Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/18873/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 15 April 2014	**On 16th May 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PRASAD BHAGAWANRAO SHINDE

Respondent

Representation:

For the Appellant: Mr C Avery, a Senior Home Office Presenting Officer
For the Respondent: Mr F Mehmood, Abbott, Solicitors

DETERMINATION AND REASONS

1. The respondent, Prasad Bhagawanrao Shinde, was born on 4 December 1978 and is a male citizen of India. I shall hereafter refer to the respondent as "the appellant" and

to the Secretary of State as "the respondent", as they were respectively before the First-tier Tribunal.

2. The appellant was refused leave to enter the United Kingdom on 3 June 2013 at which date his continuing leave to enter/remain was cancelled. The appellant appealed to the First-tier Tribunal (Judge P J Clarke) which, in a determination promulgated on 26 February 2014, allowed the appeal. The respondent was granted permission to appeal to the Upper Tribunal by Judge Grant on 14 March 2014.

3. The appellant had come to the United Kingdom first in 2007 as a student and subsequently obtained a Tier 1 visa on 29 November 2011. He was granted leave to remain as a Tier 1 (General) Migrant on 12 February 2013. He returned to India for a holiday and came back into the United Kingdom on 3 June 2013. Upon his return, he was interviewed by an Immigration Officer. The First-tier Tribunal at [10(xii)] provides an account of the appellant's interview with the Immigration Officer:

> I have been provided with a copy of the interview notes (which are in some cases hard to follow) and a typed copy. At Q48, [the appellant] was asked how he could earn £23,000 in India, how he could do that, when he was not in India, he replied, 'it's a lie.' At Q49 he stated that he had not declared this to HMRC. At Q50 he claimed to have earned £26,465 in India for his company Shinde Instance, how could he do that when he was living in the UK; he replied 'it's all a lie.' At Q51 he was reminded that he said that in the period May – November 2012 he had only four – five clients [in the UK – Q40] and also that he had earned only £11,000 in the two years since the company was set up. No comment was made. At Q52 he was asked if he had made up the figure. No comment was made [it is unclear from the interview record whether the appellant said 'no comment' or that he made no comment].

4. The judge goes on to record that, in a witness statement, the appellant has claimed that he did not say "it's a lie" in answer to questions 48, 50, 51 and 52. There was evidence from the appellant that he had become stressed and tired following his long flight from India.

5. At [12] the judge considered the account of what had happened at Heathrow Airport. The judge found that the appellant had failed to indicate to the Immigration Officer that he had been "tired and stressed" and he did not say anything to the interviewing officers about his "family problems." The judge found that the appellant was probably tired following his flight. He found that the appellant had not chosen to read the interview record although he had been given the opportunity to do so. The judge found that it was "likely that [the appellant] did not fully understand what he was signing." The judge concluded that there was "nothing in the evidence before [me] which justifies any criticism of the Immigration Officer. He was entitled to rely on the information he had been given by the appellant at the airport."

6. The judge then went on to consider the "income claimed in the appellant's [visa] application form." The judge considered it important to determine whether the appellant had been in receipt of the income detailed in that form. At [16] the judge found that the documents were "internally consistent" and as a consequence reliable.

He concluded that he was "thus satisfied, not without considerable doubt, that [the appellant] has the income he claims from his business in India." The judge did, however, have a number of concerns regarding the appellant's income from his business in the United Kingdom. He was not satisfied that he had "a clear and full picture of his business receipts." The judge found it difficult to accept that the appellant had received no income at all from April – November 2012 or again from November 2012 to April 2013. He observed that these might be "matters...of interest to HMRC, although there may be an explanation." At [18] the judge concluded that the appellant did have the income which brought him within "the appropriate band" required by the Immigration Rules.

7. I find that there is a serious problem with the judge's approach to the evidence in this case. Despite finding that the Immigration Officer could rely upon the contents of the appellant's interview in deciding to curtail his existing leave and refuse him leave to enter the United Kingdom, that finding does not appear to have had any influence upon the judge's assessment of the documentary evidence which the appellant had submitted with his application. The grounds of appeal describe this as a "unlawful separation of the evidence". I agree. Although he accepted that the appellant was probably tired after his long flight, the judge has effectively found that the appellant knew what he was doing when he said that the sums which claimed to have earned both in India and the United Kingdom were all "a lie." I do not understand why the judge should have failed to give weight to those admissions when he proceeded to consider the remainder of the appellant's evidence. In the light of the admissions, it was clearly necessary for the judge to give clear and adequate reasons for finding that, although he may have lied to the immigration authorities in the past, the appellant was otherwise a witness of truth. However, he did not do so. Accordingly, I find that the judge's approach was flawed and that the determination should be set aside.

8. I told the representatives at the hearing that I proposed to remake the decision in the Upper Tribunal. I indicated that I could find no error of law in the judge's finding that the interview record was reliable. I indicated that I saw no reason to revisit the judge's finding that, although he may have been tired, the appellant had been aware of what he was saying when he gave answers at interview. Mr Mehmood, for the appellant, offered no further submissions.

9. I have considered the documentary evidence and, like Judge Clarke, I am not satisfied that this evidence provides a clear and full picture of the appellant's business activities. That observation, coupled with the appellant's own admissions that the financial details which he had provided were not true or accurate, lead me to conclude the Immigration Officer was fully entitled to deny the appellant entry and to cancel his existing leave to remain. By his own admission the appellant had acted dishonestly in providing false particulars in support of his last application for a visa. In the circumstances, the appeal against the respondent's decision is dismissed.

DECISION

10. The determination of the First-tier Tribunal which was promulgated on 26 February 2014 is set aside. I have remade the decision. This appeal is dismissed.

Signed Date 15 May 2014

Upper Tribunal Judge Clive Lane