



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

Appeal Number: VA/35826/2012

**THE IMMIGRATION ACTS**

**Heard at Newport**

**On 21 March 2014 and 12 May 2014**

**Determination**

**Promulgated**

**On 20 May 2014**

.....

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**Md JAFOR KIBRIA**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - DHAKA**

Respondent

**Representation:**

For the Appellant: Mr Rahman of A R Immigration Services (on 21 March 2014)

For the Respondent: Mr I Richards, Home Office Presenting Officer

**DECISION AND REMITTAL**

1. The appellant is a citizen of Bangladesh who was born on 30 November 1976. On 29 May 2012, he applied for entry clearance to visit his family in the UK. On 12 September 2013, the ECO refused the appellant's

application for entry clearance under paras 320(7A) and 41 of the Immigration Rules (HC 395 as amended).

2. As regards para 320(7A) the ECO stated that:

“Our records indicate that on 4 October 2011 you made a No Time Limit transfer of conditions application to the Home Office in the UK, in the name of Pabel Hussain with a date of birth 27/05/1976 and passport number F0413615. You stated on your application form at question 6.7 that you have not made an application to the Home Office to remain in the UK in the last 10 years. You have applied to remain permanently in the UK and used a different identity to do so. Therefore, given this information that has come to light since the decision was made on your application, I am satisfied that false representations have been made and material facts have not been disclosed in this application. As false representations have been made and material facts have not been disclosed your application is refused under paragraph 320(7A). “

3. The appellant sought permission to appeal. Initially, permission was refused by the First-tier Tribunal but was subsequently granted by the Upper Tribunal on 14 October 2013.

4. The appeal initially came before this Tribunal on 21 March 2014 (Mr C M G Ockelton, Vice President and UTJ Grubb). Following submissions from both representatives, the Tribunal indicated orally that it was satisfied that the Judge’s decision contained an error of law and should be set aside. The Tribunal’s reasons were as follows.

5. The appellant’s representatives had sought information about the alleged deception by the appellant and how it had been discovered. Although the means of discovery was not something that the appellant was entitled to know, the appellant was entitled to copies of the documents relied upon by the Entry Clearance Officer to support the claim that the appellant had engaged in a deception.

6. Rule 30(1) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 provides, so far as relevant, as follows:

“30(1) When the respondent is served with a copy of the notice of appeal, it must...file with the Tribunal a copy of -

(a) the notice of the decision to which the notice of appeal relates, and any other documents served on the appellant giving reasons for that decision;

....

(c) any other unpublished document which is referred to in a document mentioned in sub-paragraph (a) or relied upon by the respondent;....”

7. In the notice of decision, the ECO as we have already set out above, stated that:

“Our records indicate that on 4 October 2011 you made a No Time Limit transfer of conditions application to the Home Office in the UK, in the name of Pabel Hussain with a date of birth 27.05.1976 and passport number F0413615.”

8. The document or documents which comprise “our records” should have been served upon the First-tier Tribunal (and therefore made available to the appellant) in accordance with rule 13(1)(c) of the 2005 Procedure Rules. The importance for an appellant of access to documents relied upon by a respondent is clearly recognised by the disclosure requirement in the Rules. In reaching his adverse decision, the First-tier Tribunal Judge should have taken into account the non-compliance with rule 13 in reaching his decision: the absence of the documents was relevant to the Judge’s consideration and findings in respect of the respondent’s allegation of deception. Consequently, the Judge erred in law in reaching his adverse decision and that decision cannot stand.
9. As the Tribunal indicated at the hearing on 21 March 2014, that did not necessarily mean that the appellant’s appeal should be allowed. The ECO should be given an opportunity to provide the relevant documentation as required under rule 13. Consequently, we directed that the ECO should within 28 days of 21 March 2014 complete his duty under rule 13(1)(c) and provide the Tribunal with any unpublished documents relied on or referred to in the decision. If the ECO was unable to do so, then reasons should be provided.
10. As a consequence, the appeal was listed ‘for mention’ before UTJ Grubb on 12 May 2014.
11. The appellant’s representatives indicated by facsimile that they did not wish to attend that hearing and had not been required to by the Tribunal’s previous directions. Mr Richards, who represented the ECO indicated that the ECO was not in a position to produce the relevant documents as the file had been mislaid. He acknowledged that the proper disposal of the appeal was to remit it to the First-tier Tribunal which would have to reach a decision in the light of the fact that the ECO was unable to provide the documents referred to (and relied upon) in the decision letter.

## **Decision**

12. The decision of the First-tier Tribunal to dismiss the appellant’s appeal under the Immigration Rule (para 320(7A) and 41) involved the making of an error of law. Its decision cannot stand and is set aside.
13. The appeal is remitted to the First-tier Tribunal to be heard by a Judge other than Judge Powell.
14. In remitting the appeal, I direct that within 6 weeks of this decision being sent the Entry Clearance Officer file with the First-tier Tribunal and serve upon the appellant a witness statement setting out the evidential basis

upon which the refusal of entry clearance was based and explaining why any documents then relied upon are not now available.

15. The appeal should be relisted for hearing in the First-tier Tribunal not earlier than 10 weeks from the date that this decision is sent.

Signed

A Grubb  
Judge of the Upper Tribunal

Date: