Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: VA/15330/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7 August 2014	**On 8 August 2013**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Mrs CANDICE ERIN LAMONT
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr C Avery, Home Office Presenting Officer
For the Respondent: Mr A Pipe, Counsel
(instructed by D&A Solicitors)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Alan R Williams on 16 June 2014 against the determination of First-tier Tribunal Judge Pirotta

who had allowed the Respondent's appeal against the refusal of her application for entry clearance as a visitor in a determination promulgated on 16 May 2014.

2. The Respondent is a national of Canada, born on 24 August 1982, married to Mr Benjamin Luke Coleman, a British Citizen. The Respondent and her husband live in Canada. She is a non visa national but had applied for entry clearance because she had previously been refused entry clearance on arrival, and had subsequently been refused entry clearance under paragraph 320(7A) of the Immigration Rules. The present refusal had been under paragraph 320(7B). The judge had found that the Respondent had not acted dishonestly such that the earlier refusal under paragraph 320(7A) based on the circumstances in 2010 when the Appellant signed a letter of invitation in her then fiancé's name, could not stand, and that accordingly paragraph 320(7B) was inapplicable.

3. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted because the judge had allowed the appeal without making any findings as to paragraph 41 of the Immigration Rules and, perhaps less clearly in the grant, because the finding as to dishonesty was not adequately reasoned.

4. Directions were made by the Upper Tribunal in standard form. The Respondent filed a notice pursuant to rule 24 opposing the appeal. It was contended *inter alia* that the paragraph 41 point had been conceded at the hearing. The tribunal made the judge's record of proceedings available to the advocates in case that clarified the point.

Submissions – error of law

5. Mr Avery for the Appellant relied on the grounds and the grant of permission to appeal. The decision was inadequately reasoned and the dishonesty finding flew in the face of the admitted facts of what amounted to a forged signature on the letter of invitation. It was unclear from the record of proceedings whether or not the paragraph 41 issue raised in the Entry Clearance Officer's decision had been conceded or not pursued, but certainly the determination was silent. The main issue nevertheless was the judge's treatment of paragraph 320(7B) of the Immigration Rules. The judge failed to

appreciate that the provision was mandatory. The judge made it clear that she disagreed with the provision, but it was for the judiciary to apply the law, whether or not they personally approved of it. The judge's conclusions were unsustainable in any event. The Respondent had admitted that she had submitted a forged document, deliberately. That was the end of the matter.

6. Counsel for the Respondent submitted that the record of proceedings indicated that there had been a narrow issue, i.e., paragraph 320(7B). That was why the determination only addressed that question. It was important that the Respondent was a non visa national and thus had had no need to make a prior entry clearance. When on a previous port refusal the Respondent had been refused leave to enter and granted temporary admission for 3 days only, she had complied. The present application had been a protective measure. It had been open to the judge to find as she had done that the Respondent had made a foolish error of judgement which was not dishonest. Perhaps it could be said that parts of the determination were inarticulate, but if the heart of the judge's findings were considered, i.e., that there was no *mens rea*, the determination should stand.

7. It was not necessary to call upon Mr Avery in reply.

The error of law finding

8. The tribunal gave its decision at the hearing that the Secretary of State's appeal would be allowed and reserved its reasons which now follow. The determination was prepared by an experienced judge but the tribunal was bound to find that the judge had inadvertently fallen into material error of law, led by understandable sympathy for the original Appellant. The record of proceedings was unclear as to whether the paragraph 41 issues had been formally conceded or simply not actively contested. No further information was available and it was too late to seek the judge's observations. In any event it was for the judge to make the issues clear in the determination, having indicated at [11(iv)] that paragraph 41 was a ground of refusal by the Entry Clearance Officer. It was obviously for the benefit of both parties that this was done. That error of law alone was regrettably sufficient to require the setting aside of the determination, as it was fundamental to the appeal.

9. As to paragraph 320(7B), unfortunately the judge had expressed herself in strong language at [22] "It is absurd…" and [25] "It cannot be logically argued…". While judges retain their democratic freedoms, a determination is not the place for the expression of personal opinions. Such language creates the impression that the judge disapproved of the relevant provisions in the Immigration Rules and was biased against the Secretary of State. The judge's reasoning thus became open to doubt.

10. The judge also said at [25] that there were "strong compelling compassionate circumstances" such as to make it permissible to "overlook the submission of the letter on this occasion in these particular circumstances". The judge referred to "the deception" in the same paragraph. A fair reading of that paragraph is that the judge had found that there was indeed a deception but that there was a discretion available to the Entry Clearance Officer and for the First-tier Tribunal to review under paragraph 86(3)(b) of the Nationality, Immigration and Asylum Act 2002. It was not disputed before the tribunal that there is no such discretion because both paragraph 320(7A) and 320(7B) are mandatory.

11. While it is possible to see why the judge felt sympathy towards the Respondent and her relations in the United Kingdom, there was no scope within the Immigration Rules for the judge's approach. For all of these reasons, the tribunal finds that the determination contains material errors of law, such that it must be set aside and remade. The Secretary of State's appeal to the Upper Tribunal is allowed.

