



IAC-FH-AR-V1

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

Appeal Number: IA/18726/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19 August 2015  
Oral judgment**

**Decision & Reasons Promulgated  
On 25 August 2015**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MEHAR MUHAMMAD WAQAS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr L Bajwa of A Bajwa and Co Solicitors  
For the Respondent: Mr E Tufan,

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the appellant Mr Mehor Muhammad Waqas against a decision of First-tier Tribunal Judge Ian Howard promulgated on 17 March 2015 following a hearing at Hatton Cross on 6 February 2015 in which the judge dismissed the appellant's appeal against the decision of the Secretary of State dated 11 April 2014 to vary his leave to remain and to make a decision to remove him from the United Kingdom by way of a direction under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. It is important to consider the chronology which is relevant to the judge's decision. The variation of leave decision refers to an application made on 28 March 2012 for Tier 1 (Highly Skilled) Post Study leave to remain in the United Kingdom which was granted to the appellant valid to 28 September 2014. The refusal of 11 April 2014 states that the Secretary of State has now identified that false representations were made in relation to that application for the purposes of obtaining the leave to remain.
3. The basis of that finding is that in support of the application for Tier 1 leave on 28 March 2012 the appellant is said to have submitted financial documents showing investments worth 500,000 rupees at the National Savings Centre in Lalamusa in Pakistan. It is said the documents have been confirmed to be false. On 4 October 2012 the National Savings Centre Lalamusa confirmed that the submitted documents were not genuine and that there was no investment held by that centre in the appellant's name. It is stated that had the Home Office been aware of these facts at the time of considering the applicants immigration status on 28 September 2012 the appellant would not have been granted leave as a Tier 1 (Post-Study Work) Migrant.
4. The submission of false documents in support of the application to obtain leave is said to show a flagrant disregard of the UK's Immigration Rules and UK laws and it was not considered that the circumstances were such that discretion should be exercised in the appellant's favour and the appellant's leave was therefore curtailed under the provisions of paragraph 323(i) with reference to 322(2) of the Immigration Rules so as to expire on 11 April 2014.
5. The appellant challenged that decision in grounds of appeal received by the First-tier Tribunal on 28 April 2014 in which he states that the decision was not in accordance with the Rules, discretion should have been exercised differently, was not otherwise in accordance with the law and incompatible by reference to his human rights.
6. There is within the bundle in addition to the formal pleadings a statement that has been provided by the appellant setting out his details, immigration history, his current circumstances and making comment upon the curtailment decision in which he states that the documents submitted were not false and that he contacted the National Savings Centre in Pakistan after receipt of the decision who confirmed that he has had the funds of 500,000 rupees (5 lakh rupees) for the last four years. He contacted the head office and the Lalamusa branch and both had confirmed the existence of the investment.
7. There are further comments relating to maintenance and accommodation and Article 8 is touched on. In paragraph 10 the appellant said he is a genuine truthful, credible and honest person who has always observed the Immigration Rules during his stay in the United Kingdom and that he has not, and will not, have recourse to public funds.

8. The matter came before the judge, as stated, on 6 February 2015. In the determination the judge sets out the nature of the immigration decision under challenge and refers to the evidence that was made available and the grounds of appeal. In paragraph 6 the judge notes that by agreement between the parties the appeal proceeded by way of submissions only which is relevant because it appears that it was not considered appropriate by the appellant's representative to call him to give oral evidence which may have given an opportunity to explain some of the issues of concern to the judge.
9. The judge correctly identified that in a case where there is an allegation of false documents the burden of proving that rests upon the Secretary of State. The judge sets out the findings from paragraph 10 of the determination. What was of particular concern to the judge was the documentary evidence made available. The first of these is a document verification report (DVR) that the judge ruled as admissible at the hearing and in relation to which Counsel, although objecting to late admission, did not apply for an adjournment or allege any procedural irregularity or fairness in relation to the judge considering this material.
10. It is necessary to look at this document. The DVR states that the verification result is that the documents provided were verified as being false. In the DVR are reference numbers and rupee amounts in relation to three certificates that had been sent to the National Savings Centre for confirmation and verification as to their genuineness or otherwise.
11. There is within DVR redacted sections, one of which is said to contain the name of the person in relation to whom the verification checks were made. The judge has written on the copy that is attached to the correspondence section of the First-tier Tribunal file that under the second of those sections it contains the appellant's name Muhammad Waqas Mehar.
12. Of more importance, however, is a further document which is the response referred to as an attachment in the comments section of the DVR. This is a letter from the Government of Pakistan Regional Directorate of National Savings dated 4 October 2012. That date is important as a submission was made during the course of the hearing today regarding the passage of time between the evidence that was relied upon and the date of hearing in 2014. Had this been a matter where an application made in 2012 was only considered on evidence obtained in 2014 and where the passage of time may have been a more important consideration, Mr Bajwa's submission may have been relevant. But if one looks at the letter from the Government of Pakistan it is dated 4 October 2012 which is in fact relatively contemporaneous with the reference to the National Savings Centre for verification of the certificates provided. The letter states that it is intimated that the certificates provided by the appellant concerning the investments worth 500,000 rupees is fake and bogus as there is no investment in NSC Lalamusa in the name of the appellant.

