



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/24216/2012

**THE IMMIGRATION ACTS**

Heard at Piccadilly Exchange, Manchester  
On 23 August 2013  
Prepared 27 August 2013

Determination Sent  
On 30 August 2013

Before

UPPER TRIBUNAL JUDGE DAWSON  
UPPER TRIBUNAL JUDGE O'CONNOR

Between

ZAHIDA PARVEEN

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

**Representation:**

For the Appellant: Mrs S Daley, instructed by Rochdale Law Centre  
For the Respondent: Mr I Jarvis, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Pakistan born 30 September 1950. She appealed to the First-tier Tribunal against a decision of an Entry Clearance Officer refusing to grant her entry clearance to visit relatives in the United Kingdom.
2. First-tier Tribunal Judge Ransley dismissed this appeal on all grounds in a determination promulgated on the 5 February 2013. Upper Tribunal Judge Chalkley granted the appellant permission to appeal on 10 July 2013, and thus the appeal came before us.
3. In her pleaded grounds the appellant submitted that the First-tier Tribunal Judge erred in the following respects:

- i) by misdirecting herself in law by equating the appellant's desire with her intentions;
  - ii) by failing to give reasons for her conclusion that the appellant was 'not genuinely seeking entry as a visitor'
  - iii) by failing to put the appellant on notice that she intended (i) to conclude that the appellant had made false representations in an earlier entry clearance application, and (ii) to treat such finding as adverse to the appellant's credibility;
  - iv) by irrationally concluding, in paragraph 24 of her determination, that 'the appellant's intention should be informed by whether this was her first application for a visitor's visa after previously seeking to settle in the UK'
4. At the hearing Mrs Daley made submissions in support of the grounds, drawing attention, as she did so, to passages contained within the Court of Appeal's decision in A v Secretary of State for the Home Department [2010] EWCA Civ 773 and the Tribunal's reported decision of AA and others (Sectors Based Work: general principles) Bangladesh [2006] UKAIT 00026.
  5. In response Mr Jarvis submitted that these decisions were of no assistance to the Tribunal, as each gave consideration to a different immigration rule, and to an entirely different set of circumstances. He further asserted that the First-tier Tribunal Judge had given detailed reasons for her adverse credibility finding and those reasons had been available to her given the evidence she had been provided with. As to the claimed procedural unfairness, he observed that the appellant had been legally represented at the hearing, and that the legal representative had neither made an application for the sponsor's evidence to be re-opened to deal with the issue of the inconsistency nor sought an adjournment to obtain further evidence from the appellant in this regard.
  6. After having considered the parties submissions we announced our decision that the First-tier Tribunal's determination did not contained an error on a point of law requiring it to be set aside. We now give our reasons for that conclusion.
  7. In her Visa Application Form the appellant indicated that she sought entry to the United Kingdom for a period of two months to visit her son. The Respondent refused this application having concluded that the appellant had not established that (i) she was genuinely seeking entry as a visitor for a period not exceeding six months, and (ii) that she intended to leave the United Kingdom at the end of the stated two month period. When doing so the Respondent identified that he was not satisfied with the accuracy of the appellant's assertions as to her financial circumstances in Pakistan. The refusal notice also highlights the fact that the appellant had previous made an application for settlement in the United Kingdom, which had been refused, as had the appeal against such decision.
  8. In her determination the First-tier Tribunal Judge correctly directs herself to the relevant immigration rule [5], the decision under challenge [7] and the applicable

burden and standard of proof. She provided reasons for concluding that the appellant did not meet the requirements of the Immigration Rules, within paragraphs 10 to 25 of the determination. In doing so she observed that in her VAF the appellant stated that she receives no income from 'employment/occupation' but that she does receive monies from her United Kingdom based son. The judge then directed attention to a certificate from the appellant's former employers, which indicated both that the appellant ceased employment in January 2002 and that she receives a pension of Rs 10,425 per month [12].

9. The appellant's son gave evidence before Judge Ransley, confirming that the appellant receives the aforementioned pension, that she ceased employment in '2000 or 2002' and that he sends her £120 per month [13].
10. The judge then turned [18 to 20] to consider the determination of the Asylum and Immigration Tribunal (Judge Pacey) of 8 April 2009 made in relation to a decision to refuse to grant her settlement in the UK as the dependent relative of her son ('paragraph 317 appeal'). She cited [18] verbatim from paragraph 16 of Judge Pacey's determination, recording submissions made by the appellant's then representative to the effect that the appellant's only source of income was from her son. Judge Ransley subsequently concluded as follows in paragraph 22 of her determination:

"I find that untruths have been told by the Appellant and the Sponsor in the Appellant's paragraph 317 application/appeal in that the Appellant had failed to disclose that after retiring as a teacher in 2002 the appellant has been receiving a teacher's pension of Rs 10,425 per month. The Appellant made false representations by claiming that she was wholly financially dependent on her Sponsor-son in the UK and false representations were made to the effect that the Appellant was living in the most exceptional compassionate circumstances in Pakistan."

