



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

Appeal Number: IA/18495/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30th January 2015**

**Decision & Reasons Promulgated
On 16th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**ADIL MUMTAZ
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gondal of Berkshire Law Chamber

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge of the First-tier Tribunal Oliver promulgated on 12th August 2014.
2. The Appellant is a national of Pakistan born 14th July 1973 who on 22nd January 2013 applied for leave to remain in the United Kingdom as a Tier 1 (entrepreneur). This was initially refused on 28th May 2013 and the Appellant appealed against that

decision and an appeal hearing was listed for 16th October 2013, but on the day before the hearing the Respondent withdrew that decision and on 4th April 2014 made a fresh decision to refuse to vary leave to remain and to remove the Appellant from the United Kingdom.

3. The refusal was based upon paragraph 322(1A) on the basis that the Appellant had submitted a false document with his application, that being a letter from Standard Chartered Bank Wapda Town Branch in Pakistan. The Respondent was satisfied that the letter was false, as this had been confirmed by the bank. The Respondent was therefore satisfied that the Appellant had used deception in his application.
4. The application was also refused with reference to paragraph 245DD(a) which provides that the application must not fall for refusal under the general Grounds of Refusal, and (b) which provides that an applicant must have been awarded a minimum of 75 points under paragraphs 35 to 53 of Appendix A. The Appellant was not awarded any points under Appendix A, because he had not proved that he had access to £50,000 provided by third party funding nor had he proved that the funds were held in a regulated financial institution nor that they were disposable in the United Kingdom. This was because the Appellant had submitted a false bank letter.
5. The Respondent stated in the refusal, that in line with paragraph 245DD(l) an assessment as detailed in paragraph 245DD(h) had not been carried out, and reserved the right to carry out such an assessment if the refusal decision was challenged, or in a future application.
6. The Appellant's appeal was heard by Judge Oliver (the judge) on 17th July 2014. The Appellant had appealed on the basis that the bank letter was not false, and the Respondent had not discharged the burden of proof, and that the Respondent's decision breached his family and private life rights under Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention). The judge found that the Appellant had failed to discharge the burden to show that the bank statement was not a false document, and while it was noted that a second bank letter had been submitted, even if that was authentic and proved that the necessary funds were available, the Appellant must show that he did not provide a false document in the first place.
7. The judge therefore dismissed the appeal under the Immigration Rules, and the appeal was also dismissed in relation to Article 8, the judge noting that the Appellant had only ever had limited leave to remain in the United Kingdom, and had no expectation of anything more permanent.
8. The Appellant applied for permission to appeal to the Upper Tribunal, there was no challenge to the Article 8 finding but it was contended that the judge had erred in finding that the burden of proof was on the Appellant, whereas the burden in this case was on the Respondent, because the Respondent was alleging that a false document had been submitted.
9. Permission to appeal was granted by Upper Tribunal Judge McGeachy who found it arguable that the judge had erred in paragraphs 5 and 6 of the determination, in

stating that the burden of proof was on the Appellant, when the burden is on the Respondent to show that the bank letter was not genuine.

10. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending that the First-tier Tribunal decision did not disclose a material error of law. The Respondent had provided strong evidence that the document was not genuine, and it was then for the Appellant to deal with that evidence and the Appellant had failed to do so.
11. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law.

The Upper Tribunal Hearing

Error of Law

12. I heard submissions from Mr Gondal who relied upon the grounds contained within the application for permission to appeal, in contending that the judge had erred by finding that the burden of proof was on the Appellant and not the Respondent. Mr Gondal submitted that the Document Verification Report relied upon by the Respondent and presented to the judge, was inconclusive and did not prove that the document was false.
13. Mr Bramble relied upon the rule 24 response and pointed out that in paragraph 3 of the determination the judge had correctly set out that in cases of deception the burden of proof is on the party making the allegation. Mr Bramble accepted the burden was in fact on the Respondent, but submitted that the Appellant had a duty to rebut the evidence put forward by the Respondent, and on that basis the judge had not erred in paragraph 6 by finding that "the Appellant has failed to discharge the burden which has now fallen on him to show that the first was not a false document".
14. Having considered the competing submissions I found that the judge had erred in law. The judge had correctly set out the burden of proof in paragraph 3, and in paragraph 5 had stated that the onus was on an Appellant in immigration appeals to prove his or her case on the balance of probability. That is generally true, but not in a case where the Respondent alleges deception, as it is the Respondent who bears the burden of proof in such a case, on a balance of probabilities.
15. The judge erred in paragraph 6 in recording that the Appellant had failed to show that the first letter he had submitted with his application was not a false document, and that even if the second letter was genuine, the Appellant must still show that he did not provide a false document in the first place.
16. I do not accept that the Appellant has such a burden, and in my view it is clear that the burden is on the Respondent to prove the falsity of a document to the appropriate standard, which is a balance of probability.
17. Because the judge had erred in finding that the burden was on the Appellant, I concluded that his findings were unsafe and the determination disclosed a material error of law which meant that it must be set aside.

