Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/39989/2013
IA/39994/2013
IA/40000/2013

THE IMMIGRATION ACTS

Heard at Newport
On 5 February 2015

Determination Promulgated
On 12 May 2015

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

JAGRUTIBEN DINESHKUMAR PATEL
KAUSHIKKUMAR CHANDULAL PATEL
CHELSI KAUSHIKKUMAR PATEL

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Westmaas, instructed by Singhania & Co Solicitors
For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are nationals of India, wife and husband and their daughter respectively. They appealed to the First-tier Tribunal against decisions of the respondent on 10 September 2013 refusing them further leave and deciding to make

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removal directions under s. 47 of the Immigration, Asylum and Nationality Act 2006 (as amended). Judge Mathews dismissed their appeals. The appellants applied to the First-tier Tribunal for permission to appeal against that decision, and permission was granted by Judge Osborne. Amongst the reasons given by Judge Osborne for her decision were that the Judge erred in not applying a "high standard of proof" in the circumstances of the case before him. Before us it was accepted that the reference to such a standard was a mistake of law by Judge Osborne. Nevertheless, in view of the grant of permission, and particularly because it raised other issues, the matter comes before us.

2. The first appellant (whom we shall call "the appellant") came to the United Kingdom in 2007 as a working holiday-maker. She was granted further leave as a highly skilled migrant, expiring on 25 March 2010. She had further leave as a highly skilled migrant until 25 March 2013. The application resulting in the present decision was made on 12 March 2013, that is to say whilst the appellant had leave. The reasons for the refusal of the application refer to the circumstances of the appellant's previous application, as follows:

> "On 12 February 2010 Migration Gurus applied on your behalf for leave to remain as a Tier 1 (General) Migrant. They submitted documents to corroborate your previous claimed earnings from your (self-employment) with Prit Services Ltd and BMP Consultant Ltd providing accountants' letters and bank statements from 01 April 2009 until 01 January 2010. The Secretary of State is satisfied that the documents submitted in relation to these employments were counterfeit as made clear in the witness statements made by Detective Constable Laura Curry and Sonal Rajshakha.
>
> It is considered that the Secretary of State is satisfied that you have submitted false representations within your visa applications including gaining extensions of leave to remain in the United Kingdom. As false representation have been made in relation to your previous application your application for indefinite leave to remain has been refused under Paragraph 322(1A) of HC395 immigration rules which comes under General Grounds for Refusal. "

3. The judge had before him the reports to which reference is made in that decision, to which we shall refer in more detail shortly. He noted that the previous application did indeed rely on employment with Prit Services Ltd and BMP Consultants, or at any rate an income from those firms. The evidence produced by the Secretary of State appeared to show that Prit Services Ltd and BMP Consultants were amongst at least fifteen sham companies operated by Migration Gurus with the purpose of creating paperwork that could be used to provide evidence of employment and work that did not really exist. He noted also that the appellant's position was that she had not engaged in any deception:

> "18. I note that the appellant does not deny that she was in contact with [Migration Gurus]. She maintains however that her employment by Prit Services Limited and BMP Consultants was genuine and represented online data entry. In her oral evidence she was able to give little significant detail of the data entered or computer program used. She could produce no record of her own of such employment. No emails from her claimed online employer, despite that being her method of communication with them."

4. Looking at the evidence as a whole, the judge concluded that the appellant had not worked in the manner she claimed; the jobs had not existed, and that was the reason that she was unable to give details of them. He found also as a fact that when her previous application for leave to remain was made, she was aware that the documents being submitted, relating to her employment, contained falsehoods and that she "knowingly made a fraudulent application in that it relied on false employment details".

5. The judge went on to deal with the argument made on her behalf that she relied on different employment (and indeed, apparently, real employment) for the later application. His conclusion was as follows:

> "21. … Paragraph 322 (1A), relied upon by the respondent allows a refusal where, amongst other features, false information has been submitted, or material facts have not been disclosed. In my judgement the fact that the first appellant knew that her previous immigration status had been obtained by fraudulent assertions as to her employment, employment that had not occurred and therefore she knew to have been false, was and remains a highly pertinent material fact that she elected not to disclose. Indeed she chose not to address that employment in her present witness statement, a matter that I also found to be indicative of her knowledge of that purported employment was fraudulent.
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> 22. I find that the appellant was fundamentally dishonest in her previous application and failed to disclose that fact in the present application. In my judgement paragraph 322 is correctly and properly invoked and relied upon by the respondent in the present case. "

6. The judge went on to deal with issues of article 8 and the interests of Chelsi, and concluded that there was no reason why the appellants, as a family, should not be removed to India.