11. Mrs Daley submitted [ground 3] that it was unfair of the judge to come to this conclusion without putting the allegation of false representation to the sponsor, or appellant; either of whom, it is said, may have been able to provide adequate explanation for the apparent inconsistency.
12. We do not accept this submission. As we were reminded by Mr Jarvis, the appellant was legally represented before the First-tier Tribunal. It is obvious from even a cursory examination of Judge Pacey's determination that it was the appellant's case in the paragraph 317 appeal that she was wholly reliant on the monies provided to her by her United Kingdom based son. It is plain that the evidence before the Judge Ransley was in contradiction to this. The appellant's financial circumstances were clearly put in issue in the ECO's decision notice and, consequently, inconsistent evidence given in relation to those circumstances would evidently be relevant to the Tribunal's determination.
13. Even if the relevance of the inconsistent evidence had not occurred to the appellant's legal representative at the point in the proceedings when the sponsor was giving evidence, it was a matter specifically relied upon by the Respondent's representative during the course of his closing submissions [see paragraph 21 of the determination].

14. It is matter for the appellant and her legal representatives how she conducts her case. Despite the evident inconsistency, and the respondent's submissions made in regard to it, the appellant's legal representative made no application to recall the sponsor in an attempt to proffer an explanation; neither was an adjournment sought in order for evidence to be obtained from the appellant in this regard. The onus to apply for an adjournment or recall the sponsor to give additional evidence was on the appellant's legal representative. The judge was entitled to take the point against the appellant and in doing so did not act in breach of the principles natural justice.
15. Mrs Daley's reliance in this regard on the decision of A is misplaced. A was a decision of the Court of Appeal made in relation to paragraphs 322(1A), with reference to paragraph 320(7A), of the Immigration Rules, and involved a detailed consideration of the meaning of the term 'false representations'. Judge Ransley was not considering the applicability of either of these rules, but rather assessing the reliability of the appellant's evidence, and the credibility of her stated intentions. In doing so she was, in our conclusion, entitled to rely upon the fact that the appellant had given inconsistent evidence in an earlier application; evidence which appeared to suit her needs at that time but no longer does so.
16. In any event, the appellant, and her representatives, have now had ample opportunity to provide an explanation in relation to the aforementioned inconsistency, the determination of the First-tier Tribunal having been promulgated nearly 7 months ago. There has, however, been no additional evidence provided in this regard. Consequently, even had we concluded that the First-tier Tribunal had erred in placing weight on the inconsistency without providing the appellant or sponsor an opportunity to provide an explanation in relation to it, such error would not have led us to set aside the First-tier Tribunal's determination; there being no such explanation before us.
17. Turning back to the first of the appellant's pleaded grounds, we do not accept that the judge equated the appellant's intentions with her desire. It is plain that just because a person desires to live in the United Kingdom permanently this does not follow that such person does not have an intention to leave the United Kingdom at the end of a grant of limited leave.
18. Judge Ransley was fully aware that it was the appellant's intentions that were at issue [see paragraphs 11 and 25 of the determination]. In paragraph 24 the Judge was concluding no more than it was both the appellant's desire and her intention to live permanently in the United Kingdom with her son, for reasons she gave earlier in her determination.
19. As to the second of the appellant's grounds, the judge's reasons for concluding that the appellant did not genuinely intend to visit the United Kingdom for the stated two month period [22 - 25] were of equal application to her decision made in relation to paragraph 41(i) of the Rules.

20. Finally, we do not accept that the First-tier Tribunal erred in the manner claimed in the fourth of the appellant's grounds. The First-tier Tribunal Judge was entitled to take into account, when determining the relevance of the fact of appellant's previous visits to the United Kingdom, that, unlike the instant application, all of these visits had taken place prior to the appellant's application for settlement. This was particularly relevant given the judge's finding that the appellant had been untruthful in her attempts to gain settlement here.
21. Looked at as a whole, the reasons given by the First-tier Tribunal Judge for dismissing the appellant's appeal are clear, cogent and rational. She did not take into account matters of irrelevance and did not fail to take into account relevant facts. Her conclusions were open to her on the available evidence.
22. For these reasons we find that the First-tier Tribunal's decision does not contain an error on a point of law and it is to remain standing.

### **Decision**

For the reasons given above we find that the determination of the First-tier Tribunal does not contain an error on a point of law such that it ought to be set aside. The First-tier Tribunal's determination is to remain standing.

Signed:



Upper Tribunal Judge O'Connor  
Date: 27 August 2013