



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: VA/09907/2013

VA/09906/2013

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 17th July 2014

Promulgated

On 17th July 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR LAKHBUR SINGH
MISS SIMRAN KAUR**

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellant: Mr Jarnel Grewal (Sponsor in person)

For the Respondent: Mr P Nath (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellants with regard to a determination of the First-tier Tribunal (Judge Brenells) promulgated on 16th April 2014.
2. The Appellants had initially sought entry clearance as family visitors to visit the Sponsor, the first Appellant's brother-in-law. Those applications were refused but subsequently allowed on appeal by the First-tier Tribunal.

3. However, when attempting to travel to the UK the first Appellant was denied boarding because his passport was damaged. He obtained a replacement passport and then attended the British High Commission to have his visa transferred to his replacement passport. He also produced the previous passport. Examination of that passport led the Entry Clearance Officer to conclude that it had been tampered with as a result of which the visa was cancelled. The second Appellant being a child and dependent upon the first Appellant being able to travel, her Visa was also cancelled.
4. The appeals came before the First-tier Tribunal at Taylor House on 4th April 2014 when the Appellants were represented by the Sponsor, as they were before me.
5. In his determination the Judge set out the reasons for the visa being cancelled and the first paragraph of that refusal states as follows:-

"In your original application you submitted passport number A3433205. I am satisfied that the document has been forged following a document examination detailed in report held separately. As false documents have been submitted in relation to your application, it is refused under paragraph 320 (7a) of the Immigration Rules".
6. The Judge then set out the text of the letter issued by the Entry Clearance Officer to the first Appellant dated 29th April 2013 and then the text of the document verification report that was before him. I will not repeat the contents of the verification report but it is clear that it indicates on its face that it is a sanitised version of the original document which is held on the local restricted drive because it contained details and images of restricted ultraviolet security features. However it is plain that there were difficulties with the stitching on the passport which indicated that the document had been taken apart and poorly re-stitched manually. It also indicated that certain security features were not as they ought to have been leading the author to conclude the document had been tampered with and pages removed and/or inserted.
7. The Judge then indicated that he heard from the Sponsor who made representations on behalf of the Appellants, in particular that there was no evidential foundation to revoke the visa and indeed the first Appellant indicated in his grounds of appeal that as the original passport, the subject of the DVR, had not been returned to him he had been denied the opportunity to rebut the "spurious allegation".
8. The Judge however indicated that before him the Sponsor did have the passport in question and invited the Judge to examine it himself. The judge refused to do so indicating that he is not an expert. The Judge then noted that given the passport was in the Sponsor's possession it would have been possible for him to have obtained an expert report which he had failed to do. The Judge considered that the document verification report, sanitised though it may be, was sufficient to discharge the burden of

proof and was satisfied that the document was not what it purported to be or at least not in its original form and dismissed the appeal.

9. The grounds on which permission to appeal was granted make a number of complaints. The grounds upon which permission was granted however was that the Judge had arguably given inadequate reasoning for his conclusion that the document was false and that the Judge did not deal with the submissions put forward by the Sponsor and first Appellant about the fact that the passport could not be forged because if it was it would not have been replaced and the Judge granting permission felt it arguable that if the First-tier Tribunal had considered the written submissions on this point he might have come to a different conclusion.
10. The grant of permission also suggests that the Judge may have considered the wrong provisions of the Immigration Rules although having read the determination I can find no evidence of that whatsoever.
11. Large parts of the grounds are taken up with a criticism of the Judge refusing to examine the passport himself. That is unmerited. As the Judge quite properly pointed out, he is not an expert and it was not for him to come to a conclusion about the veracity of the passport particularly when faced with a report by an expert.
12. The grounds reiterate that if the Indian authorities believed the passport to have been forged they would not have issued a new one.
13. The grounds also complain that the document verification report being incomplete, the Judge ought not to have relied upon it.
14. The Sponsor referred to s.108 of the Nationality, Immigration and Asylum Act 2002. However, there was no s.108 application. There was no evidence seen by the Judge that was not available to the Appellant and Sponsor. It is true that the document verification report was a sanitised version of the whole. However, the Judge did not have access to the entirety of the report any more than the Appellant and Sponsor. However, the report that the judge did have and which the Appellant and Sponsor also had was sufficient, in my view for the judge to conclude that the Entry Clearance Officer was entitled to conclude that the document had been tampered with. Whilst forgery is referred to more than once it is quite clear that the difficulty was not that the original passport was a forgery but that the original passport had been tampered with, taken apart and re-stitched. There is adequate evidence even in the sanitised version to support that conclusion and the Judge was entitled to place reliance upon it. The fact that the Indian authorities replaced a "damaged" passport is not evidence that the Appellant had not tampered with it.
15. Furthermore, despite the Appellant's complaint that as he did not have his passport and thus could not obtain his own evidence to rebut the allegation, it had been returned because it was in the Sponsor's possession by the hearing. As the Judge pointed out therefore, they did

have the ability to obtain their own expert evidence and they chose not to avail themselves of that opportunity.

16. Before me the Sponsor argued that they had not done so because they did not consider the Entry Clearance Officer's argument to merit it; it was so flimsy and thus not worth rebutting. It may or may not have transpired to be flimsy but it is nevertheless the case that the Appellant and Sponsor were aware of the reason for the decision and had the means to obtain their own evidence to rebut the assumption of the Entry Clearance Officer had they chosen to. Having decided not to take this action they must take the consequences.
17. The Sponsor indicated to me that he did now have an expert report but as I explained that evidence was not before the original Judge and I would only consider looking at it if I decided that the original First-tier Tribunal Judge made a material error of law such that the case has to be re-decided. That evidence could and should have been produced to the First-tier Tribunal and was not. I do not find that the First-tier Tribunal made an error of law and the decision is upheld.
18. The appeal of the Upper Tribunal is dismissed.

Signed

Date 17th July 2014

Upper Tribunal Judge Martin