Discussion and fresh decision

12. The parties were present and willing to proceed immediately to a rehearing, rather than defer the rehearing to a later date. The parties will henceforth be referred to by their First-tier Tribunal titles.

13. Mrs Suzanne Parkey ("Mrs Parkey") gave evidence on behalf of the Appellant as her sponsor, confirming as true and adopting as her evidence in chief her witness statement dated 7 May 2014. The Appellant and her husband (Mrs Parkey's son) were well settled in Kamloops, British Columbia, Canada which had been their home

for some years. Both were very happy with their lives there and there was no question of the Appellant's settling in the United Kingdom or overstaying her visit visa. The plan had been for the Appellant and her husband to come to the United Kingdom for a family birthday celebration, for two weeks.

14. The Appellant had been advised to make an entry clearance application as a safeguard after the debâcle of refusal and temporary admission. She had been given a date for interview at the deputy High Commission in Vancouver, which was a six hour drive. The letter of invitation from her fiancé had not arrived, so with his permission she had signed a freshly printed copy of the letter on his behalf and presented it. The Appellant hadn't asked for the interview date to be changed, as she should in retrospect have done. The paper she used was not a United Kingdom size, so she was challenged. The signed original arrived the next day in Kamloops but she was not allowed to resubmit her application. Her only intention was to prove that she had been invited to the United Kingdom, which was true. It was a huge error of judgement. Mrs Parkey had discussed this with her son many times. He had thought that it was ok. It would have been better if the Appellant had signed "pp".

15. There was no cross-examination.

16. Mr Avery for the Secretary of State relied on the submissions he had made earlier in relation to the material error of law. Paragraph 41 was not live in view of Mrs Parkey's evidence. But there had been admitted deception as to submission of a document which was not what it claimed to be. The appeal had to be dismissed.

17. Mr Pipe for the Appellant relied on his skeleton argument. The relevant law showed that dishonesty had to be proved to the civil standard, cogently, by the Respondent. AA (Nigeria) v SSHD [2010] EWCA Civ 773 applied. There was no dishonesty as the husband's signature had been placed as his agent on express authority. These were unique circumstances, which showed at most a foolish error. There was no deception as the fact was that the Appellant had been invited to visit the United Kingdom. (No Article 8 ECHR claim was pursued.)

18. The Appellant had a full right of appeal to the First-tier Tribunal as her entry clearance application had been made before the limitation to human rights issues was imposed.

19. Mrs Parkey was a frank and open witness, whose unchallenged evidence the tribunal accepts without hesitation. The tribunal is satisfied that the Appellant has strong links to Canada where she and her husband are well settled. The tribunal finds that the Appellant has the intention to return to Canada in the event hat she were granted a visit visa. No other issues arose under paragraph 41 of the Immigration Rules.

20. The difficult issue was the refusal under paragraph 320(7B). Mrs Parkey candidly recognised that in February 2010 the Appellant should have either postponed the interview in Vancouver or have made it clear to the Entry Clearance Officer that she had signed the letter of invitation on her fiancé's behalf. Instead the Appellant presented the letter of invitation as if it bore her fiancé's signature. Despite Mr Pipe's able and attractive submissions, with regret the tribunal is driven to find that paragraph 320(7A) was correctly applied by the Entry Clearance Officer when refusing the Appellant's application for entry clearance on 19 February 2010.

19. This was, in the tribunal's view, more than a foolish error of judgement. It was presenting a forgery, with the intention of obtaining entry clearance with the minimum delay. Although the Appellant may not have given the matter much thought and was in all probability distracted, it was dishonest, perhaps recklessly so. There is nothing in the agency point, because the Appellant failed to state that she was acting as agent. Had she done so, it is doubtful that the document would have attracted any weight at all. The fact that there was a genuine invitation in the post is immaterial for these purposes. Equally immaterial is the fact that the Appellant was a non visa national, because the reality was that she would have faced refusal of entry clearance on arrival at port because of past difficulties. No doubt her name is recorded. It is obvious that once the Appellant had elected to apply for entry clearance, she was bound to ensure that all of her documents were genuine and that the application was honest in all respects. She made a declaration to such effect.

20. From that finding, it follows that paragraph 320(7B) was correctly applied by the Entry Clearance Officer to the Appellant's next entry

clearance application, for a family visit. The provision was mandatory. No doubt the result will seem harsh to the Appellant and her family, but that is the law.

21. The First-tier Tribunal's decision can only be remade in one way, that is, that the appeal against the Entry Clearance Officer's decision must be dismissed.

DECISION

The making of the previous decision involved the making of an error on a point of law. The appeal to the Upper Tribunal is allowed. The decision of First-tier Tribunal Judge Pirotta is set aside and remade as follows:

The appeal under the Immigration Rules is DISMISSED

Signed **Dated**

Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT
FEE AWARD

The appeal was dismissed and so there can be no fee award

Signed **Dated**

Deputy Upper Tribunal Judge Manuell