13. There is then a comment regarding appreciation of such verification requests and a request for stern action to be taken against persons who arrange such bogus balance statements. It is not suggested that that document did not emanate from an official source within the Government of Pakistan and is signed by a joint director of the organisation.
14. In relation to the omission of the appellant's name from the DVR, the fact this relates to the appellant before the First-tier Tribunal is in fact corroborated by a further document that he sought to rely upon which is a National Savings Centre letter allegedly, according to the heading, from the same centre but dated 10 August 2012, which refers to the appellant's name and lists the savings that it is stated he holds by reference to the three certificate numbers and quantities of the individual investments which are identical to those appearing in the DVR.
15. The judge was therefore entitled to look at the documents as it had not been established, as suggested, that they might not relate to the appellant. The weight the judge gave to the documents has not been shown to be inappropriate in all the circumstances. Challenges to weight are matters that have to be given careful consideration as the weight to be given to evidence is ordinarily a matter for the judge. Two relevant questions arise which are firstly, did the judge consider the evidence with the required degree anxious scrutiny and, secondly, has the judge given adequate reasons for the findings made.
16. The judge considered the evidence and finds that the content to contain an unequivocal statement that the three certificates relied upon are fake and bogus. As a result the judge was satisfied the evidential burden upon the Secretary of State of establishing 'falsity' had been met. I find the judge did consider the evidence in the manner required and has given adequate reasons for the findings made.
17. The second documents are those referred to in paragraph 16 of the determination, bearing in mind no oral evidence was given and the appellant's case that he was only seeking to rely upon the documentary evidence that he had placed before the judge. There are two documents specifically referred to. The first is the letter dated 10 August 2012 purportedly from the National Savings Centre certifying that the appellant had purchased on 10 August 2010, which are deposited at the National Savings Centre, National Savings Certificates amounting to 5 lakh rupees with the reference number of the certificates referred in the DVR. The value of the certificates due to accrued interest over two years is stated to be 560,000 rupees and it is stated the certificates can be cashed at any time.
18. That clearly indicated to the judge that what had been purchased in August 2010 were National Savings Certificates. The second document is a letter of 12 June 2014 purporting to emanate from the National Savings Centre. It has a date on it of 11 June 2014 under the signature appearing but it is dated 12 June in relation to what appears to be a counter-

signatory. This states that in fact four years ago the appellant bought National Lottery Bonds from the centre which had been redeemed and transferred into a savings certificate.

