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Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/16039/2014
IA/16040/2014

THE IMMIGRATION ACTS

At Field House
On 28th September 2015

Decision and Reasons Promulgated
21st December 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MS SANKAR AKRAMOV
MRS MADINA MUKHITDINOVA
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S.Khalid of Lords Solicitors.

For the Respondent: Mr.E.Tujan, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellants are nationals of Uzbekistan. The first appellant was born on 7 September 1983 and the second appellant is his wife, who was born on 24 June

1986. The second appellant's application was as a dependent of her husband and so the outcome of his appeal will determine hers.

2. The first appellant has been in the United Kingdom with leave since August 2008 in order to study and for post study work. On 10 February 2014 he applied for leave to remain as a Tier 4 student. He was required to demonstrate he had the necessary maintenance of £14,400 for himself and his wife. This had to be evidenced by funds for his use held in a bank account for a consecutive 28 days before the application.
3. He submitted bank statements in his father's name from the Xalq bank in Tashkent to demonstrate the necessary funds were available. The respondent carried out checks on the statements and concluded that the entries from 6 January 2014 to the 7 February 2014 were not genuine. Consequently, his application was refused under paragraph 322(1A) on 18 March 2014 as was his wife's.
4. 322(1A) sets out grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused:

'(1A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge) ...'
5. The appeal is heard at Taylor house on 28th November 2014 before First-tier Immigration Judge Cockrill. In a decision promulgated on 3 December 2014 both appeals were dismissed.
6. Mr Khalid, who appears now also represented the appellants at the First-tier. In the First-tier he confirmed that no argument with being advanced under article 8.
7. First-tier Judge Cockrill in the decision records having copies of the relevant bank statements and a document verification report obtained by the respondent. The first appellant gave evidence and it was contended the respondent had not provided sufficient evidence to establish that the bank statement was false. Cross-examination elicited that he had produced no rebuttal evidence either from his father or the bank.
8. In submissions, Mr Khalid pointed out that the verification report produced referred to information obtained from a member of staff at the bank which had not been provided.
9. First-tier Judge Cockrill at paragraph 31 stated there was only one issue in the appeal, namely whether the bank statements were false. The judge focused attention on the document verification report. At paragraph 33 the judge said that the burden in this situation shifted to the respondent to show the falsity. At paragraph 34 the judge stated that on the face of it the bank statement provided

contained false information. The verification report redacted the identity of the bank employee and the judge commented that this was not uncommon and took view this did not reduce the weight to be attached to the document. The judge summarised at paragraph 35 the respondent's contention, namely, a genuine letter had been issued from the bank but contained false or inaccurate details and the transaction history shown did not correspond with bank records. At paragraphs 36 and 37 the judge found that the respondent had discharged the initial burden to show the document was false and that the appellant had not rebutted this. No further evidence had been produced from the appellant's father or the bank. The judge summarised the approach at paragraph 40 :

“Putting the matter shortly therefore, I consider that the Respondent has discharge the initial burden that lies upon her and then with the burden shifting back to the Appellant that he has not discharged the burden to show that he has provided accurate and truthful information.”

10. The contention on behalf of the appellants in the Upper Tribunal was that no weight should have been attached to the document verification report because it refers to information from a third party which has not been provided.
11. It was contended that the respondent had failed to discharge the burden of proof. Reference was made to the decision of MH (respondent bundle: documents not provided) Pakistan [2010] UKUT 168 and Shen (paper appeals: proving dishonesty) [2014] UKUT 00236 (IAC). It was not accepted that the bank statement contained false information.
12. The presenting officer contended that the appellant had produced no rebuttal evidence and the judge was entitled to find on the balance of probabilities the bank statements could not be relied upon. Both parties agreed that if I found a material error of law I could proceed to remake the decision without hearing further evidence.

Consideration

13. The document verification report is contained in the respondent's bundle. The appellants had been provided with a copy of this before the appeal in the First-tier Tribunal. It consists of a request from an identified member from the respondent's fraud team, Mr Darren Conway. It is dated 27 February 2014. It indicates that the bank statement as well as a letter from the bank was scanned onto the request and sent to the Chief of Currency Department at the Xalq bank. There is then a page described as 'detailed verification results'. The name of the member of staff at the bank is redacted. The 'Comments' section indicates Mr Conway spoke to this person on the telephone and confirmed that the letter from the bank was genuine. The bank official required time to check the transactions and then telephoned Mr Conway who recorded the transaction history in the statements did not match the bank records. The conclusion was that the statements were false.

14. There is also a page dated 12/3/2014 which refers to a verifier, Ms Joanne Morris and which contains a UK e-mail address. The comment section records 'FALSE-checks with issuing body confirmed documents are false (see attachment). Third-party confirmation received on 28/2/14.'
15. I see no basis for finding this evidence should have been excluded as the appellants representative contends. It was highly relevant. There is no unfairness in its introduction. Before the hearing the appellant was aware of this evidence and had an opportunity to address it. The issue is the weight to be attached to it.
16. I believe the appellants' representative is mistaken in referring to a missing attachment. As I read the report the final page is completed by a UK member of staff, Ms Morris, and the attachment referred to is a report from Mr Conway.
17. The tribunal has traditionally taken a flexible approach towards the admission of evidence. In terms of strict proofs the report is not signed by the maker. The original notes of the conversation with the member of staff at the bank are not included. However, the tribunal does not require the strict proofs of evidence applicable in other forums. The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 were in force at the time of the First tier hearing. Rule 14 (2) provides that the tribunal may admit evidence whether or not it would be admissible in a civil trial.
18. MH (respondent bundle: documents not provided) Pakistan [2010] UKUT 168 was concerned with whether bank statements were genuine. Checks were made with the bank and a report was produced but was not on file. When the matter came to the Upper Tribunal subsequent searches could not produce the report. The Upper Tribunal referred to the applicable 2005 procedural rules which require the respondent to serve any unpublished document referred to. This requirement is mandatory and similar provisions are contained in rules 23 and 24 of the 2014 rules. The purpose behind the rule is for the appellant to know the case they have to meet. The present case is completely different on the facts. Here, the report was provided and in my view in its totality.
19. Shen (paper appeals; proving dishonesty) [2014] UKUT 00236 (IAC) gives guidance on the approach where deception is alleged. The factual background was again considerably different. The Upper Tribunal at paragraph 16 said that the reference to 'false' in paragraph 322 'dishonestly false'.
20. At paragraph 25 the Upper Tribunal commented on the burden of proof and referred to a switching burden with the burden of proof resting on the decision maker to establish any contested precedent fact. Once the decision-maker establishes the underlying facts, the burden shifts to the appellant. (see IC (Part 9 HC395 - burden of proof) China [2007] UKAIT 00027, para 10; MZ (Pakistan) v SSHD [2009] EWCA Civ 919 para 25; and Mumu (Para 320; article 8; scope) [2012] UKUT 00143 (IAC)). At hearing, Mr Tusan provided me with a copy of

the House of Lords decision in B (children) [2008] UKHL 35 where, at paragraph 70, Baroness Hale said that neither the seriousness of the allegations or the seriousness of the consequences should make any difference to the standard of proof to be applied, namely the balance of probabilities.

21. Having considered the arguments I find no material error of law in the decision of First-tier Judge Cockrill. It is clear and concise and identifies the issue arising and deals with it appropriately. The Judge dealt properly with the document verification report and correctly self-directed on the burden of proof. Consequently, the decision dismissing the appeals shall stand.

Decision.

The decision of First-tier Judge Cockrill dismissing the appellants' appeals shall stand. The appeals are dismissed.

Deputy Upper Tribunal Judge Farrelly