



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

Appeal Numbers: IA/09849/2013
IA/09850/2013

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham

**Decision & Reasons
Promulgated**

On 20th March 2015

On 10th April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**(1) SHAILIKA ARORA
(2) SANDEEP KUMAR
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No appearance

For the Respondent: Mr N Smart (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge P J Holmes, promulgated on 19th August 2013, following a hearing at Stoke on Trent on 6th August 2013. In the determination, the judge dismissed the appeals of Shailika Arora and Sandeep Kumar. The Appellants applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are citizens of India. The principal Appellant is the wife. The second Appellant is her husband. The principal Appellant, the wife, was born on 1st October 1986, and her husband, the second Appellant, was born on 1st September 1980. They entered the UK on 20th February 2010 with entry clearance valid until 18th September 2012. This was on the basis of the first Appellant's entry as a Tier 4 (General) Student. The second Appellant entered as her dependant. They have a child, born in this country in August 2010. On 15th June 2012 the Appellants apply each for leave to remain in the same respective categories. The first Appellant was seeking leave in order to study with Finance Business Training Limited, on a full-time Chartered Institution of Management Accountants (CIMA) Course. On 18th March 2013, the Respondent issued a letter of refusal in respect of each of the applications. The refusal letter for the first Appellant was made under paragraph 322(1A) of the Immigration Rules. The second Appellant was refused in the light of the refusal of the first Appellant because he could not satisfy the requirements of paragraph 319C(b) of the Rules.
3. The basis of the refusal is that the first Appellant had submitted a previous application which included bank statements that were false. In the present application she failed to disclose the fact. This was considered to be a material non-disclosure. Furthermore, after the first Appellant's current place of study was taken off the approved register, and after she had been given 60 days in which to find another Sponsor, she had in November 2011 submitted an application to remain under Tier 4 in order to follow a course of study at an institution called "Equinox College" for an Advanced Diploma in Hotel Management. This application was subsequently withdrawn. In the meantime, however, the Respondent had conducted a check on an ICICI bank statement and concluded that the document was false.

The Judge's Findings

4. The judge dismissed the appeal. He considered the explanation on behalf of the Appellants. This was that they had been the victim of a deception themselves. They had engaged an agent to make an application on their behalf who had filed a fraudulent application on the basis of a fraudulent bank statement. However, before that application had been considered, it was withdrawn in February 2012. Therefore, since the act of withdrawal was indicative of an act of "honesty" on their part, they could not be treated as having wilfully misled the authorities in sending an application that was in the first instance a false application.
5. The judge, however, rejected this reasoning on the basis of the well-established case law in **AA (Nigeria) [2010] EWCA Civ 773** which established that an applicant may be held to have used "deception" even though the dishonesty in question was not that of the applicant personally (see paragraph 11 of the determination). The judge also observed that the Appellant's answer in relation to question D.16, "Has the student ever used deception when seeking leave to enter or leave to remain", was

answered with the entry of “No”. This did not augur well for the Appellants (see paragraph 17). The judge reasoned that the first Appellant was “an intelligent and well educated woman” and that,

“I find it impossible to believe that she could have thought it would not be material for her to disclose that she had previously made an application for leave for the purpose of studying at what (by the time of submitting the present application) she believed to be a non-existent college, supported by what (by that time) she knew to be a fake bank statement. I find that the first Appellant withheld these facts knowing them to be material. I observed that these facts have come to light only as a result of the Respondent’s verification inquiry and not through any voluntary disclosure by the Appellants. I did not accept (and as have already pointed out, the Appellants have not even clearly alleged) that the first Appellant was given any advice to the effect that this information could be legitimately withheld ...” (paragraph 18).

6. The judge concluded that there was “no evidence to show that any steps of this nature were taken before about May 2013 – that is to say, after the refusal currently appealed, whereby the Appellants learned that the Respondent knew of the deception” (paragraph 19). The judge ended by making the observation that, “It could possibly be true that the first Appellant was the victim of a fraudster, but this fact, if it is true, does not excuse the first Appellant from her own obligations of honesty in her dealings with the Respondent” (paragraph 21). Thereafter, consideration was given to the position under human rights law (see paragraphs 23 to 27) but the appeal was dismissed on this basis as well.
7. The Grounds of Appeal allege that the judge failed to appreciate that an earlier application, containing a false document, had been withdrawn. This could not be treated as a valid application capable of triggering refusal on general grounds. On 6th September 2013 the application was rejected by the First-tier Tribunal. On 24th September 2013, the application was rejected by the Upper Tribunal. Following a further appeal to the High Court, which was successful, the Upper Tribunal then granted permission in the light of the observations of the High Court, in a decision dated 18th November 2014. The matter now comes before this Tribunal.

Submissions

8. At the hearing before me on 20th March 2015, however, there was no attendance by the Appellants. There was no explanation for their non-attendance. Neither, was there any attendance by a legal representative on their behalf. This had been listed as an oral hearing and so it was altogether surprising why there was no attendance.
9. For his part, Mr Smart submitted that the appeal could not succeed because the judge had applied **AA (Nigeria)** faithfully. Moreover, the Upper Tribunal determination of **Ahmed (general grounds of refusal -**

material non-disclosure) Pakistan [2011] UKUT 00351 confirmed that the failure to disclose a material fact is also classed as “deception”. This deception can be by someone acting on behalf of the Appellant. Judge Holmes had made it quite clear, in the reasoning at paragraph 11 of the determination, that the dishonesty need not be that of the applicant personally.

10. Second, as far as the argument that the fraudulent application was never decided upon, is concerned, this was of no avail to the Appellants. This is because Rule 34G of the Immigration Rules makes it clear that an application is defined as being valid from the time that it is posted or received. This means that it does not have to be decided upon. Reliance was placed upon the Court of Appeal case of **Raju**.
11. Third, the judge even allowed for the possibility that the Appellant was “the victim of a fraudster” but still decided that the appeal fell to be dismissed for the reasons that were given.

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. In fact, the determination of Judge Holmes is a clear, comprehensive, and thoughtfully constructed decision. The judge allows for every possibility and decides the matter on the basis of the applicable law. The facts are properly found. The appeal fails for the following reasons.
13. First, the judge is clear that **AA (Nigeria)** does not require that “deception” has to be that of the applicant personally. Second, the judge’s findings are clear that, “The first Appellant withheld these facts knowing them to be material” and the relevant facts have “come to light only as a result of the Respondent’s verification inquiry and not through any voluntary disclosure by the Appellants” (paragraph 18). The Appellant did not allege that she was advised to withhold information.
14. Third, the judge was equally clear that no steps were taken by the Appellant before May 2013, which was after the refusal of the currently appealed decision, “whereby the Appellants learnt that the Respondent knew of the deception” (paragraph 19). These facts totally undermine the claim of the Appellants who have in any event decided not to attend this hearing today.
15. Finally, the judge allows for the possibility that even if the first Appellant “was the victim of a fraudster” this still “does not excuse the first Appellant from her own obligations of honesty” (paragraph 21). The judge’s findings in relation to human rights were equally entirely sustainable.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity order is made.

Signed

Date: 7th April 2015

Deputy Upper Tribunal Judge Juss