means. The question is whether the alleged error/issue is one capable of being clarified in this way. In this case the trade license was found not to be genuine as a result of its reference number not being recorded as having been issued and it has not been established before this Tribunal that this is a matter that could not have been verified by way of direct telephone contact. No legal error in the Judge's decision in accepting the verification report provided to the First-tier Tribunal has been established on this basis.
10. The submission that the quality of the evidence was poor such as not to corroborate the assertion has no arguable merit. The evidence is

clearly set out in the decision notice which is corroborated by the document verification report. That evidence clearly supports the finding that one of the trade licences was never issued by the relevant authorities and is therefore a false document. The Judge considered that evidence with the degree of care required, that of anxious scrutiny, and gave adequate reasons for the findings reached. In such circumstances the weight to be given to the evidence was a matter for the Judge and no legal error is proved. The submission that the document verification report is not evidence has no arguable merit. The fact other trade licences may have been genuine is not material as the engagement of 320(7A) is not dependant upon a proportionate assessment of the number of genuine verses false licences.

11. The statement by the Judge that there was no rebuttal evidence provided is factually correct and it is clear that no application for an adjournment was made to enable a direction to be sought for such material to be produced. Mr Hasan submitted that the Chairman of the Trade License Board would only give such information if the court directs but if no application is made for such a direction the Judge cannot be criticised and no legal procedural error is established.
12. What is clear is that the Appellant submitted a number of documents at least one of which was found to be forged. The finding upon which such conclusion is based is adequately supported by evidence in a document verification report. As the Appellant submitted the application and signed the application form confirming everything contained therein in relation to the application is true, the necessary mens rea is established. Any such intent to deceive can be that of the applicant or a third party.
13. Having considered the decision, evidence available to the Judge, and submissions made, I am not satisfied that any arguable legal error material to the decision under challenge has been established.

Decision

14. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

15. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson
Dated the 12th August 2014