



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/05949/2013
IA/12464/2013

THE IMMIGRATION ACTS

Heard at Field House
On 4th March 2014

Determination Promulgated

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Before

UPPER TRIBUNAL JUDGE MOULDEN
UPPER TRIBUNAL JUDGE COKER

Between

VIJAY NATARVARLAL PATEL
BHUMIKABEN VIJAY PATEL

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Westmoreland of YDVisas
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants appeal a decision of the First-tier Tribunal which dismissed an appeal against a decision of the Secretary of State refusing to vary the appellants leave to remain in the UK.

Background

2. The first appellant had sought indefinite leave to remain in the UK by application dated 5th October 2012 having previously had leave to remain in the UK initially as a student since May 2005, then as a Highly Skilled Migrant and then as a Tier 1 (General) Migrant valid until October 2012. The second appellant had likewise applied for indefinite leave to remain as a dependant of the first appellant.
3. The first appellant's application was refused under paragraph 322(1A) of the Immigration rules on the grounds that in his previous application for leave to remain as a Tier 1 (General) Migrant he had submitted counterfeit documents and the Secretary of State was thus not satisfied that he had not used deception in his previous application. The second appellant was refused as the first appellant's dependant. We have referred in this determination hereafter to the appellant given that the appeal is predominantly concerned with the first appellant's appeal; the second appellant being dependant upon him.
4. The appellant denied all knowledge of the deception although it was acknowledged by him that those who had prepared the application - Migration Gurus Ltd - had "submitted dishonest applications to the Home Office on an extensive scale". The appellant sought permission to appeal on the grounds, in essence, that:
 - a. The respondent had failed to produce crucial evidence against the appellant namely payslips that he had submitted with his application;
 - b. That the prosecution of a person (Mr Modi) for his involvement with Migration Gurus Ltd and the lack of prosecution against the appellant was in favour of the appellant rather than adverse to the appellant as found by the First-tier Tribunal;
 - c. The appellant was not named in any of the police prosecution papers
 - d. Lack of reasoning by the First-tier Tribunal in discounting these matters
 - e. Lack of adequate reasoning for the findings by the First-tier Tribunal that the appellant had "provided wholly unconvincing and contrived oral evidence" and that the appellant was not credible because his evidence was inconsistent with him being "educated to degree level...".
5. Permission to appeal was granted on the grounds that the First-tier Tribunal judge had erred in law in failing to find on the evidence before him that "the respondent had discharged the burden of proof as opposed to just relying on his findings about working for the company at the relevant time lacked credibility."
6. Before us it was accepted by the appellant that the payslips in question had been returned to him by the respondent prior to the appeal hearing before the First-tier Tribunal and he had lost/mislaidd them; he had not produced them to the First-tier Tribunal judge.

7. Paragraph 322(1A) of the Immigration Rules is as follows:

Refusal of leave to remain, variation of leave to enter or remain or curtailment of leave
322. In addition to the grounds for refusal of extension of stay set out in Parts 2-8 of these Rules, the following provisions apply in relation to the refusal of an application for leave to remain, variation of leave to enter or remain or, where appropriate, the curtailment of leave:

Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused

(1).....

(1A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application.

8. Although in submissions before us the appellant's representative stated that the decision to refuse to vary leave had been incorrectly taken under 322(1A), this was not a ground of appeal, nor was it expanded before us and nor had it been taken before the First-tier Tribunal judge. In any event the First-tier Tribunal adequately and correctly considered this in paragraphs 50 to 53 of the determination, finding that the decision the subject of the appeal was predicated upon the appellant's previous deception.
9. In a carefully considered and detailed determination the First-tier Tribunal judge addressed the burden and standard of proof in reaching his conclusions. He describes this as being the "high end of the balance of probabilities" which is a mis-description but the appellant's representative confirmed that in any event that approach was in the appellant's favour; he did not take issue with this (IC (China)[2007]00027). The First-tier Tribunal judge found (in [67]) that the respondent had discharged the onus of proof at the high end of balance of probabilities for the reasons that followed and were set out in paragraphs 68 to 80. The First-tier Tribunal judge sets out the evidence before him with regards to *inter alia* Migration Gurus Ltd; the fraudulent circulation of money; the lack of expenses incurred by Pat Technology Ltd and that there was nothing in the police evidence that indicated that Pat Technology Ltd (for whom the appellant claimed to work) demonstrated that it was a genuine trading company or that a genuine salary was paid to any one by the company.
10. The First-tier Tribunal judge then goes on (in [81]) to evaluate the appellant's evidence, such evaluation including sustainable reasons why he did not find credible the appellant's evidence that he worked for Pat Technology including the appellant's unclear evidence about his role; his lack of knowledge of the address where he worked despite claiming to have worked there for 15 hours a week for 7 months and his inability to remember details of the work undertaken. The judge makes reference to the appellant being educated and having no communication difficulties. This reference is challenged by the

appellant although there is no apparent basis for such a challenge – it is self evident that an educated person with good command of English would inevitably be able to provide an address of where he worked for such a lengthy period and would recall details of the job he undertook particularly given that he had claimed it involved the supply of IT software and documents to other clients.

11. It is plain that the First-tier Tribunal correctly considered whether the respondent had discharged the burden of proof (albeit to a higher standard than was required) and had then considered the appellant’s oral and documentary evidence in context.
12. The conclusions and findings reached by the First-tier Tribunal were predicated upon careful evaluation of the evidence before him and correctly determining initially whether the respondent had discharged the burden of proof in establishing deception and thereafter the evaluation of the appellant’s evidence.
13. There was no challenge to the dismissal of the appeal on Article 8 grounds. Although the First-tier Tribunal dismissed the appeal on those grounds it had been acknowledge in any event by the appellants that if the appeal was unsuccessful under the Rules, the appellants would not be relying upon Article 8 (or the respondent’s evidential flexibility policy).

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. We do not set aside the decision.

The decision of the First-tier Tribunal judge stands.

Date

Judge of the Upper Tribunal Coker