Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: VA/31577/2012
VA/31615/2012
VA/31593/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 8 January 2014	**On 17 January 2014**
Prepared 9 January 2014	

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

MRS HARDEEP KAUR
MASTER GAGANDEEP SINGH
MISS HARPREET KAUR

Appellants

and

ENTRY CLEARANCE OFFICER – NEW DELHI

Respondent

Representation:

For the Appellants: Mr M Blundell, Counsel, instructed by Malik & Company
For the Respondent: Mr G Saunders, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

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1. The appellants are citizens of India. The first appellant was born on 20 March 1971 and the two further appellants, born on 30 June 2001 and 4 October 2002, are her children. They applied for visit visas to enter Britain to visit the first appellant's sister, Mrs Bimala Kaur and her husband, who are settled here.

2. The first appellant's application was refused under the provisions of paragraph 320(7A) on the basis that the application form contained the answer "No" in response to the question "Have you ever been refused a visa for any country including the UK?" whereas there was evidence that the first appellant had been refused a visa on 14 May 2003.

3. The notice of refusal also noted that although the first appellant had said she was a housewife and dependent on her husband "all the recent documents you have produced in the form of crop receipts, bank deposits and life insurance policies are in your name not his". The ECO therefore considered that he could not be satisfied that the appellant's husband was in the village or in India as stated or that the appellant had presented an accurate picture of her economic circumstances. That led him to doubt her intentions in Britain and he therefore stated that he was not satisfied that she "intends to visit for the period and purpose as stated by you". The application was therefore also refused under the provisions of paragraph 41(i) and (ii) of HC 395 as amended.

4. The other appellants were refused on the basis that as their mother was not coming to Britain they had not shown that suitable arrangements had been made for their travel to reception and care in the United Kingdom.

5. The appellants appealed against that decision. Their appeals were dismissed by Judge of the First-tier Tribunal Hussain after a hearing on 27 August 2013. It was the first appellant's argument that the fact that "No" had been written in the application form in reply to the question of whether or not she had ever been refused a visa was a mistake made by the agent whom she had employed and was therefore an innocent mistake. Judge Hussain did not believe that explanation.

6. However in reaching that conclusion the judge had stated that the burden of proof was on the appellant and the standard of proof was the balance of probabilities. He had not stated on whom the burden of proof lay to prove the allegation made that the appellant had made false representations or not disclosed material facts in relation to the application.

7. When the appellant appealed to the Tribunal Deputy Upper Tribunal Judge S J Hall found, for that reason, that there was a material error of law in the determination. I annex to my determination a copy of his Decision and Directions.

8. It was in these circumstances that, after a transfer order had been made, the appeal came before me for hearing afresh.

9. The appellant's sister, Mrs Bimala Kaur, gave evidence, relying on a statement which had been produced in which she stated that her sister and children were well settled in India and were financially stable and well off, that her sister's husband was "in agricultural business" and handled all business affairs and that her sister was a housewife who assisted her husband in agricultural work.

10. It was stated that the appellant's husband had put some business and family matters in her name "by personal choice". It was, she asserted, that the appellant's husband was in India and that he would stay there during the visit to Britain.

11. She referred to other family members who had travelled to Britain as family visitors and returned and asserted that her sister had told her that she had not provided false information or practiced deception in her application. The application form had been completed by a visa representative named Holiday Tours and Travels to whom her sister had "supplied the information and supplied all the documents to them to prepare". Her sister had been told to sign the application form and had done so. The statement went on to say that the appellant was not well versed in English and had not checked the contents of the form, trusting the representative. She added that her sister was "really upset and angry at the visa representatives when I told her that due to this error she may be banned from applying to the United Kingdom for a visit visa for a period of ten years".

12. She referred to a letter from Holiday Tours and Travels stating that they had not asked the appellant the particular question about the refusal of a visa and had merely assumed the answer and apologised. Mrs Bimala Kaur statement stated that the appellant's previous passport details had been provided on the application form which showed that she had not had the intention to provide any forms and information.

13. The statement asserted that the appellant had merely made an innocent mistake.

14. Mrs Bimala Kaur was asked by Mr Blundell where her brother-in-law was. She replied that he was in India and she went on to say that her sister had said that the agent had made the mistake rather than her sister. Her sister had very little knowledge of English.

15. In cross-examination she confirmed that that she could only given answers which reflected what her sister had told her. She was asked about relatives staying with her and she said initially that her guests had come and gone having stayed for a week. Asked if here was anyone staying

with her now, she said that she had her sister who would leave on 15 January.

16. Mr Saunders asked her about the documents to which the appellant had referred in the grounds of appeal and pointed out that all the documents which the appellant now produced and were in joint names were dated after the refusal. Mrs Ramala Kaur was unable to answer that question.

17. In summing up Mr Saunders relied on the reasons for refusal, accepting that one issue raised in the refusal – the relationship between the appellant and the sponsor was not in issue.

18. He referred me to the letter from Holiday Tours and Travels and stated that the First-tier Tribunal Judge had been entitled to disbelieve what was stated therein. He asked that I should not believe what was now claimed either. They were a company which dealt with visas and would have known that this was an important issue. It was a perfectly proper inference for the Entry Clearance Officer to make that those in the travel business should ensure that the documents were completed correctly. There were no other errors, he pointed out, in the application form which would have indicated that the travel agency had been careless. He referred to the case of **Adedoyin v SSHD [2010] EWCA Civ 773 (AA (Nigeria))** which he stated indicated that an honest mistake was excusable but he argued that this was clearly not an honest mistake and stated that the witness could not be relied on.