19. The judge in paragraph 16 refers to inconsistencies in the information provided by the appellant within the documents he relies upon in that one was claiming National Savings Certificates were bought on 11 August 2010, whereas the later letter was stating that National Lottery Bonds were bought which had subsequently been redeemed and transferred. The judge stated in 2010 that the appellant, according to the original certificate, did not own National Lottery Bonds but three National Savings Certificates.
20. It has been submitted today that the judge erred in relation to his assessment of the evidence and failed to understand the evidence and failed to adequately consider that evidence. The starting point for that submission is what is said to be the chronology that the three National Lottery Bonds were in fact purchased in 2010 and that they were later redeemed and the National Savings Certificates purchased in April 2014.
21. If one starts a consideration of paragraph 16 from that point in time then it does appear that the findings of the judge are contrary to the appellant's chronology. But that is not the position this court has to adopt. The starting point is to consider whether the judge made a material error by failing to consider the evidence with the required degree of anxious scrutiny and it is clear that he did not. There was no oral evidence called and no other evidence given to the judge to provide an explanation for the identified discrepancy. The finding by the judge, the factual finding that these two documents contain a discrepancy is correct. It has not been shown that this is a finding contrary to the evidence and it has not been shown it is a finding that is irrational, perverse or which can be challenged on any public law ground.
22. The judge also had before him at that stage the DVR stating the certificates were bogus and evidence provided in support of the claim to the contrary that were contradictory in nature. It cannot therefore be said that the judge has erred in relation to the assessment that the Secretary of State had discharged the burden of proof upon her to the required standard in relation to the issue of falsity.
23. Counsel for the appellant today was asked whether the alleged error in relation to paragraph 16 was an assertion of error of fact but if one considers the evidence that was made available, even if there is a factual error in relation to one of these documents, that was not proved before the judge and in fact has not been proved in other evidence provided since. The submission that the appellant had to own the National Lottery Bonds as otherwise he could not have obtained the National Savings Certificates does not appear to have been a matter that was explored before the judge and it is clear that no evidence was provided to the judge at the First-tier Tribunal to support the contention that without ownership

of the National Lottery Bonds the appellant could not obtain the National Savings Certificates.

24. The next issue that was submitted in relation to the making of an error of law is that of intention. It is settled law following **AA (Nigeria) [2010] EWCA Civ 773** that the reference to false representation and false documents in the Immigration Rules requires an element of dishonesty even though that dishonesty need not be that of the appellant himself.
25. The Court of Appeal considered this matter further in **JK (India) v Secretary of State [2013] EWCA Civ 1080** in which they confirmed in relation to Section 322(1A) that that paragraph was deliberately couched in terms intended to prevent the making of dishonest applications with the result that applications were to be refused even though the dishonesty employed may be not be that of the applicant himself or herself.
26. It is therefore a reoccurring theme in the case law that there are two elements to a 'dishonesty' appeal. One is whether the Secretary of State has established that the documents are by their nature false or contain false statements and the second the mental element, the mens rea, of the appellant or another person and whether this has been established. The determination on the face of it is silent as to whether the judge considered the issue of the necessary mental element but it is clear from the case of **R (Iran)**, which although somewhat dated still provides useful guidance in relation to the assessment of an error of law, and subsequent cases that even if a determination appears silent in relation to an issue a judge on appeal is entitled to find no material error of law if it can be inferred from a reading of the determination that this element has been properly considered, has no application, or is not material.
27. In relation to this matter, it is accepted by all parties that the application made in 2012 was an in-country application that was made by the appellant himself. It is not suggested that any other party was involved or that an agent or some other person is responsible for the submission of the documents. The judge's finding that these are not genuine documents must mean that the starting point in relation to this issue has to be the finding that these documents are fake and bogus. If they are fake and bogus then the appellant himself in submitting those documents to the Secretary of State in support of an application must have known they were fake and bogus and therefore must have had the necessary negative intent required. No alternative explanation has been provided other than disagreement with the core finding.
28. There is clearly a contradiction between the documents as referred to in paragraph 16. The letter of 10 August 2012 is said to contain a misrepresentation/ false statement relating to the purchase of National Savings Certificates. I accept that in relation to that matter the appellant may not be responsible but it is not only his intention that is relevant. It can quite properly be inferred that in finding that the documents are fake

and bogus the judge has accepted that the necessary mental intent has been established that relates to the appellant himself.

29. For that reason I find (i) that in relation to the substantive finding regarding the falsity of the documents no error of law has been established, (ii) that in relation to the challenge on the basis of intention, although it is arguable the failure of the judge to set out consideration of this issue in the determination may be an arguable error of law, it is not material to the decision to dismiss the appeal. It is quite clear from the findings that that element can be inferred as being satisfied from the substantive findings in paragraph 13 onwards.
30. For that reason my finding is that there is no legal error material to the decision to dismiss the appeal established and this appeal itself must be dismissed.

### **Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

Signed

Date: 21 August 2015

Upper Tribunal Judge Hanson

### **TO THE RESPONDENT FEE AWARD**

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

Signed

Date: 21 August 2015

Upper Tribunal Judge Hanson