18. Having set aside the decision of the First-tier Tribunal, both representatives indicated that they were ready to proceed so that the decision could be remade.

Remaking the Decision

19. I ascertained that I had all documentation upon which the parties intended to rely, and that each party had served the other with any documents upon which reliance was to be placed. I had the documents that were before the First-tier Tribunal which comprised of the Respondent's bundle with Annexes A-H, and the Appellant's bundle that had been before the First-tier Tribunal which comprised four pages. In addition I had a letter from the Appellant's representatives dated 5th January 2015 enclosing a statement dated 23rd December 2014 made by Tanveer Ahmad who was providing the third party support, a Standard Chartered letter dated 8th December 2014, and a letter from a legal representative in Pakistan dated 24th December 2014 confirming the authenticity of Tanveer Ahmad's statement dated 24th December 2014, and the Standard Chartered letter dated 8th December 2014.
20. As these documents had not been before the First-tier Tribunal, I had to decide whether they should be admitted into evidence pursuant to rule 15(2A) of the 2008 Procedure Rules. Mr Gondal explained that evidence had been submitted to prove that the First-tier Tribunal Judge was wrong to find that the bank letter was false.
21. I indicated that I would consider the evidence, but offered Mr Bramble the opportunity to apply for an adjournment to verify the contents of the Standard Chartered letter dated 8th December 2014 which appeared to verify the authenticity of an earlier Standard Chartered letter. Mr Bramble indicated that he did not require an adjournment and was content to proceed.
22. I established that both parties had a copy of the Document Verification Report (DVR) dated 6th March 2014, and the e-mails attached thereto.
23. Mr Gondal indicated that although the Appellant was present, he did not intend to call evidence but was content to proceed by way of submissions.

The Appellant's Submissions

24. Mr Gondal submitted that the bank letter submitted by the Appellant with his application was genuine and that the DVR did not state that it was not genuine but was inconclusive. Mr Gondal submitted that the letters issued by Standard Chartered dated 21st May 2014 and 8th December 2014 proved the authenticity of the letter submitted with the application, which Mr Gondal advised was the Standard Chartered letter contained at C1 of the Respondent's bundle. This is a letter with reference number mw/009-n confirming that 8,000,000.00 rupees were available to the Appellant, in an account held by Tanveer Ahmad, his cousin. This amount was said to equal £50,909.70 according to the Oanda exchange rate on 22nd January 2013.
25. Mr Gondal submitted that the Respondent had not attempted to verify the contents of the Standard Chartered letter dated 21st May 2014 which confirmed the authenticity of the earlier letter.

26. In relation to Article 8 the claim was based upon the Appellant's private life in the United Kingdom. It was accepted that he did not satisfy the requirements of paragraph 276ADE of the Immigration Rules.

The Respondent's Submissions

27. Mr Bramble relied upon the refusal decision dated 4th April 2014. He agreed that the letter in question was the bank letter at C1 of the Respondent's bundle, and submitted that the DVR was not inconclusive, but verified that letter to be false on the basis of an e-mail received from Standard Chartered Bank dated 6th March 2014 which was attached to the DVR.
28. Mr Bramble submitted that the letters from the bank dated 24th May 2014 and 8th December 2014 were noticeably different in format to the letter that had been submitted with the application. Mr Bramble contended that the DVR satisfied the burden upon the Respondent, and proved that the letter submitted with the application was false. I was asked to find that the subsequent letters from the bank addressed the issue of the amount of money in Tanveer Ahmad's account, but not the genuineness of the initial bank letter.
29. In relation to Article 8, Mr Bramble pointed out that there was no evidence provided by the Appellant as to the extent of his private life in the United Kingdom and the appeal should be dismissed both under the Immigration Rules and on human rights grounds.

