Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/10516/2012

THE IMMIGRATION ACTS

Heard at Field House	**Oral Determination**
On 19 June 2013	**Promulgated**
	On 1 July 2013

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

JAVID VALI UMARI GEN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India who applied for entry clearance as a visitor under paragraph 41 of the Immigration Rules. His application was refused in circumstances which I will deal with in greater detail later on. One of the bases upon which the Entry Clearance Officer relied was in relation to whether or not this was a family visit as defined by the Immigration Rules. That I think was not in fact material for the purposes

of the substantive consideration of the application. However it was of some importance when if it came to the ongoing right of appeal to the Tribunal. The Entry Clearance Officer decided:

> "You seek entry to the UK to visit your uncle. However you have not submitted any evidence to show you are related as claimed to your sponsor or that you have ever even met. Instead you have submitted a copy of a British passport and stated that the holder is your uncle, without substantiating this. I am therefore not satisfied that this application constitutes a family visit as defined by the Immigration Rules. If you wish to appeal against this decision, you should submit original documentary evidence demonstrating the stated relationship."

The decision went on:

> "Your right of appeal
>
> > 'You are entitled to appeal against this decision under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. If you wish to appeal you must complete the attached IAFT-2 Notice of Appeal form. An information sheet has also been provided. If you decide to appeal against this refusal of this application the decision will be reviewed with your grounds of appeal and the supporting documents you provide'."

2. The decision was made on 6 February 2012 and it was in due course reviewed by the Entry Clearance Manager who made a decision accepting the decision of the Entry Clearance Officer. The Entry Clearance Manager's decision was made on 9 July 2012.

3. The appeal, if it was an appeal, came before First-tier Tribunal Judge Hindson whose determination was promulgated on 6 November 2012. Unsurprisingly, the case was considered on the papers at Bradford. I say it was unsurprising. It was as a result of the invitation to do that but in any event neither the appellant nor the respondent attended. The appellant of course could not attend himself but it would have been open to him to have had an oral hearing where the sponsor or other family members had come to provide evidence. However the Immigration Judge did not determine the appeal, rather he provided a ruling on what he considered to be a preliminary issue and the ruling dealt with the familial relationship and he concluded that the appellant had failed to adduce evidence as to that relationship notwithstanding the fact it was his claim that his uncle, the brother of his father and the appellant also has siblings in the United Kingdom. The judge therefore concluded:

> "Notwithstanding that this point was made by the ECO in the refusal letter the appellant has provided no further evidence of relationship. He has simply reiterated his claim in the grounds of appeal. Further, he is electing to have his appeal determined on the papers means I

have not had the benefit of the oral testimony of the sponsor. I am surprised that he would chose to have the appeal determined on the papers in these circumstances. I am therefore not satisfied that the appellant is related as claimed to those he says he intends to visit."

4. In the granting of permission to appeal, Designated Judge Zucker considered that it was arguable that the judge was wrong in making a ruling as he did and that he should have determined the appeal. In reaching that conclusion he referred to the guidance offered in the case of **SB (family visit appeal: brother-in-law?) Pakistan [2008] UKIAT 00053**. In **SB (family visit appeal)** the Tribunal reached the conclusion that when there was a valid appeal before the Tribunal it was not good enough to say that there was no appeal. Instead, a valid appeal had to be disposed of in accordance with the statutory provisions governing such appeals and that required a decision to be made either allowing or dismissing the appeal. Consequently it deprecated the disposal of an appeal by ruling to the effect that there was none. In the circumstances of this case I am quite satisfied that there was an appeal and indeed that was what the Entry Clearance Officer said there was when he made his decision and indeed the form that had been provided to the appellant in which to complete his grounds of appeal had been provided by the Entry Clearance Officer himself. In those circumstances it would be slightly curious to say the least if it is subsequently found that there was no appeal. However, that is perhaps a matter of little moment in the context of this appeal.

5. The substance of the decision that was made by the Entry Clearance Officer was the application of paragraph 320(7B) of the Immigration Rules. Where paragraph 320(7B) applies there is an automatic refusal for a period of up to ten years, a period which commences from the date of the previous event in which the deception or submission of falsified documents or information was employed. The scheme of the Rules is that where an application for entry clearance has been refused under paragraph 320(7A), namely on the basis that there has been the submission of false documents or false information, the application has to be refused where a decision has been previously made under paragraph 320(7A), then any subsequent application has automatically to be refused under paragraph 320(7B). In this case there was an automatic application of paragraph 320(7B) because there had been an earlier refusal in 2011 on the basis of the submission of a false English examination certificate. We know that there was such a submission because Mr Watson, the Entry Clearance Manager, provided evidence that the appellant had been invited to interview in relation to that earlier application and during the interview he had admitted that an agent had given him the English language certificate which was one he knew to be false. Accordingly, there can be no answer save that the application fell to be dismissed by the Entry Clearance Officer, the Entry Clearance Manager and then any subsequent appeal had to be dismissed for similar reasons. It follows that the grant of leave in this case served no useful purpose whatever.

6. However, there is an issue as to whether or not the Entry Clearance Officer acted reasonably in requiring the material that he did in relation to the family relationship. It seems to me that a degree of caution has to be exercised in cases of this type when the Entry Clearance Officer is requiring an applicant to satisfy the requirements of the Rules as to a family relationship. The reason for doing this is that it seems to me it will be disproportionate to require an applicant to prove the family relationship by, for example, obtaining DNA evidence but the requirement for information will depend upon the circumstances of a case. In this case, because of the documentary deception that had earlier been used, it seems to me it was reasonable for the Entry Clearance Officer to make a requirement that the applicant would supply some form of documentary evidence to establish the relationship. In this case the applicant himself submitted a British passport but that did not indicate a British passport which he claimed was that of his uncle but the Entry Clearance Officer said that that was not sufficient to show the relationship between the passport holder and the applicant. That was something that the applicant could have made good in the review by the Entry Clearance Manager. It was also something that the applicant could have made good in his appeal before the Tribunal. Accordingly, there was an opportunity for the applicant to provide additional information that would have supported that relationship. He did not do so and consequently it was open to the judge to conclude that the applicant had failed to establish that he was related to the uncle as he claimed. It would have been open to him to have called the sponsor or his siblings to establish that point and he did not do so. In those circumstances the appropriate decision is that the appellant has failed to establish the familial relationship between himself and the UK sponsor and accordingly there is a finding that the 2003 Family Regulations do not provide a right of appeal to the Tribunal. Furthermore, and in the alternative, were he to have a right of appeal that right of appeal is bound to fail because it fell to be refused under the automatic provisions of paragraph 320(7B) of the Immigration Rules.

7. I accordingly find there was no material error in the judge’s determination.

ANDREW JORDAN
UPPER TRIBUNAL JUDGE