



IAC-FH-CK-V1

**Upper Tribunal  
(First Tier Tribunal and Asylum Chamber)** Appeal Number: IA/13392/2014

**THE FIRST TIER TRIBUNAL ACTS**

**Heard at Field House**

**On 4 November 2014**

**Determination  
Promulgated**

**On 11 November 2014**

**Before**

**THE HONOURABLE MRS JUSTICE ANDREWS DBE  
DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**UMAR KHALIL**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Z Nasim, Counsel

For the Respondent: Mr P Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a determination promulgated on 17 July 2014 by the First-tier Tribunal (Judge Ferguson) dismissing an appeal by the appellant, Mr Khalil, against the refusal of his application for leave to remain as a Tier 1 (Entrepreneur) under paragraph 322(1A) and 245DD of the Immigration Rules. The facts and the background are set out in some detail in the determination and we need not repeat them here.

2. Essentially the appeal turns on a single point of law for which permission was granted by Judge PJM Hollingworth, namely the adequacy of the description by the Tribunal of the standard of proof in relation to the respondent.

3. In paragraph [7] of the determination the Tribunal referred to the burden of proof on the respondent to establish any contested precedent fact – here, the alleged falsity of a document relied on by the appellant. That paragraph deals with the burden and standard of proof as follows:

“Because this is a decision taken under paragraph 322 of the Immigration Rules the burden of proof is first on the respondent to establish any contested precedent fact, here, whether there is evidence to establish that the document is likely to be false.”

4. The documents relied on by the appellant included a copy of a National Savings Account statement and a letter dated 7 November 2013 that purported to emanate from the Government of Pakistan National Savings Centre in Lahore. The respondent’s original decision refusing the application stated that the respondent was satisfied that this documentation was false because “the bank had stated to us that the letters (sic) had not been issued by the National Savings Centre, Lahore as stated on your submitted letter”: paragraph [2].

5. At that time the appellant had not received a copy of the Home Office document verification report (“DVR”) relied on by the respondent. This stated:

“The National Savings Account statement and letter was faxed to SPOC on the fax number [which is then set out] to ascertain the authenticity of the documents. After checking with the concerned branch in Lahore the SPOC replied back via fax that this account statement and letter have not been issued by the National Savings Centre in Lahore. Scanned copy of fax reply is attached for reference. In light of above information the National Savings letters submitted by the applicant are not genuine”.

6. In his evidence before the Tribunal, the appellant said there must have been a clerical error, and that he had called the bank who had confirmed that the documents were original documents and that the money in the accounts was a “family investment”. He said that the money had come from his uncle, and he produced more documentation in support of his application: paragraph [10].

7. The First-tier Tribunal considered the further documentation, which once again consisted of a letter purporting to come from the Government of Pakistan National Savings Centre, Model Town Branch in Lahore. It is dated 30 May 2014, and addressed “To whom it may concern”. The letter stated that Mr Khalil (and it gave his address) was “a genuine and valued customer” and that he had invested a sum of money in the Model Town

Branch on 13 March and 15 March 2012. It said that “our investor has complained to us that his statement could not be verified by our official so he was refused. Actually, his statement is genuine but there may be a clerical mistake by our staff, that is the reason his statement could not be verified”. It was signed by somebody who describes himself as “the Officer in Charge, National Savings Centre, Model Town Branch, Lahore.”

8. The submission made to the First-tier Tribunal by the Presenting Officer was that this further document was no better than the earlier documentation submitted by the appellant. He also relied upon the DVR, which was not in the respondent’s bundle, but produced for the first time at the hearing. That document indicates that financial documents were submitted by the Home Office to the National Savings Directorate (“NSD”) for verification. On the front page appears a copy of a scanned attachment of a document described as “National Savings 1 x 1”, with the request “please verify the attached bank documents, thank you”. On the back of that page details of the inquiries made and their results have been filled in by an Immigration Liaison Officer in the Risk and Assessment Overseas Network (“RALON”) section of the British High Commission in Islamabad, Mr Nasir Mehmood. They have already been quoted in paragraph 5 above.
9. One of the boxes on that page shows the contact details for the person at the NSD to whom the documentation was sent by fax for authentication, a lady named Mrs Shah Jehan Tahir, who is described as the “Joint Director”. Among the details provided to the NSD in the form faxed to it were:
  - the certificate holder’s name, Mr Umar Khalil;
  - the unit registration numbers (which appear also on the letter of 7 November 2013 whose authenticity was being checked); and
  - the name, address and telephone number of the relevant branch of the bank, correctly recorded as the National Savings Centre, Model Town in Lahore.
10. Next, the form requests the following details to be provided by the NSD:
  - The certificate holder’s name;
  - The account opening date;
  - The amount of each certificate;
  - The CNIC number of the certificate holder or signatories, (that is, the person’s national identity number);
  - A contact number for the certificate holder; and

- The present balance and whether the balance is matched with the record.

None of those details was supplied when the form was faxed back. Instead the form bears a stamp of the verifying NSD official, whose name is also printed out with his signature, a Mr Maqbool Hussain Qamar. He describes himself as “the Assistant Director HQ, Directorate of National Savings, Lahore”. Above his name and stamp, written in manuscript, there appears the single word “FAKE”.