19. With regard to the substance of the refusal he argued that there was no evidence in the affidavit from the sponsor to indicate that what was now being said was true. There was nothing to dictate the presence of the appellant's husband in India. He asked me therefore to dismiss the appeal.

20. Mr Blundell dealt first with the issue relating to the evidence that the appellants would return to India. He referred to the affidavit evidence and the documentary evidence which he indicated showed that the appellant's husband was in India and that the family were prospering there.

21. With regard to the refusal under Rule 320 he referred me to the application form, stating that full details were given of the address of the appellant and that although, in answer to question 99, an incorrect answer had been given when it was stated that the appellant had not been refused a visa in the past that should be taken within the context of the reply to question 21 where details of the previous passport were given. Clearly this indicated that an honest attempt was being made to answer all questions. If an intention to deceive the Entry Clearance Officer had been made then surely those details would not have been submitted.

22. The appellant, he argued, was not a lawyer nor indeed was the travel company. The travel company were really there to book travel. Moreover

the travel company were somewhat slapdash in the way in which they had completed the form – he referred to the answer to question 142 which he stated was in “text speak”. It was not plausible to conclude that the appellant had attempted to deceive. He argued that the burden on the Secretary of State was significant. Moreover there was nothing to indicate that this appellant and her family, who were relatively prosperous in India would wish to overstay. He referred to letters from the children’s schools and other documentary evidence showing a settled life in India. He asked me to find the respondent had not discharged the burden on her and emphasised the high threshold in that burden given the consequences for the appellant.

Discussion

23. It is clearly for the respondent to discharge the burden of proof upon her to show that the appellant had made false representations and material facts had not been disclosed in relation to the application. However, with regard to the issues relating to the intentions of the appellant the burden of course lies on her, the standard of proof being that of the balance of probabilities.

24. On the face of it false representations were made in the application form. The first appellant had been refused a visa but the form stated that she had not. I note the terms of paragraph 320(7A) which state that entry clearance is to be refused where false representations have been made whether or not to the applicant's knowledge in relation to the application. The application form was submitted by the appellant's agent. They were acting on her behalf. On the face of it therefore I can only conclude that the respondent has discharged the burden of proof to show that the appellant's application should fail under the provisions of Rule 320(7A). However, of relevance is the judgment of the Court of Appeal in **AA (Nigeria)**. That judgment held that as the word “false” was capable of meaning both “dishonest” and “incorrect” there was a genuine ambiguity in paragraph 320(7A) and “false” could only therefore be applied to deliberate lies rather than statements which were not merely not in accordance with the true facts and that accordingly for a false representation to lead to mandatory refusal dishonesty or deception was needed, albeit not necessarily that of the appellant.

25. The issue therefore before me is whether or not such dishonesty or indeed dishonest intention was present in the actions of the appellant. The appellant's claim, in the application form, was that she had lost the passport which contained the refusal of the earlier visas. There are no circumstances given as to how the passport was lost or that attempts were made to find it. I consider that that claim should surely have alerted any representative to ask the applicant for the visa if there was anything in the passport which would indicate difficulties for the appellant.

26. While Mr Blundell argued that while they submitted the application, Holiday Tours and Travel, were not lawyers and merely travel agents. The reality is surely that they would be aware of the potentially draconian nature of Rule 320 and the importance therefore of telling the truth.

27. I must consider the background to this application. The background was that the appellant had been refused the visa. It is not likely, I consider, that she would not have informed the travel agency when she made the further application that that had happened. It was clearly an important event which had direct bearing on an application to enter Britain.

28. It follows from this that I consider that I do not find the assertions of the appellant in the grounds of appeal and made on her behalf her sister to be credible. I consider that she knew when the application was made that she had been refused a visa and that she would have communicated this to the agent she was using. I do not accept the assertions made in the letter from Holiday Tours and Travel.

29. I am fortified in my decision when I consider the grounds submitted by the appellant. In those she states that:

> "When you plan to visit the UK we need to show our income, just to proof [sic], my husband asked the commission agent that please issue all the crop receipts in the name of wife, just for embassy purpose. Otherwise they were receipts in the name of my husband and other family members. Last is LIC, just to proof [sic] my financial circumstances I have attached LIC on my name only with my application, otherwise we have financial documents in joint names. If I had attached all documents of my husband, then Visa Officer may have raised the point that I do not have income proof, financial documents on my name. Just to avoid such objection we attached all documents in my name, not on my husband."

30. I consider that that statement indicates that the appellant was effectively prepared to manipulate evidence to strengthen the application. That does not indicate that she left everything in the hands of the agent and was not substantially involved in the application. It is also, of course, the case that in the grounds of appeal she said that she had told the agent who completed the applications that she had been refused but that he had gone on to give the answer "no" instead of "yes" to the question of whether or not she had ever been refused a visa. Again, I do not consider that if the express instructions had been that she had been refused a visa and that she had told the agent, the agent would, without more, have put in an answer that he knew to be false. I note that in any event the is a mismatch between what the appellant states in the grounds of appeal about when she said that she told the agent she had been refused and the affidavit of Mrs Bimala Kaur where it is stated that the agent "simply assumed" the answer.

31. I therefore find that the respondent has discharged the burden of proof upon him and that therefore this appeal falls to be dismissed under the provision of Rule 320(7A).

32. I would add that given that the appellant was prepared to submit evidence that did not reflect the true situation in that it did not bear her husband's name I consider that the Entry Clearance Officer was entitled to questions her intentions and therefore the refuse the application under the provisions of paragraph 41 of the Rules.

33. The decision of the Judge of the First-tier having been set aside I remake the decision and dismiss these appeals.

Decision.

These immigration appeals are dismissed.

Signed Date

Upper Tribunal Judge McGeachy