7. The grounds of appeal are rather curiously arranged. Ignoring the issue about the burden of proof, they may be stated as follows. First, the appellant met the requirements of the rules in relation to her current application. Secondly, so far as the allegation of falsehood is concerned, both the Secretary of State and the judge applied the wrong provision of the rules: paragraph 322(1A) relates to the current application; if there is an issue about a previous application, the appropriate rule is in paragraph 322(2). Thirdly, the Secretary of State did not adduce in evidence any document alleged to be false. Fourthly, the appellant has always abided by the law. The focus of Mr Westmaas' submissions before us was on the evidence going to the appellant's alleged misconduct.

8. The principal evidence upon which the Secretary of State relied consisted of the reports to which we have referred. Those reports relate to the enterprise that operated under the name of "Migration Gurus". Sonal Rajshakha is a financial investigator, whose report is dated 1 November 2011. He had examined the records of Migration Gurus and fifteen associated companies, amongst which were BMP Consultants and Prit Services Ltd. He concluded that none of the businesses were genuine operating businesses, but instead were instruments set up for the sole

purpose of providing the impression of a salary for clients of Migration Gurus. The client would pay a sum of money into one of the companies, it would be transferred to and from various company bank accounts, and it would then be paid by one of the companies to the client, purportedly as a salary. The money could then be used again in the same way. As the expert reported, "none of the fifteen companies appear to engage in any actual business activity of any kind. The usual payments one would expect to see for a legitimate operating business, such as payments for utilities bills, taxation, invoices, office supplies, transport, expenses, overheads, running costs, stock and lease/rental/mortgage payments for commercial premises are not apparent within the fifteen companies' bank accounts". He also said that:

> "The fifteen companies do not appear to operate as fifteen separate companies. In practice, they appear to operate as one single company, balancing and reconciling one another's financial accounts. The credits and debits for the majority of the fifteen companies' bank accounts almost do or, indeed do, balance one another out. There is no apparent generation of profit nor the sustenance of loss, as one would expect to see from time to time within a legitimate business account. The purpose of a network of companies as opposed to a single company in this case, appears to be an attempt to obscure the patterns of financial activity under which the scheme operates to disguise its source(s) of cash, which is/are MG clients paying themselves their own fake 'salaries'. Moreover, every single one of the fifteen companies' bank accounts is held with HSBC Bank plc. This is either a remarkable coincidence or more likely – deliberate, for ease of transfer between the fifteen companies' bank accounts. …
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> A figure of only £232,620.10 has been circulating around the fifteen companies' bank accounts for a period of greater than two years between 31 March 2008 and 15 August 2010. This does not appear to be a particularly high figure for fifteen companies and amounts to less than £7,000 per annum per company."

9. The statement, and DC Laura Curry's statement, also deal with the investigation into the activities of Vijay Sorthia and his wife, who operated Migration Gurus together; over £332,000 was found in cash in their bedroom. It is also not quite right to say, as was said on behalf of the appellant, that there is no evidence of any convictions arising out of these investigations; as the statements record, nine directors of the companies and six beneficiaries of the Migrations Gurus scheme had already pleaded guilty to offences of obtaining leave by deception and/or money laundering.

10. As Mr Westmaas pointed out in his submissions to us, the appellant's name does not appear in the documentation; the financial expert's conclusions were based on an assessment of about 84% of the companies' financial transactions, not 100%, and there was up-to-date evidence. It seems to us that that is beside the point. The evidence before the judge was amply sufficient to enable him to reach the conclusion that the companies for which the appellant had claimed to work were not genuine companies at all and had no work to do. The appellant was given an opportunity to describe her work, in her oral evidence before the judge, and gave an explanation which was so lacking in detail that he did not accept it as a description of how her working hours were spent.

11. The judge's conclusion was that the appellant had not undertaken the work that she had claimed to have undertaken. That conclusion was based firmly on the evidence and, in our judgment, shows no error of law. The claim of paid employment upon which she had obtained her previous grant of leave was false.

12. Mr Westmaas was right in drawing the distinction between sub-paras (1A) and (2) of Paragraph 322. But the judge did not make the error upon which Mr Westmaas relies. As we have indicated, the judge very clearly found that the failure in the present application to disclose the previous leave was obtained by a falsehood was non-disclosure of a material fact within the meaning of sub-para (1A). Mr Westmaas did not in his oral submissions make any suggestion that the judge was not entitled to reason in that manner. In the circumstances, refusal was mandatory. The applicant's previous (alleged) good conduct was irrelevant. No arguments were raised before us in relation to the judge's conclusions on article 8 or s.55, with which in any event we agree entirely. The applications and appeals of the second and third appellant depend entirely on those of the appellant. We affirm the dismissal of all three appeals.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 22 April 2015