



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/19764/2012
IA/19765/2012

THE IMMIGRATION ACTS

Heard at: Field House
On: 18 December 2014

Determination Promulgated
On: 16 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MRS LABANY AKTER
MR MD SHAHIDUL ISLAM
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: Ms O Momoh, counsel (instructed by Universal Solicitors)
For the Respondent: Ms L Kenny, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are husband and wife; they are nationals of Bangladesh. I shall refer to Mrs Akter as "the appellant." Their applications for leave to remain as a Tier 1 (Entrepreneur) Migrant and her dependant were refused on 3 September 2012

pursuant to Paragraph 322(1A) of the Rules. The appellants have two children, born on 25 August 2010 and 25 February 2014 in the UK who were not joined in the proceedings.

2. In support of her application the appellant submitted a bank statement. The respondent then sent the statement for verification. The subsequent document verification report dated 8 August 2012 asserted that neither the bank account referred to, nor the bank branch itself, existed. The conclusion set out in the report was that the statement of account submitted was not a "genuine document". Their applications were accordingly refused.
3. Their appeals against the refusals were dismissed by First-tier Tribunal Judge McIntosh in a determination promulgated on 15 November 2013.
4. On 23 January 2013, Upper Tribunal Judge Chalkley granted the appellants permission to appeal, on the basis that there was no indication from the First-tier Judge of the standard of proof which was applied.
5. At the hearing on 2 April 2013, the Upper Tribunal found that the decision involved the making of an error on a point of law. Nowhere had the Judge referred to the burden of proof in the assessment. It was not apparent from the determination itself that the Judge had proceeded on the correct basis. The issue as to burden of proof in such a case is fundamental and should not be left to an analysis of the determination as a whole to conclude whether or not the Judge did err as claimed.
6. The appeal was then listed for a re-hearing. There have been several hearings, including adjourned hearings. The appellants' solicitors have unfortunately not always complied with directions with regard to the production of a consolidated bundle of documents. This has caused inconvenience to the parties. The hearings were also stood out as the appellant was heavily pregnant. She in fact gave birth recently to her second child in the UK.
7. In addition, there have been several changes of representation on both sides. It is only recently that Ms Momoh has been instructed. I am indebted to both Ms Kenny and Ms Momoh for their preparation, and in particular the identification of the essential issues in this case. Ms Kenny in particular has provided a very helpful and detailed timeline setting out the various documents and reports that were subsequently filed and relied on by both parties.
8. An example of a further delay resulted from the production by the appellant of a copy of a letter dated 17 June 2013 purporting to have been sent by the Social Islami Bank. The respondent wished to investigate its provenance and by agreement the appeal was then adjourned.
9. On resumption of the appeal on 17 September 2013, Mr Saunders, who represented the respondent on that occasion, produced a letter from a Mr Abdul Basset, described as the vice-president and manager of that bank, disputing the authenticity

of the 17 June letter. It was contended that although a letter had been sent by the bank, it had been “modified by the applicant.”

10. This resulted in the further adjournment following an application on behalf of the appellants by Mr Mohammad in order for enquiries to be made. This resulted in various further disputes and counter disputes culminating in a recent attempt by the appellants to produce yet further evidence by way of an email to the appellants from Mr Bashet confirming that the bank held the relevant account. There was also an attempt to produce further copies of letters said to have been sent by Mr Bashet to the appellants. All this has tended to cloud the identification of the relevant issues in the appeal.
11. During the course of submissions by the parties, which are set out below, it was finally accepted that this appeal concerned the contention by the respondent that account number 1151079896538 at City Bank Ltd, Bangladesh, was an account that did not exist. In support of their applications the appellant claimed to have held £200,000 in that account and had submitted a letter and statements from that bank.
12. At the hearing on 18 December 2014, I refused the appellants' further application to adduce further evidence, this time relating to email correspondence dated 20 July 2014 from the Social Islami Bank Ltd. The application was said to be pursuant to paragraph 15(2)A) of the Upper Tribunal Rules. However, the evidence sought to be produced was not germane to the issues which have to be decided.
13. Submissions were then made by each party.

