



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

Appeal Number: OA/19536/2013
OA/19547/2013
OA/19555/2013
OA/19560/2013

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 5 June 2015

On 10 July 2015

Before

**UPPER TRIBUNAL JUDGE PINKERTON
DEPUTY JUDGE OF THE UPPER TRIBUNAL KAMARA**

Between

**MRS ZARLASHT
MASTER ZIAULLAH KARALOQ
MASTER MANSOUR KARALOQ
MASTER MOHAMMAD FAHIM KARALOQ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

Representation:

For the Appellant: Mr Saini, counsel instructed by Starck Uberoi LLP
For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellants, nationals of Afghanistan, appeal a decision promulgated on 27 January 2015 of First-tier Tribunal Judge Cohen

who dismissed an appeal against a decision to refuse the appellants leave to enter the United Kingdom under Appendix FM. Permission to appeal was granted on 10 April 2015.

Background

2. The sponsor, Mr Abdul Ghayem Karaloq, arrived in the United Kingdom during the year 2000. He remained here subsequently, was granted indefinite leave to remain in 2008 and naturalised as a British citizen the following year. On 13 June 2013, the appellants made applications for entry clearance in order to join the sponsor in the United Kingdom as his partner and children. Those applications were refused as the respondent considered that the first appellant had submitted a false English language certificate. In essence, City and Guilds were said to have informed the respondent that the date of birth of the person who had sat the test was 2 May 1991, whereas the first appellant's date of birth is 1 March 1973.
3. During the course of the hearing before the First-tier Tribunal, the appellants relied upon evidence obtained by Starck Uberoi LLP on their behalf which indicated City and Guilds had amended their records as to the appellant's date of birth at the request of the Test Centre.
4. Judge Cohen found as follows:
 - a. That the English language certificate was not genuine.
 - b. Someone had sat the test in the appellant's place.
 - c. He preferred the evidence of the respondent to that obtained by the appellants' solicitors.
 - d. He noted that the first appellant had failed an English language test twice before, that she signed her name with a thumb print and considered these matters undermined the sponsor's claim that she was well-educated.
 - e. He remarked that the sponsor, who had lived and worked in the United Kingdom for a decade, required an interpreter and he was from a similar background and area as the first appellant and as such she was "highly unlikely" to speak and read English to the required level.
 - f. That the decisions to refuse entry did not breach the appellants' human rights under Article 8 of the ECHR.

Error of law

5. The grounds of appeal submit:
 1. That the judge erred in concluding that the burden of proof in relation to an allegation that false documents were used rests on the appellant.

2. That the judge erred in attaching more weight to the respondent's evidence than that of the appellant.
3. That the judge made stereotypical comments regarding the appellant's ability to speak English.
6. Permission was granted in relation to the first ground alone.
7. We gave Mr Saini leave to argue all three grounds of appeal. Both representatives were in agreement that the FTTJ had erred in failing to set out in his decision that the burden of proof rests on the respondent where an allegation of falsity is made as is the case here, **AA (Nigeria) v SSHD [2010] EWCA Civ 773** applies. However, Mr Tarlow was of the view that it was not a material error in view of the judge's other findings, which included that the first appellant signed her name with a thumbprint and her previous failures to obtain the requisite English language qualification.
8. We found that the FTTJ had erred as stated and that this error was material owing to the unsatisfactory nature of the respondent's evidence. In essence, the document verification report was based on a series of emails between the ECO and City and Guilds. There is no mention, in the incomplete series of emails which were reproduced in the respondent's bundle, of the specific date of birth of 2 May 1991 for the person who enrolled at the Test Centre concerned. From the evidence before us, it is clear that the ECO's request of 24 July 2013 that City and Guilds recheck the certificate received no response from that body and that a further request was sent on 2 August 2013. The respondent's bundle does not contain any further correspondence from City and Guilds and thus it is difficult to understand what the ECO took into consideration in order to conclude that the test certificate was "not genuine." It is therefore questionable whether the respondent had established that there was an anomaly between the date of birth of the first appellant and the person who was enrolled for the test. Had the judge applied the correct burden of proof, the outcome may not have been the same.
9. Owing to the incomplete nature of the respondent's evidence, we also found there to be some merit in Ground 2, in that the judge's consideration of the evidence obtained by Starck Uberoi LLP may well have been inadequate.
10. In these circumstances we are satisfied that there are errors of law such that the decision be set aside to be remade. None of the findings of the FTTJ are to stand.
11. Further directions are to follow.

Conclusions

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

We set aside the decision to be re-made.

Directions

This appeal is remitted to be heard *de novo* in the First-tier Tribunal. The hearing will take two hours.

A Dari interpreter is required.

Signed

Date: 6 June 2015

Deputy Upper Tribunal Judge Kamara