



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

Appeal Numbers: IA/39913/2014
IA/39914/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 28 January 2016**

**Decision & Reasons Promulgated
On 29 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**MRS AGAMPODI VIDYANGANI LAKMALI SILVA
MR SANJAYA KUMARA UDAHAGE DON
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Attendance

For the Respondent: Mr Richards, Senior Home Office Presenting Officer

DECISION ON ERROR LAW

1. The Appellants had appealed against the decision of First-tier Tribunal Judge Clapham whereby he had dismissed the Appellants' appeals against the Respondent's decisions to refuse their Tier 4 (General) Student applications.
2. Permission to appeal was granted by First-tier Tribunal Judge Mark Davies.

3. The Tribunal had served notice of the hearing date which was listed for today. That notice of hearing was served on the Appellants at their address provided in Leicester, but also on their solicitors (Messrs Jade Law Solicitors).
4. The case was called on at 10am at the hearing before me, but there was no attendance either by the Appellants or their solicitors.
5. I took the precaution of putting the case back in my list, but despite doing so and after completing all other cases, there was still no attendance by or on behalf of the Appellants.
6. I satisfied myself from the Tribunal's file that there had been proper service of the notice of hearing.
7. Mr Richards submitted that the matter ought to proceed. I canvassed with him the fact that serious allegations were being made against the Appellants by the Respondent and he indicated that it was for the Appellants to respond to such matters which they had failed to do.
8. Having considered the grounds of appeal and the matters raised, I come to the clear view that there is no error of law in the decision of the First-tier Tribunal.
9. The original decision of the Respondent made it quite clear that a bank verification letter was said to be false. Despite that the Appellants instead of providing evidence to contradict or to explain that document, sought consideration of their case on the papers.
10. As the First-Tier Tribunal noted, the Bank of Ceylon made it clear that the document produced by the Appellants was not genuine. The Judge noted that the position was therefore clear that the Appellants did not meet the financial requirements in the Rules.
11. As for the grounds of appeal against the Judge's findings, they are long but in reality do no more than seek an extension of time for the grounds and then set out a long extracts of case law, including the Court of Appeal's decision in **AA (Nigeria) v Secretary of State for the Home Department** [2010] EWCA Civ 773 and the Upper Tribunal's decision in **FW**.
12. I have carefully considered the First-tier Tribunal Judge's decision alongside the grounds of appeal and more generally.
13. In my judgment there is no material error law. The Judge did apply the correct standard of proof. He had made it clear that it was for the Appellants to address the concerns raised by the

Secretary of State. He said this at paragraph 5 and then again at paragraph 7 of his decision.

14. The Judge did not have to cite authority that proof of fraud or deception has to come from the Secretary of State. Especially since the Secretary of State had provided that proof in the form of the verification report. This was not a case in which a bare assertion of fraud was raised by the Respondent because specific disclosed evidence had been provided to the Appellants. The verification report was the Respondent's evidence.
15. The reality of the situation is that even if there had been an error by the Judge's failure to specifically state that it was for the Secretary of State to prove fraud or deception, the Appellants had wholly failed to provide any evidence to contradict the allegations made and the evidence relied upon by the Respondent. Therefore even if there was an error of law, it was not a material error of law because there has never been any sufficient evidence from the Appellants about the dubious documents that they had relied upon when seeking leave to remain and which documents their own claimed bank had said were not genuine.
16. The failure of the Appellants to provide a proper response to the matters raised against the Appellants was therefore fatal to their case.

Notice of Decision

17. The original appeal did not involve the making of a material error of law. Therefore the decision stands and the Appellants appeals remain dismissed.

There is no anonymity order made.

Signed

Date

Deputy Upper Tribunal Judge Mahmood