Submissions

14. Ms Kenny stated at the outset that the issue is whether the respondent has shown that the appellant had submitted false documents accompanying her application. She referred to paragraph 245DD of the rules which provide that an applicant must not fall foul for refusal under the general grounds for refusal. There must be a minimum 75 points awarded under paragraphs 35 to 53 of Appendix A and the applicant must have a minimum of 10 points under paragraphs 1 to 2 of Appendix C.
15. She noted that the respondent relied on paragraph 322(1A) which provides for the mandatory refusal of the application where false representations had 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) or material facts have not been disclosed, in relation to the application, or in order to obtain documents from the secretary of state or a third party required in support of the application.
16. Ms Kenny has set out the “timeline” in this case. The original document verification report dated 8 August 2012 asserted that neither the City Bank account referred to nor the bank branch itself existed.
17. A “new” DVR dated 5 May 2013 was produced before the Upper Tribunal following a query as to the apparent contradictory assertions made in the earlier DVR by the

officer concerned. He initially stated that the bank representative informed him that the bank records indicate that this account and branch does not exist. He then goes on to state however that "... the information held by the bank differs from what is detailed in the documents that were provided in support of the application form." As such, the officer was "satisfied" that the statement for the account submitted was not genuine.

18. However, the initial DVR report did not disclose the nature of the "information" which was in fact held by the bank. Nor is the branch, if any, identified. Nor was there any indication as to how the information held had 'differed'.
19. Accordingly, the respondent contacted the case worker in Bangladesh setting out the queries that were raised. The later report again certified that the account name and the account number did not exist. The officer contacted the City Bank, Dhaka Chambers Branch. The representative confirmed that the City Bank, Dhaka Chambers Branch, had been renamed to "the City Bank Motijheel Branch" in June 2011. The bank representative from the City Bank Motijheel confirmed that the bank records indicated that this account does not exist and should be considered as fake. It is asserted that the information held by the bank differs from what is detailed in the documents that were provided in support of the application form.
20. The respondent has also subsequently produced a letter sent to Mr R Sarker, Immigration Section, at the British High Commission in Dhaka. This is dated 15 September 2013. Mr Abdul Bashet confirmed in a letter to the officer concerned that the Social Islami Bank Ltd issued a certificate on bank account number 0541340005734 "...favouring Labany Akter entitled to whom it may concern" under reference SIBL dated 17 June 2013. It is asserted that the content of the certificate as attached to the officer's email "seemed difference" from the content of the actual certificate issued. It is therefore presumed that the content has been modified.
21. The copy of the original certificate was also enclosed. It was not denied however that the Social Islami Bank Ltd account was opened.
22. Ms Kenny also referred to the City Bank account statements (pages 32-35) in the appellants' bundle which refer to the account type as "savings bank - staff." She submitted that there has been no suggestion that either the appellant or her father had ever worked for the bank. Further, the application form and the passport copy show that the appellant's name is "Akter". The certificate and bank statement submitted show the name as "Akhter". That discrepancy adds to the evidence that false documents have been provided.
23. Nor had the appellant provided closing statements from City Bank or statements from Social Islami Bank confirming the deposits said to have been made on 10 June 2012.
24. Ms Kenny submitted that the two reports relating to documentation from both banks, as well as the letter dated 15 September 2013 from Social Islami Bank Ltd are sufficient to "discharge the burden of proof resting on the respondent to prove the

allegation made against the appellant." She submitted that the appellant has 'failed to rebut the allegation' and all the subsequent letters sent by the Social Islami Bank produced by the appellant during the course of the hearing should be afforded little weight.

25. She referred to pages 29 and 35 of the appellant's bundle containing the letter from City Bank dated 30 October 2012, which states that the account was closed on 10 June 2012 on the request of the appellant and her father. The closing balance on that date is the same as that contained in the bank statement produced at page 35, showing the same amount as at 26 April 2012.
26. The respondent had thus discharged the burden of proof on the balance of probabilities.
27. On behalf of the appellant, Ms Momoh submitted that the emails from the Social Islami Bank Ltd explains the letter to the respondent dated 15 September 2013, in line with the appellants' contention that this is inaccurate. That email verifies that the bank had provided two certificates of the same date (17 June 2013) and in effect retracted the statement that the certificate had been "modified by the appellant."
28. The appellant has always denied the use of dishonesty or deception in this case. In the light of the emails submitted by the appellants in rebuttal of the respondent's reliance on the letter of 15 September 2013, the respondent had not proved her case.
29. She referred to Adedoyin v SSHD [2010] EWCA Civ 773 with regard to paragraph 322(1A) of the rules. Dishonesty or deception is needed to render a false representation a ground for mandatory refusal. An allegation of forgery needs to be proved by evidence and by the person making it. She also relied on the decision in Ahmed (General Grounds of Refusal - material non disclosure) Pakistan [2011] UKUT 00351 (IAC). There must have been the deliberate practise of deception.
30. She submitted that the appellant had endeavoured through telephone calls as well as email correspondence to engage with the Social Islami Bank for clarification on what was essentially confusion as to the provenance of the bank certificate. Consideration of the correspondence from the Social Islami Bank in its entirety confirms that the appellant has at all material times been financially sound and solvent and that there is strong degree of 'correlating documentation'.
31. The allegation that the appellant submitted a "modified" bank certificate is a serious allegation and compelling evidence must be produced '...beyond a defective DVR and a letter dated 15 September 2013 "presuming" that the content of the certificate was modified'.
32. Ms Momoh also made specific submissions with regard to the DVR dated 5 May 2013. The new report did not shed any light on the issue: "...The same things are repeated. There is no attempt to explain what was requested".

