

**Upper Tribunal
(Immigration and Asylum
Chamber)
Appeal Number:
OA/00996/2014**



THE IMMIGRATION ACTS

Heard at: Field House

**Decision and
Promulgated**

Reasons

On: 2nd December 2014

On: 3rd December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Entry Clearance Officer, New Delhi

Appellant

And

Baldev Singh Raath

Respondent

For the Appellant: Mr Bramble , Senior Home Office Presenting Officer
For the Respondent: -

DETERMINATION AND REASONS

1. The Respondent is a national of India date of birth 10th October 1982. On the 3rd September 2014 the First-tier Tribunal (Judge L Murray) allowed his appeal against a decision to refuse to grant him entry clearance as the spouse of a Tier 2 Migrant.
2. The Respondent had previously come to the UK as the dependent spouse of another PBS migrant, a Tier 4 (General) Student Migrant. He had subsequently extended his leave to enter on the basis of that relationship. Then in November 2013 he had applied to return to the UK, this time as the spouse of a different woman. The Entry Clearance Officer (ECO), perhaps understandably, called him in for interview. As a result of the answers that he gave during that interview the present application was refused with reference to paragraph 320(7A) of the Rules. The ECO found that the statements made by the Respondent at interview about when this relationship was established directly contradicted the statements he had made, and documents submitted,

in the course of earlier applications about his relationship with his former wife. The ECO was satisfied that false representations had been made and invoked paragraph 320(7A). The application was further rejected on the basis that this was not a subsisting and genuine relationship.

3. On appeal the First-tier Tribunal upheld the Entry Clearance Officer's decision to refuse with reference to paragraph 320(7A). The determination properly notes that the burden of proof lay on the Entry Clearance Officer and found that cogent evidence had been presented to show that false representations had indeed been used. The Tribunal did however accept that the Respondent and his partner were in a genuine and subsisting relationship and on that basis allowed the appeal under the Rules and Article 8 ECHR.
4. This decision contains errors of law such that the decision must be set aside. The refusal under paragraph 320(7A) meant that the appeal had to be dismissed under the Rules. That is the nature of a mandatory refusal. Whether this was a genuine marriage was irrelevant once the 'false representations' had been proved. As for Article 8 the decision contains no reasoning at all as to why it should be allowed on this ground.
5. I remake the decision only in respect of Article 8. The Tribunal has found that this is a genuine marriage and there is no challenge to those findings. I am therefore satisfied that there is a family life. I cannot be satisfied that the decision shows a lack of respect for it because I have absolutely no information about where his Sponsor presently is. She may be in India with the Respondent. Even if the Article is engaged and there is an interference I am satisfied on the evidence before me, that the decision is a proportionate one for the Entry Clearance Officer to have made. That is because Tier 2 is a temporary status and the Sponsor would have only been in the UK for a short time. If she wanted to be with her husband she could remain with him in India. Further there is a very great weight to be attached to the public interest in denying entry clearance to applicants who lie in the course of their applications or interviews.

Decisions

6. The determination of the First-tier Tribunal contains errors of law and it is set aside.
7. The decision in the appeal is remade as follows: "the appeal is dismissed on all grounds".

Deputy Upper Tribunal Judge Bruce
2nd December

2014