



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-000730
First-tier Tribunal No:
HU/06399/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 01 May 2023

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB

Between

MUQADAS ASHRAF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Lucy King, instructed by Qualified Legal Solicitors.

For the Respondent: Ms Sian Rushforth, Senior Home Office Presenting Officer.

Heard at Cardiff Civil Justice Centre on 1 December 2022

DECISION AND REASONS

1. The appellant is a national of Pakistan. On 26 September 2019 she applied for entry clearance to the United Kingdom on the basis of her relationship to her husband, Sajad Ali (the sponsor). Her application was refused on 19 March 2020. The basis of the refusal was that the Entry Clearance Officer's investigation of the documents provided to prove the sponsor's claimed employment and income caused him to think that false information had been submitted. Her appeal was dismissed by Judge Mathews in the First-tier Tribunal. She now appeals, with permission, to this Tribunal. Although, here as below, the appeal is on human rights grounds, it is clear that if at the date of the decision the appellant met the requirements of the immigration rules, she would be likely to have little difficulty in showing that her exclusion from the United Kingdom would be disproportionate.

2. The dispute between the parties is confined to the evidence of the sponsor's income. The appellant's case, as presented by Ms King, is that the results of the investigation upon which the Entry Clearance Officer relied do not point in the direction indicated. There was a considerable amount of evidence before the First-tier Tribunal in addition to that which had been before the Entry Clearance Officer. It was not and is not suggested that new or further evidence could be taken into account directly as supporting the original application, because of the rules requiring specified evidence presented with the application. The position here is that documents purporting to be in compliance with the rules were presented with the application, but the Entry Clearance Officer regarded them as "false". The purpose of the additional evidence is therefore to assist in establishing that the picture presented by the documents supplied with the application was a true picture.
3. In assessing the material before him, Judge Mathews clearly appreciated the latter point. We are satisfied, however, that he did err in his consideration of the evidence. We will state our reasons very briefly, because it will be necessary for another judge to consider the material, and we do not want anything we say here to be taken as expressing a view on the prime factual issue in this appeal.
4. The three reasons why we consider that the judge erred are as follows. First, the judge appears to have regarded the respondent's assessment of the documents as merely that they were unreliable, rather than that they were "false". The distinction is important, for two reasons. One is that a person who is found to have produced false documents may find that future applications are affected by that; secondly, in the circumstances of this case the burden of establishing that the documents were false fell on the Secretary of State. The judge cited Tanveer Ahmed v SSHD [2002] UKIAT 00439, which relates to unreliable documents not false ones. He stated at the beginning of his decision that the burden of proof lay on the appellant; and when assessing the Entry Clearance Officer's assertion about the documents, he appears to treat the question as being whether the respondent has raised a sufficiently powerful case on the matter to call for an answer from the appellant. We are therefore not confident that the judge applied the correct burden of proof.
5. The second reason for our decision is that, having cited Tanveer Ahmed, the judge appears to have immediately embarked on an investigation of whether the documents had been produced in such a way as to lead him to think that at least one of them was false in the sense of having been concocted. The reasons that he gives are, to say the least, somewhat speculative; and the process as a whole demonstrates an inconsistency in his approach to the question before him.
6. Thirdly, it does appear that he failed to consider all the evidence. At paragraph 17 he writes as follows:

“I observed that the documents advanced relate to 2020. That is relevant because none of them relate to the period considered in the document verification report.”

7. We accept Ms King’s submission that the judge’s statement in that paragraph demonstrates that he had in fact failed to take into account a number of the documents upon which she relied.
8. For these reasons, the judge erred in his determination of this appeal. As we have said, it will be necessary for the evidence to be reassessed, in full, by a different judge. We accordingly set aside Judge Mathews’ decision and remit the appellant’s appeal to the First-tier Tribunal for a fresh decision by a judge other than Judge Mathews.

C.M.G. Ockelton

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 27 April 2023