11. At paragraphs [7] and [8] of the determination the First-tier Tribunal referred to the DVR. It found “the evidence sufficient to establish that the NSD has declared the document to be false” [9]. The Tribunal further found that the name of the signatory of the letter of 30 May 2014 relied on by the appellant was indecipherable from the signature and that the explanation given in that letter did not match that received from the NSD which had found “in plain terms” that the bank statement was false [10-11].
12. Although the standard of proof is the civil standard of the balance of probabilities, it is well established that whenever an allegation is made that documents relied on by an applicant are forgeries, or concocted, or otherwise lack authenticity, then because of the serious nature of the allegation, the respondent has to satisfy a “higher standard” of proof: see **AA (Nigeria) v SSHD** [2010] EWCA (Civ) 773 at [43]. Although there continues to be some debate as to whether this is accurately described as a higher balance of probabilities, the nature and quality of the evidence relied upon in support of that allegation must be of sufficient cogency, it must emanate from a source that is credible, and it must be subjected to very careful scrutiny. Mr Nasim submitted that the DVR fell far short of satisfying the burden on the respondent in that regard.
13. Whilst it is true that the First-tier Tribunal does not clearly set out the standard of proof by making reference to “the higher standard of proof,” the question we have to ask ourselves is whether that omission amounted to, or gave rise to, a material error of law in the determination. That involves a consideration of whether or not, if the high standard of proof had been expressly addressed in the determination, a different result would (or should) have been reached from the one that was reached by the Tribunal.
14. The Tribunal, having gone through all of the information before it, including the laconic response in the fax to the requests in the DVR, and Mr Mehmood’s interpretation of it, said this in paragraph [9] of the determination:

“...Given the protocol for the verification of documents, the response and the seal from the assistant director, the evidence is sufficient to establish that the National Savings Directorate has declared the document to be false”.

15. It seems to us that there is grave difficulty in coming to the conclusion that the word “fake” bears anything other than the normal meaning attributed to it by the Home Office and by the Tribunal. The NSD, through an assistant director, had checked the position and certified that the document submitted to it for verification was not genuine. In other words, the letter dated 7 November 2013 purporting to come from the bank verifying the account statement did not emanate from the National Savings Centre in Lahore. Mr Nasim was therefore driven to submitting that that evidence, in and of itself, was insufficient to satisfy any tribunal to the appropriate standard that the document was indeed false, bearing in mind the existence of the other documents that were relied on by the appellant, in particular the further letter of 30 May 2014. However, that letter was said to emanate from the same source as the one already declared to be “fake”.
16. Mr Nasim pointed to the fact that the DVR was produced by the respondent for the very first time at the hearing. However, that did not put the appellant in any apparent difficulty; we note that he did not seek an adjournment. Instead the appellant submitted that it was appropriate for the Home Office to go through the verification procedure again, but quite understandably that idea did not commend itself to the Tribunal.
17. It is very difficult to see a basis upon which it could seriously be contended that it was not open to the Tribunal to come to the conclusion that it did on the evidence before it. The meaning of the word “fake” was clear. It is not apt to describe a genuine document issued by a bank official but without the requisite authority.
18. There is nothing in the point made by Mr Nasim that the original addressee of the inquiry, Mrs Tahir, was not the author of the response to it. A person who was plainly in a position of authority within the NSD, an assistant director, had satisfied himself that the document was not a genuine document issued by the National Savings Centre in Lahore.
19. Nor do we consider that there is anything in the point made by Mr Nasim that there was insufficient evidence to prove what document(s) were sent for verification. Mr Mehmood refers in the text of the DVR to sending a National Savings account statement and letter. That is consistent with the name of the attachment on the first page and the contents of the fax to the NSD (which gives details which are consistent with the underlying bank documents relied upon by the appellant). We are satisfied that the documents that were sent for authentication were indeed the same as the documents originally relied on by the appellant and on the basis of which the decision to refuse his application was originally made.
20. The clear inference to be drawn from the NSD’s response is that no reliance could be placed on the document said to have emanated from the National Savings Centre in Lahore because it was not authentic, and that was directly contradictory to the suggestion floated by the appellant and echoed in the letter of 30 May 2014 that there may have been a clerical

error. The fact that none of the requested details in the boxes requesting specific information about the account, the certificate numbers and details of the account-holder were filled in when the response was returned is also consistent with the conclusion that the NSD's inquiries had been unable to match the details given to it with an existing account.

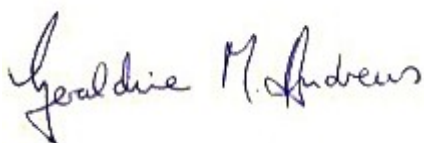
21. In all the circumstances, even if the Tribunal did not clearly or adequately set out the standard of proof in relation to the respondent, we are satisfied that the Tribunal was entitled to find that the respondent had discharged the burden of proof to the requisite high standard.
22. That being so, despite the valiant attempts of Mr Nasim to persuade us to the contrary, it seems to us that there is no basis on which we could realistically allow this appeal.

### **Decision**

23. **There was no error of law in the determination such that the decision dismissing the appeal should be set aside. This appeal is therefore dismissed.**

Signed

Date 10<sup>th</sup> November 2014



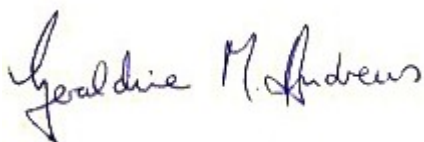
Mrs Justice Andrews

TO THE RESPONDENT  
FEE AWARD

**We have dismissed the appeal and therefore there can be no fee award.**

Signed

Date 10<sup>th</sup> November 2014



Mrs Justice Andrews