



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

Appeal Number: IA/31367/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 19 January 2016**

**Decision Promulgated
On 27 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**HIMANSHU SHARMA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Claire (counsel) instructed by VK solicitors

For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Telford, promulgated on 5 December 2014, which dismissed the Appellant's appeal

Background

3. The Appellant was born on 24 June 1993 and is a national of India. On 29 May 2014 the Appellant applied for leave to remain in the UK as a tier 4 (student) Migrant. On 29 July 2014 the Secretary of State refused the Appellant's application.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Telford ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 5 February 2015 Judge Chambers gave permission to appeal stating *inter alia*

"4. The Judge is not to be criticised for failing to take account of evidence that was not placed before the Tribunal. The appellant's omission was however an unintended slip and the evidence it now transpires existed at the time.

5. Permission is granted to enable the unrepresented appellant to put the case he had intended. Though granted permission, it must be understood by the appellant that the burden remains upon him to demonstrate the reliability of the birth certificate. The addition of a translation does not, in itself, prove that".

6 (a) At the start of the hearing, counsel for the appellant tendered a 122 page bundle which included new documentary evidence and a witness statement from the appellant (dated 12 January 2016). The Home Office presenting officer had no objection to the production of the bundle.

(b) Mr Claire, for the respondent, referred to the grant of permission to appeal, & told me that it was at least implicit in the decision that the appellant has produced a translation of his birth certificate to the respondent. He told me that the respondent has not challenged the authenticity of the birth certificate, and referred me to the second page of the decision (at [3]) under the heading "*grounds of appeal*". There, the Judge records that the appellant claimed to have sent in further evidence - including a translation of his birth certificate.

(c) Mr Claire argued that although the Judge makes findings that the appellant has not produced a translation of the birth certificate, those findings are not adequately reasoned. He told me that the failure to give adequate reasons amounts to a material error of law. Mr Claire argued that (if I am with him on that argument, then) I am empowered by the grant of permission to appeal to consider the translation now reproduced at document 109 of the appeal bundle presented today. He urged me to set aside the decision and to consider the documentary evidence now produced, and thereafter to allow the appellant's appeal.

7. Miss Johnstone, for the respondent, argued that the decision to grant permission to appeal itself contains a defect because it does not identify an arguable error of law. She reminded me that [6] of the decision contains the Judge's findings of fact. The second sentence of [6] is a finding of fact that the appellant does not discharge the burden of proving that he is related to the

financial sponsor because a translated birth certificate is not produced. She referred me to both [5] & [7] and argued that there are adequate reasons for making the findings of fact contained in each of those paragraphs. She also argued that, even if I was to consider the documentary evidence produced today, the appellant could not succeed because, to succeed, the documents must be produced at the time of application, and it is obvious that the documents were not produced with the application and are only produced now, approximately 18 months after the date of application.

Analysis

8. Counsel for the appellant is correct that at [3] the Judge records the appellant's claim to have submitted a translation of his birth certificate. The difficulty for the appellant is that it is at [3] that the Judge summarises the grounds of appeal. What is contained at [3] is not a finding of fact, but is part of the procedural summary setting the scene for the actual decision.

9. At [4] the Judge records that this case was determined on documentary evidence only. At [5] the Judge records a summary of the evidence placed before him. There the Judge sets out, in clear and unambiguous terms, that the translation of birth certificate is not placed before him, and the information available to the Judge indicated that the respondent did not have a translation of the birth certificate.

10. It is against that background that the Judge sets out his findings at [6], the second sentence of which reads "*I find he has not shown that he is related to the financial sponsor as he has not produced to this court or to the respondent any copy of a translated birth certificate.*" That is a clear and unambiguous finding of fact which was manifestly open to the Judge to make. It is a finding of fact which is not challenged.

11. The wording of the permission to appeal creates some difficulty, because it might be interpreted as an offer to the appellant to re-litigate this case. That was not the purpose of the hearing before me. The purpose of the hearing before me is to determine whether or not the decision contains a material error of law. Neither the grounds of appeal nor the decision granting permission to appeal identify an error of law (material or otherwise).

12. Although brief, the decision contains findings of fact which were manifestly open to the Judge to make. At [7] the Judge reaches a conclusion that the appellant cannot succeed under the immigration rules because he has found that the translated birth certificate has not been produced. There can be no criticism of the fact-finding exercise. The Judge has correctly directed himself in law. This appeal raises no challenge to the Judge's findings in terms of article 8 ECHR. Having carried out the fact-finding exercise and considered the relevant law, the Judge reaches an unassailable conclusion.

13. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-

finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

14. The Judge carefully considered each strand of evidence placed before him. He carefully records the submissions that were made and then, after correctly directing himself in law, makes reasoned findings of fact before reaching conclusions which were manifestly open to him to reach.

15. I find that the Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

16. No errors of law have been established. The Judge's decision stands.

DECISION

17. The appeal is dismissed. The decision of the First tier Tribunal stands.

Signed

Date 22 January 2016

Deputy Upper Tribunal Judge Doyle