The Appellant's Response

30. Mr Gondal pointed to the letter dated 8th December 2014 which explained why the format of the bank letters had changed, and also explained that the bank manager had changed.
31. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

32. Where an allegation is made by the Respondent, that a false document has been submitted with an application, the burden of proof is on the Respondent to prove this on a balance of probability. A mere assertion will not suffice, and evidence must be provided to discharge the burden of proof.
33. The Respondent's refusal letter does not detail why it was contended that the letter is false and does not refer to the letter by either reference or date, but refers to the Standard Chartered letter submitted with the application. Both representatives agree that this letter must be the letter at C1 of the Respondent's bundle with the reference mw/009-n. There is reference in the letter, in brackets, to the date 27-09-2013 which must be an error, as it appears common ground that this letter was in fact submitted with the application on 22nd January 2013.
34. Because there was no account number on this letter, the Respondent wrote to the Appellant's representatives by letter dated 18th February 2014 (E1 in the Respondent's bundle) requesting the account number.
35. The representatives responded by letter dated 22nd February 2014 providing the account number, and providing a further letter from Standard Chartered dated

9th January 2013, with reference number mw/007-n. This confirmed the account number of the third party Mr Ahmad.

36. The document verification request was made to the T1 overseas verification team. I do not accept Mr Gondal's submission that the DVR results were inconclusive. The verification results state that the document was verified as false. Attached to the DVR were some e-mails from Standard Chartered Bank in Pakistan. The e-mail sent on 6th March 2014 referred to the attached document as not being genuine and being fake, as there was no branch manager by the name mentioned in the document.
37. The Appellant produced before the First-tier Tribunal a further letter from Standard Chartered Bank dated 21st May 2014. This confirmed that Tanveer Ahmad held an account with that bank and had done so since 30th May 2009. The account number was confirmed and the amount in the account, as stated in the initial letter submitted with the application.
38. This letter referred to three previous letters sent by the bank, reference mw/009-n dated 9th January 2013, mw/007-n dated 9th January 2013, and mw/009-n dated 27th September 2013. The letter does not however specifically confirm the authenticity of those letters, and in any event the Tribunal file, and all the documentation submitted by both parties, only contain two letters. I can find no trace of mw-009-n dated 9th January 2013. The two previous letters submitted by the Appellant were the initial letter with the application which has a date of 27th September 2013 and a reference of mw/009-n, and one letter dated 9th January 2013 with reference mw/007-n which was submitted by the Appellant's representatives on 21st February 2014 to answer a query made by the Respondent in relation to the previous letter.
39. It is apparent that the Respondent did not carry out any further verification checks following the bank letter dated 21st May 2014.
40. The final letter from Standard Chartered Bank dated 8th December 2014 does refer to the previous letters submitted, although again there are references to the same three letters referred to in the letter dated 21st May 2014 whereas I have only had sight of two of those letters. The previous letters are confirmed as "true and genuine", although the initial letter submitted with the Appellant's application is referred to as being dated 27th January 2013 rather than 27th September 2013. However the reference is the same, and the date in that letter of 27th September 2013 must be an error.
41. The latest letter from Standard Chartered explains that the letterhead format of the bank was changed, and that the branch manager named in the initial letter was transferred from the Wapda Town Branch.
42. I have therefore been provided with more information than was before the First-tier Tribunal. I now have specific confirmation from Standard Chartered, that the previous letters were genuine, together with an explanation relating to the format of those letters and the fact that a branch manager was transferred. The reasons given for finding the initial letter to be false, was that there was no branch manager by that

name. Mr Bramble did not seek an adjournment to verify the contents of the Standard Chartered letter dated 8th December 2014.

43. I have carefully considered all the evidence placed before me, bearing in mind that severe consequences can follow from a finding of deception. I have placed weight upon the Standard Chartered letter dated 8th December 2014, which provides an explanation for the earlier finding that there was no branch manager of that name, and which has not been challenged.
44. Because of the weight I have placed upon this letter, I conclude that the Respondent has not discharged the burden of proof and therefore the application should not be dismissed by reason of paragraph 322(1A) of the Immigration Rules, and the appeal is allowed under the Immigration Rules. It is now a matter for the Respondent to consider the application further in relation to paragraph 245DD(h) as indicated in the refusal decision dated 4th April 2014.
45. As to Article 8, my primary finding is that this was not before me as there was no challenge to the findings made by the First-tier Tribunal in relation to Article 8, and therefore permission to appeal was not granted on that issue.
46. If I am wrong on that, and Article 8 was before me, it was pursued in the alternative, and as I have allowed the appeal under the Immigration Rules, there is no need to go on and make findings in relation to Article 8.

Notice of Decision

The determination of the First-tier Tribunal contained an error of law and was set aside. I substitute a fresh decision. The appeal is allowed under the Immigration Rules.

Signed

Date 6th February 2015

Deputy Upper Tribunal Judge M A Hall

Anonymity

The First-tier Tribunal made no anonymity direction. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

TO THE RESPONDENT FEE AWARD

As the appeal is allowed I have considered whether to make a fee award. The evidence which has caused me to allow this appeal was not produced before the decision maker, and therefore I make no fee award.

Signed

Date 6th February 2015

Deputy Upper Tribunal Judge M A Hall