

**Upper Tribunal
(Immigration and Asylum
Chamber)**
IA/06384/2014



Appeal Number:

THE IMMIGRATION ACTS

**Heard at Bradford
On 18th June 2014**

**Determination
Promulgated
On 16 July 2014**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR TANZEEL UR REHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss H Aspinall of Counsel
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant a citizen of Pakistan born 7th September 1982 has appealed to the Upper Tribunal against the determination of the First-tier Tribunal (Judge Kelly) promulgated on 16th April 2014, dismissing his appeal against the Respondent's refusal of 21st January 2014 to grant him further leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant under the Points Based System.

2. The Appellant's application was refused on what was essentially one substantive issue. The Respondent concluded that the Appellant had submitted false documents in support of his Tier 1 application and thus it fell to be refused under paragraph 322(1A) of the Immigration Rules. The Appellant denies that the documents in question are false.

History

3. On 28th October 2011 the Appellant made application for further leave to remain as a Tier 1 Migrant. The Respondent considered that application and in doing so said the following:

"In your application, you submitted a Standard Chartered Bank account balance & maintenance certificate, a declaration of 3rd party funding and a legal letter of authentication all relating to Mrs Yasmeen Akber. The same documentation was also submitted relating to a Mr Amjad Mehmood in support of your application.

I am satisfied that the documents are false because Mrs Yasmeen Akber has been contacted through Standard Chartered bank and she has stated that she does not know Mr Tanzeel Ur Rehman (yourself) and that she has not provided you with any supporting documentation for your Tier 1 (Entrepreneur) application and does not support this application.

I am satisfied also that the documents relating to Mr Amjad Mehmood are also false because Mr Amjad Mehmood has been contacted through Standard Chartered bank and he has stated that he does not know Mr Tanzeel Ur Rehman (yourself) and that the document is false and does not bear his signature.

As false representations have been made and documents have been submitted in relation to your application it is refused under paragraph 322(1A), of the Immigration Rules.

In addition to the above, you have applied for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant but you have made false representations for the purpose of obtaining previous variation of leave.

On 29 September 2008 you applied for Tier 1 (Post-Study Work) and submitted a Post Graduate Diploma in Information Technology from Cambridge College of Learning. I am satisfied that the documents submitted from Cambridge College of Learning were false because the information obtained by UK Border Agency showed that Cambridge College of Learning never issued Post Graduate Diplomas in Information Technology".

4. When the hearing came before Judge Kelly he set out clearly the issue before him and the evidence put before him. He directed himself on the law saying at paragraph 3,

"Where it is proved that an applicant has made false representations or submitted false documents in support of an application for leave to remain in the United Kingdom, the decision-maker must refuse the application under paragraph 322(1A) of the Immigration Rules. The burden of proof is upon the respondent. Whilst the standard of proof is a balance of

probabilities, it generally requires particularly cogent evidence to meet this standard in cases where the allegation is one of fraud”.

5. The grounds seeking permission comprise three components.
 - (i) The first component which encompasses grounds one two and three seeks to advance that the Judge failed to apply the correct standard of proof and that he made no findings in respect of dishonesty/deception on the part of the Appellant.
 - (ii) The Judge’s findings of fact at paragraphs 12 and 13 of his determination are erroneous and amount to perversity because they are not supported by evidence.
 - (iii) The Judge failed to consider the Appellant’s Article 8 private life either inside or outside the Immigration Rules.

The Hearing

6. Miss Aspinall’s submissions relied on the grounds seeking permission. She emphasised that in paragraph 13 of the determination the Judge records an incorrect standard of proof and that the Judge has made no findings of dishonesty or deception. She submitted that the determination should be set aside on that ground alone. She further said that the evidence of fraud was insufficient in that what it amounted to was a report of two people stating they “disowned” the Appellant. She referred to the Appellant’s Article 8 claim and submitted that this had been raised in the grounds of appeal.
7. Mr Diwnycz served a Rule 24 response which he relied up.
8. At the end of the hearing I informed the parties that I reserved my decision and I now give my decision with reasons.

