

**Upper Tribunal
(Immigration and Asylum
Chamber)**
VA/17683/2013



Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 6 August 2015**

**Decision & Reasons
Promulgated
On 14 August 2015**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

MD KHOSRU MIAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - Dhaka

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is an appeal against the decision of Judge of the First-tier Tribunal O'Garro, who in a determination promulgated on 21 August 2014, dismissed the appellant's appeal against the respondent's refusal to grant him entry clearance as a family visitor. The initial application to enter the United Kingdom as a family visitor was made as long ago as 25 April 2011. That application was refused but was successfully appealed to the First-tier Tribunal on 12 February 2013.
2. Given the significant delay the respondent wished to confirm that the principal sponsor, Mr Choudhury, who was described as the appellant's mother's sister's son (his maternal first cousin) was still willing to act as sponsor to the appellant. To this end the respondent contacted Mr Choudhury on 25 March 2013. It is unclear to me, as it is to Mr Duffy who

represents the Entry Clearance Officer before the Upper Tribunal, what telephone number was used by the respondent to initially contact Mr Choudhury. The individual to whom the entry clearance assistant spoke purported to be Mr Choudhury and claimed that he did not know the appellant.

3. Following this conversation the person claiming to be Mr Choudhury sent a handwritten letter, dated 03 May 2013, to the respondent. The author of this letter confirmed his conversation with the British High Commission and reiterated that he did not know the appellant. The letter claimed the appellant was cheating by using Mr Choudhury's name as a sponsor. The handwritten letter gave the correct address for Mr Choudhury as identified in the application form. The letter also gave a (different) mobile and landline telephone number and an email address that was similar although not identical to Mr Choudhury's full name.
4. On 6 June 2013 the entry clearance assistant telephoned the person who had identified themselves as Mr Choudhury. In an interview record provided by the respondent the individual confirmed his identity and asked whether the British High Commission had received the handwritten letter. The person purporting to be Mr Choudhury once again confirmed that he did not know the appellant. This information was assembled in the form of a Document Verification Report and the application was refused on the basis that false representations had been with a specific reference to paragraph 320(7A) of the Immigration Rules.

Appeal before the First-tier Tribunal

5. Grounds of appeal to the First-tier Tribunal indicated that the appellant would be producing supporting evidence including documents relating to his mother's marriage, land deeds, details relating to Mr Choudhury's mother's marriage and several birth certificates. When the appeal came before the First-tier Judge she indicated that she had no additional evidence. Nothing it seems had been produced to her over and above the bare denials that were contained in the grounds of appeal. Based on the evidence before her the judge was satisfied that the false representations had been made out and dismissed the appeal.

Grounds of appeal to the Upper Tribunal

6. The grounds of appeal contend that a 58 page bundle had in fact been provided to the First-tier Tribunal but that, for whatever reason, it had not been considered by the judge. This bundle included a letter purportedly from Mr Choudhury confirming his willingness to sponsor the appellant and indicating that he had not received any telephone call from the British High Commission. Also included in the bundle of documents was a document said to be Mr Choudhury's birth certificate, a nikah namah relating to Mr Choudhury's parents' marriage, a nikah namah relating to the appellant's parents' marriage, and some land deeds. There was a date stamp on the covering letter from Hatton Cross indicating it had been

received on 6 August 2014. This was two days before the appeal was considered by the First-tier Judge.

Discussion

7. Having carefully considered this bundle, and having regard to the Hatton Cross date stamp, I am entirely satisfied that, through no fault of her own, the First-tier Tribunal did not have before her the evidence identified in the grounds of appeal, specifically, the 58 page bundle.
8. Following the authorities of **MM (Unfairness: E&R) Sudan [2014] UKUT 00105 (IAC)** I am satisfied that the First-tier Tribunal made a procedural error in terms of the availability of evidence. The First-tier Judge made a mistake of fact as to the availability of evidence when in fact it is clear that that evidence was available. I again emphasise that the First-tier Tribunal Judge was in no way at fault in failing to consider evidence that was not made available to her and her determination was otherwise unimpeachable.
8. The failure to put the appellant's bundle before the Judge has however rendered her decision unsafe. In circumstances where the appellant was effectively deprived of a fair hearing because the large bundle of documents in support of his appeal were not made available to the judge, I am satisfied this is an appropriate case to be remitted back to the First-tier Tribunal to enable full consideration to be given to the documents he has produced and to any oral evidence that may come from witnesses.

Notice of Decision and Directions

The First-tier Tribunal determination was infected by a material error of law.

The appeal is remitted back to the First-tier Tribunal a Judge other than Judge O'Garro for full consideration to be given to the documents produced by the appellant and to any supporting oral evidence.

I further direct that the respondent disclose, by means of a section 108 application if necessary (of the Nationality, Immigration and Asylum Act 2002), the telephone number initially used to contact Mr Choudhury, and how that number was first obtained.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Blum