



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

Appeal Number: IA/19325/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 14 January 2015**

**Determination
Promulgated
On 22 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MR BHAUMIK BHARATBHAI DESAI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms S Vidhyadharan, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing his appeal against the refusal of leave to remain as a student on the ground inter alia that he had relied on a forged bank statement, and thus his application fell for refusal under paragraph 322(1A) of the Rules. The First-tier Tribunal did not make an anonymity direction, and I do not consider that such a direction is warranted for these proceedings in the Upper Tribunal.

2. In support of the forgery allegation, the respondent relied on a document verification report. This specified the type of document which had been submitted for verification: a bank certificate and statements from Punjab National Bank. It also specified the relevant branch location: GT Road, Surat. It further specified the account name and the account number. However the details of who had been contacted at the bank were redacted. Details of the verifier were also redacted. The contact history was stated to be as follows:

Called the number and spoke to [redacted] - assistant manager who confirmed that the account number is incorrect - he confirmed that also Punjab National Banks have a sixteen digit account number.

[Redacted] confirmed that the document submitted by the applicant is not genuine.

3. In the notice of appeal, the appellant's solicitors, Maalik & Co, pleaded that the Secretary of State did not discharge the burden of proving that the appellant had supplied a false document in relation to his application. In a subsequent letter addressed to the Home Office Presenting Officers' Unit dated 10th June 2014, they said their client noted the contents of the document verification report. He had since spoken to his father, who had informed him that the bank had stated that there had not been any contact or query from the Home Office about the account. In the light of this, they requested that the allegation against the appellant was supported either by a letter from the bank or an e-mail from the bank or a recording of the purported telephone conversation, as their client denied the allegation against him.

The Hearing Before, and the Decision of, the First-tier Tribunal

4. The appellant's appeal came before Judge L K Gibbs sitting at Hatton Cross in the First-tier Tribunal on 1 October 2014. Both parties were legally represented. Mr Mahol, the appellant's legal representative, relied upon an extensive skeleton argument. He submitted that the respondent had not offered any proper or conclusive evidence to substantiate the allegation of forgery. On balance, the evidence contained in the DVR was inconclusive, and so the respondent had not discharged the burden of proof.
5. In his oral evidence, the appellant confirmed that his father had contacted the bank in India who had said they had not received any enquiry relating to his bank documents. In cross-examination, he was asked why he had not obtained or provided any written evidence from the bank with regard to his bank statements. The appellant said he did not realise he had to do this as previously his bank statements had been accepted by the Home Office. He complained the Home Office had not said who they contacted or what telephone number had been used.
6. In her subsequent decision, Judge Gibbs held at paragraph 12 as follows:

The respondent has relied on a telephone conversation with an assistant manager from Punjab National Bank. Although I acknowledge Mr Mahol's point (that the name and telephone number of the person [contacted is not given] and nor is there a record of the telephone conversation) I am not

satisfied that in this particular appeal this undermines the weight that I can place on the DVR. I say this because the information given does not pertain only to the appellant's bank account but is a general statement that all Punjab National Bank accounts have 16 digits. Given the general nature of this information I find that it is less relevant as to which branch was contacted or the specific name of the person as the information provided is general to all accounts.

7. The judge went on to find in paragraph 13 that the respondent had discharged the burden of proof which then shifted to the appellant. She found the appellant had not produced any evidence at all to contradict the allegation made by the respondent. Although he said that his father was able to contact the bank, she would expect written evidence/support from the bank. She found that the lack of such obviously required evidence, from a legally represented appellant, caused her to have significant doubts about his credibility. In paragraph 14, the judge ruled that she was satisfied on the balance of probabilities that the respondent had discharged the burden of proof. The appellant had provided false documents in his application and the refusal under paragraph 322(1A) was correct. The judge considered an alternative claim under Article 8 ECHR, and dismissed it.

The Grant of Permission to Appeal

8. On 25 November 2014 First-tier Tribunal Judge P J G White granted the appellant permission to appeal for the following reasons:

It is arguable that the judge is in error in finding that such a document is sufficient to discharge the burden of proof resting on the respondent (see the discussion in **Shen (Paper appeals, proving dishonesty) [2014] UKUT 00326 (IAC)**), particularly when the judge is critical of the appellant's failure to obtain evidence directly from the bank.

The Rule 24 Response

9. On 8 December 2014 John Parkinson of the Specialist Appeals Team settled a Rule 24 response on behalf of the respondent opposing the appeal. He submitted the grounds were a lengthy series of counter assertions and amounted to nothing more than a continuing disagreement. There were no cogent arguments advanced to deal with the central issues.

The Hearing in the Upper Tribunal

10. At the hearing before me, there was no appearance by or on behalf of the appellant. I was satisfied that proper notice of the hearing had been served on the appellant's nominated legal representatives, Maalik & Co, and on the appellant himself at the address for him given in the application for permission to appeal to the Upper Tribunal. The notice had been issued on 10 December 2014, and sent to both the appellant and his representatives by first class post. As there was no satisfactory explanation for the absence of representation on behalf of the appellant, I proceeded to hear the appeal in the appellant's absence. Ms Vidhyadharan submitted that the appeal should be dismissed for the reasons given in the Rule 24 response.

Discussion

11. **Shen** is concerned with paper appeals, where considerations of procedural fairness in the context of an allegation of dishonesty are potentially more acute. In this case, the appellant was legally represented throughout the appeal process, and he was given an oral hearing of his appeal, as he had requested.
12. Judge Gibbs rightly recognised that the burden of proof lay with the respondent to provide sufficiently cogent evidence of forgery such as to discharge the burden of proof on the balance of probabilities. If the evidence was too weak or equivocal to sustain a prima facie case, then the allegation of forgery fell away. Conversely, if the evidence was sufficient to sustain a prima facie case, the evidential burden shifted to the appellant to bring forward evidence in rebuttal which negated or at least undermined the prima facie case.
13. I find that the judge has given adequate reasons in paragraph 12 of his decision as to why she has found that the respondent has discharged the burden of proof; and that in consequence the appellant has a case to answer. Whether or not all Punjab National Bank accounts have sixteen digits is a question which is objectively verifiable with relative ease. As indicated by the judge, the truth of this proposition is not dependent on which branch was contacted, or the identity of the assistant manager of the branch who allegedly gave this particular piece of information. If it is true that all Punjab National Bank accounts have sixteen digits, the bank documentation relied upon by the appellant is clearly fraudulent. For the purported account number has only six digits.
14. Since the appellant and his legal representatives were in possession of the DVR well in advance of the appeal hearing, there was plenty of time to gather evidence to rebut the proposition that all bank accounts for the Punjab National Bank have sixteen digits.
15. So there was no procedural unfairness in the judge finding that the appellant had not brought forward any credible evidence to rebut the central piece of evidence which underpinned the forgery allegation, and which (if accepted) was completely determinative of the issue of forgery.
16. In short, the judge reached a conclusion that was reasonably open to her on the evidence and which was adequately reasoned.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly this appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date **22 January 2015**

Deputy Upper Tribunal Judge Monson