Considerations and Findings

9. I am satisfied that the determination of Judge Kelly discloses no material error requiring it to be set aside.
10. Contrary to the assertions made in the grounds of appeal I am satisfied that the Judge’s decision is based on a careful and rounded assessment of the evidence put before him. It was supported by clear and cogently reasoned findings.
11. What I term the main set of grounds seeking permission assert that the Judge has fallen into error by misdirecting himself on what is the correct standard of proof. A reading of the determination with care, reveals that this is not so. First it must be borne in mind that this appeal is a refusal against the application of paragraph 322(1A) of the Immigration Rules, by the Respondent. It is common ground in a 322(1A) application that the burden of proof is initially upon the Respondent.

“***Insert 322(1A) Here.....

12. The Court of Appeal guidance informs us that the correct approach in cases such as these (where the burden of proof falls on the Respondent) is that reflected in R (AN and Another) v Secretary of State for the Home Department [2005] EWCA Civ 1605 Richards LJ stated at [62]:

“Although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular, the more serious the allegation or the more serious the consequences if the allegation is proven, the stronger must be the evidence before a Court will find the allegation proved on the balance of probabilities”.

13. In essence this is precisely the approach which the Judge has directed himself to follow in paragraph 3 of his determination where he says,

“The burden of proof is upon the Respondent. Whilst the standard of proof is a balance of probabilities, it generally requires particularly cogent evidence to meet this standard in cases where the allegation is one of fraud”.

14. The contention seems to be that the Judge has misdirected himself in paragraph 13. I disagree. Paragraph 13 begins with the phrase *“In the light of the above ...”* that phrase clearly directs the reader to return to “the above” and that can only mean paragraph 12. Reading paragraph 12 in conjunction with paragraph 13 shows that what the Judge is saying is in effect that the Respondent has proved to a higher standard even than that outlined that the documents produced by the Appellant are false. Whilst the Judge may have expressed himself differently the substance of what he says is correct, because it stands to reason that a greater burden of proof must encompass a lesser one.

15. That being so I agree with Mr Diwnycz’s submission outlined in paragraph 3 of the response,

“The judge found that the appellant had been dishonest and submitted false documents and this had been proven by the SSHD beyond all reasonable doubt. There can be no complaint by the appellant in this regard, it seems the judge applied a higher standard of proof against the SSHD and the SSHD was still successful, the appellant can only complain if the judge found the deception and false documents had been proven to a standard lesser (not higher) than a balance of probabilities. For that reason the error is not material”.

16. So far as it is asserted that the Judge has made no findings in respect of the Appellant’s dishonesty/deception this ground in my view also encompasses the ground that the Judge’s decision was perverse. I find there is nothing perverse or irrational about the Judge’s findings. He has examined the evidence before him and found himself satisfied on the higher end of the balance of probabilities spectrum that the documents produced in support of the application are false. The grounds assert that there are no findings of dishonesty or deception. I am surprised at this ground. It is self-evident from a reading of the determination that if the

Judge is satisfied at the higher end of the balance of probabilities spectrum that the Appellant has produced false documents and has given reasons for being so satisfied, then the Appellant fails to fulfil the requirements of paragraph 322(1A).

17. The last challenge to the Judge's determination is based on Article 8 ECHR private life. I did raise this with Miss Aspinall at the hearing. It is said that the Judge has failed to make a full consideration and assessment of the Appellant's Article 8 private life. I see nowhere in the determination that any substantial evidence has been raised to enable the Appellant to succeed on an Article 8 claim. I accept that it was put in the grounds of appeal but only in the barest of terms. Those bare terms were repeated at paragraph 20 of the Appellant's witness statement and what it amounts to is,

"I am in the UK since April 2004 and will have resided here for ten years on 1st April 2014. I have therefore developed a private life in the UK and the Respondent's decision infringes my rights under the European Convention on Human Rights".

There was nothing more substantial than that put forward. If that is the extent of what was put before the Judge, it is hard to see how the Judge can be said to have erred because he failed to embark on a freewheeling Article 8 exercise. There was simply no evidence advanced before him to do so.

DECISION

18. For the foregoing reasons there is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated