



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/03876/2013  
OA/03877/2013; OA/03878/2013  
OA/03879/2013; OA/03880/2013  
OA/03881/2013; OA/03882/2013

**THE IMMIGRATION ACTS**

Heard at Field House	Determination Promulgated
On 22 <sup>nd</sup> May 2014	On 5 <sup>th</sup> August 2014

Before

THE HONOURABLE LORD BANNATYNE  
(Sitting as a Judge of the Upper Tribunal)

and

UPPER TRIBUNAL JUDGE GILL

Between

FARZANA KOUSAR  
NAVAIRA NAVEED  
INSHA NAVEED  
ZAINIA NAVEED  
RAJA MUHAMMAD AHMED NAVEED  
RAJA ROSHAN KHAN  
FARYAL NAVEED  
(ANONYMITY ORDERS NOT MADE)

Appellants

and

ENTRANCE CLEARANCE OFFICER - ISLAMABAD

Respondent

**Representation:**

For the Appellant: Mr Z Nasim, Counsel  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

## DETERMINATION AND REASONS

### Introduction

1. The appellants are all citizens of Pakistan. Farzana Kousar (hereinafter referred to as "the first appellant") is the mother of all of the other appellants.
2. On 19<sup>th</sup> September 2012 the respondent refused to grant the appellants clearance to enter the United Kingdom as the spouse and minor children of Raja Khan. The appellants appealed that decision to the First-tier Tribunal. The appeals were dismissed. Permission to appeal to this Tribunal was granted by FTT Judge Cruthers.

### Background

3. The Refusal Notice dated 19 September 2012 sets out the respondent's reasons for refusing leave to enter. Following enquiries to verify documents submitted by Farzana Kousar as evidence of her having taken and passed the requisite English language tests the respondent concluded that she had submitted false documents and refused her application under paragraph 320(7A). Having refused her application the remaining appellants applications were refused as they would not be accompanying a parent who had been given limited leave to remain in the UK. (See paragraph 4 of the First-tier Tribunal's determination).
4. The particular documents which were held to be false by the respondent were these: BULATS Candidate Test Report and the University of Cambridge ESOL Examination Certificate, submitted with the application by the first appellant.
5. The issue before the First-tier Tribunal was this: had the respondent on the balance of probabilities established that these documents were not genuine?
6. The First-tier Tribunal held that the respondent had established that these documents were not genuine and set out its reasons for this at paragraph 12 of the determination:

"That the documents are false is asserted in a Document Verification Report (DVR). The DVR tells me that the test report was scanned and sent to the official email address of Cambridge ESOL. The reply from a named individual was that 'Based on the information provided we cannot find any records of results for the candidate Farzana Kusar and they do not appear to be a Cambridge ESOL candidate'. In addition to this I have a series of emails exchanged between the respondent and the named individual culminating in the message quoted above. The misspelling of the appellant's name is important as the Test Report and the Certificate show her name spelt differently. It is the Certificate on which her name is misspelt. Thus I am

satisfied the document scanned and sent for verification was the certificate. In addition to the misspelt name the certificate has a reference number and an accreditation number. Thus I am satisfied that if the document was genuine, but the appellant's name had been misspelt this would have been revealed by the reference number and a different response received."

### **Submissions on behalf of the appellants**

7. The primary submission for the appellant was this: The First-tier Tribunal had erred in treating the Document Verification Report produced by the respondent as conclusive of the allegation.
8. At the hearing before the First-tier Tribunal it had been argued: that the Verification Report was not of itself sufficient to discharge the burden of proof to the required standard.
9. Mr Nasim so far as the standard of proof was concerned directed our attention to JC (part 9 HC 395-burden of proof) China [2007] UKAIT00027 in which this Tribunal held the following in relation to the standard of proof:

"13. So far as the standard of proof is concerned, we consider that what the Immigration Appeal Tribunal said in Olufosoye [1992] Imm AR 141 still holds good: 'insofar as the justification consists of deception or other criminal conduct the standard of proof will be at the higher end of the spectrum of balance of probability' (see also R v IAT ex parte Nadeem Tahir [1989] Imm AR 98 CA). This approach reflects that of the House of Lords in R v Secretary of State for the Home Department ex p. Khawaja [1984] AC 74 and is consistent with subsequent case law [see e.g. Bishop [2002] UKIAT 05532]. In R (AN and Anor) v Secretary of State for the Home Department [2005] EWCA Civ 1605 Richards LJ Stated at [62]: "Although there is a single *civil standard of proof* on the balance of probabilities, it is flexible *in its application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proven, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities.""

10. The Document Verification Report upon which the First-tier Tribunal relied in reaching its conclusion that the documents submitted on behalf of the first appellant were not genuine resulted from a series of emails:

The first email was sent from the Document Verification Officer at the British High Commission in Islamabad to [a.kanwal@graftoncollege.edu.pk](mailto:a.kanwal@graftoncollege.edu.pk) and was sent on 19<sup>th</sup> June 2012 at 13:54. It was in the following terms:

"I am Document Verification Officer at the British High Commission in Islamabad, Pakistan. I deal with visa applications of Pakistani nationals seeking to enter the UK.

I should be grateful if you please verify authenticity of attached certificates purported to be issued by your institution.

Thank you for your help in advance and I look forward to hearing from you before close of play today."

The next email in the sequence was from the Document Verification Officer at Islamabad and was sent on 20<sup>th</sup> June 2012 at 08:34 and was sent to "[esolhelpdesk@cambridgeesol.org](mailto:esolhelpdesk@cambridgeesol.org)" and said this:

"I have obtained your email address to verify attached document. Kindly reply by close of play."

The reply to this email was in the following terms:

"Please be advised that Cambridge ESOL has a procedure in place that has been agreed with the UK Border Agency whereby a Results Verification Form needs to first be submitted before we can conduct a search for a candidates results. Please can I ask that you sign and submit the attached Results Verification Form? We will then investigate this candidate's results and will get back to you as soon as possible."

The Document Verification Officer thereafter replied to that email as follows:

"Kindly find attached required sheet. I suggest you must delete columns of our name, phone and email contact from it as you will find these details in our stamp underneath."

As a result of that email the following email was sent to the Document Verification Officer from ESOL:

"Based on the information provided we cannot find any records of results for the candidate Farzana Kusar and they do not appear to be a Cambridge ESOL candidate."

11. In addition to the foregoing series of emails counsel directed our attention to this section of the Verification Form:

“Test report scanned and emailed to the official email address of ESOL. Toby Moulton, ESOL helpdesk Cambridge ESOL Customer Services replied and stated ‘Based on the information provided we cannot find any records of results for the candidate Farzana Kusar and they do not appear to be a Cambridge ESOL candidate.’ ”

12. On the basis of these emails and the said section of the Verification Report counsel submitted that the First-tier Tribunal had erred in holding the certification and report to not be genuine in that: the Document Verification Report related and referred to the “Test Report” and not the ESOL certificate. Moreover, the First-tier Tribunal had erred in law in accepting the unsubstantiated observations of the author on the front page of the Document Verification Report, which stated that the test report had been scanned and emailed to the official email address of ESOL. He submitted that if one looked at the evidence set out in the Document Verification Report, it was evident that the response from ESOL was based on the “Results Verification Form”, which was not disclosed, and not the Test Report as asserted in the Document Verification Report.

Beyond that it was his position that there was no evidence before the First-tier Tribunal to indicate that the response from ESOL was as a result of the Test Report having been scanned. The First-tier Tribunal’s finding at paragraph 12 that the “document scanned and sent for verification was the certificate” was irrational and perverse.

It was his position that there had been a material error of law.

13. Counsel’s second argument was this: the First-tier Tribunal had erred in failing to consider the first appellant’s evidence relating to the passing of the test at another approved institution, which supported the first appellant’s case that she had been a victim of a sophisticated fraud. In addition the First-tier Tribunal had erred in holding against the first appellant, the fact that there was no documentary evidence relating to a police complaint. The First-tier Tribunal had erred in failing to take into account paragraph 10 of the witness statement of the sponsor, where he had stated that the police required a bribe in order to register the complaint, which he had declined to pay. The foregoing he contended amounted to a further material error of law.
14. Finally he argued that the First-tier Tribunal had materially erred in law in failing to make a determination in terms of Article 8 which had been placed before it as a ground of appeal. In support of the foregoing submission counsel directed our attention to Section 86 of the Nationality Immigration and Asylum Act 2002 which

provides that the Tribunal must determine any matters raised as a ground of appeal.

### **The reply on behalf of the respondent**

15. The respondent relied on the response to the grounds of appeal submitted under Rule 24 which was in the following terms:

“...the respondent will submit *inter alia* that the judge of the First-tier Tribunal directed himself appropriately.

The judge identified which of the appellant’s documents were sent for verification at paragraph 12. The judge gives adequate reasons for finding that the document submitted was not genuine.

The appellant has provided no evidence from any source to counter the respondent’s evidentially supported assertion. This is despite the sponsor allegedly contacting the police on the matter. His evidence at paragraph 16 and 17 suggests that there is truth in the respondent’s position.

In any event it is not a matter of whether or not the appellant is deliberately seeking to deceive. The issue is whether a false document was submitted, whether knowingly or not.

It is far from clear that Article 8 was raised as a ground of appeal.”

### **Discussion**

16. Turning to the first ground advanced by counsel it is clear that the primary reason for the First-tier Tribunal holding that these documents were not genuine was the terms of the Verification Report, which concluded that they were not genuine.
17. However in considering that conclusion the First-tier Tribunal had to consider the basis upon which it had been reached. We are persuaded that on a proper examination of the series of emails the First-tier Tribunal was not entitled to hold it established that these documents were not genuine.
18. In order to properly hold that the conclusion contained in the Verification Form was correct it appears to us that there required to be a proper and verifiable audit trail from submission of the documents for verification to the conclusion set forth in the Verification Report. We are, without difficulty, satisfied that no such audit trail exists.
19. We first observe that the initial email is from the Verification Officer to “[a.kanwal@graftoncollege.edu.pk](mailto:a.kanwal@graftoncollege.edu.pk)”. Thereafter there is no further correspondence

sent to that address. No explanation, appears from the terms of the First-tier Tribunal's determination, to have been proffered to it as to why that was the case. In addition no explanation, appears from the terms of the First-tier Tribunal's determination, to have been proffered to it as to why all further correspondence was with "[esolhelpdesk@cambridgeesol.org](mailto:esolhelpdesk@cambridgeesol.org)". We observe that in that first email "certificates" are said to be sent, although no details as to what these certificates are is given.

20. The next email is to [esolhelpdesk@cambridgeesol.org](mailto:esolhelpdesk@cambridgeesol.org) and we note that in that email all that is sent is an "attached document". It is not clear which, if either, of the relevant documents is sent in this email.
21. The Verification Officer is then asked by ESOL to fill in a Results Verification Form to allow a search for candidates' results to be carried out. That form was not produced to the First-tier Tribunal (nor was it produced to us). It is clearly a very significant document, in that on a fair reading of the emails it appears to be on the basis of that document that ESOL reply to say the first appellant was not an ESOL candidate.
22. We are satisfied that the First-tier Tribunal on a proper understanding of the foregoing series of emails could not properly hold: (a) which documents, if any, were sent to ESOL; (b) whether ESOL came to its conclusion on the basis of the documents, or a single document and if so which documents or document formed the basis of its decision; (c) whether ESOL considered any documents other than the Results Verification Form; (d) whether ESOL reached its conclusion solely on the basis of the information in the Results Verification Form; (e) what information was contained in the Results Verification Form; and (f) whether that information was accurate.
23. Having regard to these deficiencies in the audit trail the First-tier Tribunal could not be satisfied that there was a proper and verifiable trail from the initial seeking of the information by the Verification Officer to the conclusion stated within the Document Verification Report upon which it principally relied in order to make the finding that the documents were not genuine. In our judgement the First-tier Tribunal was not entitled to accept the conclusion in the Documentation Verification Report when viewed in terms of that factual matrix. It follows from these findings that the First-tier Tribunal was not entitled to hold that the documents were not genuine.
24. The foregoing error went to the core of the First-tier Tribunal's decision and clearly amounts to a material error of law.
25. As regards the second ground advanced by counsel on behalf of the appellants the findings of the First-tier Tribunal with respect to the sponsor's evidence are somewhat scanty. In addition the First-tier Tribunal fails to consider the evidence

of the sponsor as to why he was unable to produce any evidence, namely: that the police demanded a bribe in order to provide him with said evidence.

26. It appears to us that the evidence of the sponsor regarding the position of the police was critical to an assessment of his evidence and accordingly of some materiality when considering the first appellant's position (see: paragraphs 16 to 18 of the First-tier Tribunal's determination). Thus we are persuaded that the failure of the First-tier Tribunal to consider this part of his evidence amounts to a material error of law.
27. Equally there seems to be little or no consideration of the first appellant's position regarding these documents and we believe that this when taken in conjunction with the failure to consider the sponsor's position also amounts to a material error of law.
28. Finally, with respect to the Article 8 argument, we believe that this is raised in the letter from the appellant's representatives in a letter to the British High Commission in Islamabad dated 7<sup>th</sup> November 2012 (see: page 2). However, so far as we can identify there appears to be no further reference to this issue at any stage beyond that. In particular it does not appear to have been an issue raised at all in the course of the argument before the First-tier Tribunal. We accordingly hold that this was not an issue which was properly raised before the First-tier Tribunal and which required the First-tier Tribunal to deal with it.

### Decision

29. For the foregoing reasons we hold that there is a material error of law in the First-tier Tribunal's decision. Accordingly we require to set aside the decision of the First-tier Tribunal. We have given consideration as to whether it would be appropriate for this Tribunal to re-make the decision. However, we have reached the conclusion, that given the reasons, above detailed, as to why we have decided that there is a material error of law, it would be appropriate for the matter to be remitted to a differently constituted First-tier Tribunal in order for them to re-hear this matter in relation to all issues. No anonymity order was sought and no anonymity order was made by the First-tier Tribunal and accordingly we do not make an anonymity order.

Signed

Date 22/07/2014

Lord Bannatyne