



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

Appeal Number: IA/21526/2014

THE IMMIGRATION ACTS

**Heard at Field House
On: 4 September 2015**

**Decision & Reasons Promulgated
On: 8 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MR MOHAMMAD MANSOOR AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pretzell, counsel instructed by Haris Ali Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by against the decision of First-tier Tribunal Judge Ian Howard (hereinafter referred to as the FTTJ), promulgated on 16 March 2015.

Background

2. On 7 August 2013, the appellant applied for further leave to remain in the United Kingdom as a dependant partner of a Tier 4 migrant. That application was refused on 9 October 2013 with no right of appeal and a decision was also made to remove him from the United Kingdom under

section 47 of the Immigration, Asylum and Nationality Act 2006. Following the appellant's judicial review of that decision, a further decision was served on 8 May 2014 against which he appealed. The basis of the respondent's decision was that the appellant had submitted a false document, namely a passport with the reference number of KC273212, with his application

3. In his grounds of appeal, the appellant explained that the Pakistani authorities had issued him passport KC273212 with an incorrect date of birth and that he had later been issued a further passport with the date of birth corrected. He maintained that passport KC273212 was genuinely issued by the Pakistani authorities and that he had submitted both passports to the Home Office with his application.
4. At the hearing before the FTTJ, the respondent relied upon a document examination report of passport KC273212, which stated that it had been altered in two places by mechanical abrasion, which was visible to the naked eye. It was said that changes had been made to the year of birth and the holder's identity card number. As passport KC273212 was used to obtain the appellant's current passport, the respondent considered that the subsequent passport was also fraudulently obtained.
5. The FTTJ was satisfied that the evidential burden on the respondent to show that deception was used had been discharged on the basis of the document examiner's report. He further found that the original year of birth was 1980 and not 1988 and consequently found that the appellant was not a minor at the time passport KC273212 was altered. The FTTJ's finding was made notwithstanding the witness evidence to the effect that the appellant was a minor and reliant on his parents at the relevant time. The FTTJ also concluded that the appellant's removal from the United Kingdom would not amount to an interference with his family life with his wife as her course was due to end in May 2015.
6. The grounds seeking permission argued, *inter alia*, that the FTTJ failed to refer to the appellant's documentary evidence which included documents from the passport office in Lahore; that he gave no reasons for rejecting this evidence and gave no adequate reasons for rejecting the oral evidence of the appellant and his witnesses.
7. Permission to appeal was granted by First-tier Tribunal Judge Chambers on 27 May 2015 on the basis that the FTTJ failed to give adequate reasons for rejecting the evidence of the appellant and his witnesses.
8. At the hearing before me, Mr Pretzell relied upon the grounds, stressing that the FTTJ accepted the evidence contained in the document examination report but did not engage with any of the other evidence before him. It was not in dispute that the passport in question had been altered as stated in the document examination report, however it was the appellant's case that it was not he that was responsible.

9. Mr Pretzell referred me to copies of manual records, which the appellant had obtained from the Pakistani authorities and which showed that passport KC273212 was incorrectly issued with a year of birth of 1987. He argued that the passport had been manually corrected by the passport office in Lahore to show a year of birth of 1988 and that subsequent electronic passports also showed 1988. The appellant had not used passport KC273212 to travel. I was also referred to a number of other documents, which confirmed that the appellant was born in 1988, including a school certificate, supplementary examination results and the appellant's marriage certificate. Mr Pretzell argued that the FTTJ had looked for a motive for the appellant's date of birth to be altered and had decided that the appellant's date of birth was 1980 without any evidence to support that. That finding took no account of the evidence from the Lahore passport office as to the date of birth originally recorded for the appellant. There had been no dishonesty by the appellant.
10. Mr Avery did not make any arguments in support of the FTTJ's finding that the appellant's year of birth was 1980. He argued that there was no evidence that the Pakistani authorities were responsible for altering the passport in question. The evidence from the passport office merely showed that his year of birth was 1987. The subsequent passports had simply been issued on the basis of the first altered passport. He submitted that the remainder of the appellant's evidence was produced subsequent to the amendments to the first passport, which was used in order to obtain that evidence. Mr Avery argued, relying on AA (Nigeria), that a false document in and of itself is enough to warrant refusal and that the respondent does not have to prove the appellant knowingly used a false document. There was no evidence predating the passport to support a date of birth of 1988 and it was unlikely that the passport office would make a manual correction.
11. In reply, Mr Pretzell disagreed with Mr Avery's reading of AA and stressed that there must be some dishonesty shown by the appellant. The appellant was a minor at the time, regardless of whether his date of birth was 1987 or 1988. The appellant had never used passport KC273212 to obtain entry clearance.

Decision on error of law

12. At the hearing before the FTTJ, the appellant provided evidence from the office which issued passport KC273212, showing that his year of birth was recorded as 1987. That evidence consisted of the manual record made in 2003 (which was accompanied by the appellant's passport photograph) as well as a letter from the same office dated 31 October 2013, which makes reference to the aforementioned records. Had the FTTJ considered this evidence, there would have been no need for him to speculate as to the year of birth which was manually altered on the appellant's first passport.
13. The oral and written evidence of the appellant, his uncle and aunt was that it was the Pakistani authorities, which had rectified the year of birth by

manually changing the passport. However, the FTTJ makes no assessment of that evidence other than to rely upon his speculative finding that the appellant was born in 1980.

14. As indicated in the document examination report, the alterations were obvious in that they were “visible to the naked eye.” Yet the Pakistani authorities have issued the appellant with two further passports giving his year of birth as 1988. On the face of it, this tends to support the appellant’s contention that the Pakistani authorities were responsible for altering the first passport and is a further reason why the FTTJ ought to have provided adequate reasons for rejecting the appellant’s account.
15. There was no evidence before the FTTJ to show that the appellant was born in 1980. However, once the FTTJ decided that any dishonesty was motivated by an intention to pose as a minor, he failed to consider whether the passport was dishonestly used in order to obtain leave to remain. In fact, that passport was never used in an immigration application. Furthermore, as indicated in AA, given the fact that the appellant would have been a minor in 2003, regardless of which year of birth is referred to, it would be more likely than not that a parent or guardian would be involved in any dishonesty than the appellant. This scenario was not considered by the FTTJ either.
16. I therefore set aside the FTTJ’s decision.
17. After hearing from the representatives, I accepted that it was not appropriate for me to proceed to re-make the decision as the appellant wished to obtain further evidence and in particular his parents’ marriage certificate. I indicated that the appellant might also wish to adduce his birth certificate. I decided to remit the matter to the First-tier Tribunal as I was of the view that the appellant had yet to have his evidence adequately considered.
18. No anonymity direction has been made previously, and I see no reason for one now.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

I set aside the decision of the First-tier Tribunal.

The appeal is remitted to the First-tier Tribunal to be heard *de novo* to be heard by any judge with the exception of FTTJ Ian Howard.

Signed

Date: 6 September 2015

Deputy Upper Tribunal Judge Kamara