



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/11113/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 26 January 2015

Decision & Reasons Promulgated  
On 10 February 2015

Before

THE HONOURABLE MR JUSTICE GOSS

UPPER TRIBUNAL JUDGE ESHUN

Between

MR MUJEEB PASHA MOHAMMED  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Richardson, Counsel instructed by Louis Kennedy Solicitors  
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by Mujeeb Pasha Mohammed with the permission of First-tier Tribunal Judge Shimmin given on 9 December 2014 against the decision of First-tier Tribunal Judge Braybrook promulgated on 29 October 2014 dismissing the appellant's appeal against the respondent's decision to refuse to grant him leave to

enter the United Kingdom and to cancel his existing leave to remain made on 21 February 2014.

2. The appellant is a national of India and was born on 29 November 1979. He made an application for leave to remain as a Tier 1 (General) Migrant on 10 June 2013. In support of that application he claimed points of past earnings from employment and also from his self-employed income as an IT engineer. His application was granted on 24 June 2013 and he was issued with leave to remain in the Tier 1 (General) category. At this point the respondent was satisfied that the past earnings were genuine.
3. On 20 February 2014 after a period of absence abroad the appellant was questioned on his arrival back in the United Kingdom at Heathrow Airport. As a result of alleged deficiencies in his answers in interview a decision was made on 21 February 2014 to refuse him leave to enter which had the effect of cancelling his leave to remain. That decision was made on the basis that he was claimed to have used deception in his application of 10 June 2013 to remain by claiming points based on self-employed earnings that he had not in fact earned. The respondent also applied paragraph 320(7A) of the Immigration Rules.
4. It is common ground that the burden of proof where as here leave is cancelled on the basis of general grounds for refusal is on the respondent. The standard is to a balance of probabilities although in circumstances where a breach of paragraph 320(7A) applies and the submission of false documents is relied upon the bar is raised, see the decision of Mr Justice Burton in **Ozhogina and Tarasova (deception within para 320(7B) – nannies) Russia [2011] UKUT 00197 (IAC)**.
5. It is the appellant's case that although the First-tier Tribunal Judge's decision identified the correct burden and standard of proof including the raised standard required to establish dishonesty or deception needed to render a false representation a grant for mandatory refusal the Tribunal Judge failed to apply that burden and standard in reaching the decision that she did.
6. The appellant's application letter stated he had substantial earnings as a self-employed freelance IT engineer. His tax return for the tax year 2012/2013 reflected such earnings. Bank statements and invoices were before the First-tier Tribunal Judge, who considered them and his evidence together with the record of his interviews with the Immigration Officer on 20 and 21 February 2014 and this evidence was reviewed in paragraphs 9 to 14 of the Determination and Reasons.
7. Having reviewed that evidence the Tribunal Judge went on to conclude in paragraph 15 of the Determination and Reasons as follows:

"I have looked at the evidence in the round and concluded the information in his application was not supported in any way by documentary or other evidence",

then a sentence that is not necessary to recite. The paragraph concluded:

"I am satisfied that the appellant has put forward a false representation in the application form as to his self-employed earnings and that the entry clearance fell to be refused under paragraph 320(7A)."

8. Although there is no stated conclusion that this finding of a false representation in relation to the self-employed earnings in the application form was false on the basis of false documents that was the clear implication of the context of the paragraph for the preceding paragraphs highlighted 1) that the amount of tax to be collected of £300 bore no relationship to the asserted self-employed net earnings of £25,587 for the tax year 2012/2013, the appellant produced no plausible explanation or documentation in relation to this, 2) his bank account showed that the amounts purportedly credited to his business account in payment of invoices were “on almost every occasion almost immediately withdrawn almost in total”, 3) a rejection of the appellant’s explanation that substantial sums had to be withdrawn because of late payment of invoices and the need to meet expenses when his expenses merely consisted of travel and tools for cabling, 4) his failure to remember the names of any clients in interview when it was a small pool many of whom had repeat orders, 5) the absence of any invoices or remittances post his application when his account was that he remained self-employed until December 2013. All this was material upon which such a finding could properly be made on the evidence before the Tribunal Judge.
9. We are satisfied that in reaching the conclusion that she did there was no failure to apply the burden and standard of proof in reaching the determination that the Tribunal Judge did. Clearly there was an evidential basis upon which the burden could be discharged by the respondent in relation to the provision of false documents. The Tribunal Judge was entitled to conclude as she did. There was no error of law in relation to the conclusion to which we came and this appeal is dismissed.

**Notice of Decision**

The appeal is dismissed under the Immigration rules.

No anonymity direction is made.

Signed

Date **10 February 2015**

Mr Justice Goss

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date **10 February 2015**

Mr Justice Goss