33. In this regard she referred to the request for clarification as set out in a letter from Ms E Martin, who represented the respondent at a hearing on 3 June 2013. In particular, information was sought as to what was meant by "account and branch does not exist" as contained in the initial DVR.
34. The respondent's official was asked to provide clarification as to the following: If the said branch and account do not exist, how can the information held by the bank officer differ from the records they have? What documents are being referred to when the bank states that the information held by the bank differs from what is detailed in the documents that were provided?
35. Ms Momoh submitted that the information subsequently given was wholly inadequate.
36. With regard to the assertion that the City Bank Dhaka Branch was renamed in 2011, Ms Momoh referred to the appellants' bundle at page 29, containing a letter from a Senior Assistant Manager dated 30 October 2012. The City Bank Ltd address at the head of the page is given as "Dhaka Chamber Branch, 65-66 Motijheel C/A Dhaka, Bangladesh." There is accordingly no significant discrepancy. That letter certified that the appellant and her father had the closing balance relied on as at 10 June 2012. Having been provided with this document, the officer should have checked this information.
37. She submitted with regard to the reference in the appellant's bank statement to "staff account," that this has never been raised before. It is a matter of speculation, which could have been cleared up, but was not. Accordingly, the respondent was not able to obtain any assistance from that document.
38. She submitted that the bank statement set out at A35, corroborates the appellant's position as to the balance of her account in April. The appellant had contended at paragraph 5 of the witness statement that her father was not happy with the banking services of City Bank and therefore wanted to close that account. That was done on 10 June 2012, after which the amount was transferred to the Social Islami Bank Ltd.
39. Ms Momoh also referred to the original letter accompanying her application submitted on her behalf by Universal Solicitors. There it was asserted that the appellant had funds of £205,000 to which she has her own access as a joint account holder. Her father has given his consent over the full funds which are held by City Bank. Further, she is using £5,658 for her maintenance and has provided the same bank statement from City Bank covering at least 90 days or more from the period commencing on 17 April 2011 to 26 April 2012 in her claim for ten points.

Assessment

40. The respondent has contended in the reasons for refusal that the appellant submitted a false bank statement from City Bank Ltd, in Bangladesh, namely, that the account did not exist.

41. I have had regard to the evidence of the appellant as well as the substantial documentation that has been produced by both parties post-dating the date of the decision. Such further evidence produced related to the same bank manager at the Social Islami Bank Ltd. In this respect there have been allegations and counter allegations that have been made.
42. However, I have to ascertain whether the respondent has shown on the balance of probabilities that the appellant has made false representations or has submitted false documents (whether or not material to her application and whether or not to her knowledge) in relation to the application. I have regard to the documentation submitted as at the date of the application.
43. The respondent has the burden of proving that false documents have been dishonestly and deceitfully produced as part of the application. In this case the appellants themselves produced and produced such documentation. Accordingly, it must be shown that there was the necessary accompanying intention to deceive. Dishonesty or deception is needed to render a false document a mandatory ground for refusal.
44. The appellant's evidence has remained consistent throughout. The bank statement which she relied on in her application was submitted by the respondent for verification. As noted, the subsequent documentation verification report dated 8 August 2012 asserted that neither the bank account referred to nor the branch itself existed.
45. As already noted, the report went on to state that the information held by the bank differed from what is detailed in the documents that were provided in support of the application form. However, details as to what that information was and how it supposedly differed was not revealed. A subsequent attempt was made by the respondent to obtain clarifying evidence and in particular as to the alleged differences. I have set out at paragraphs 33 and 34 above the questions asked and the answers received.
46. In response to the questions, the respondent produced a further document verification report dated 5 May 2013. With regard to City Bank it again simply asserted that the information held by the bank differed from what is detailed in the documents that were provided. It was confirmed that the City Bank Dhaka Chambers Branch had been re-named the City Bank, Motijheel Branch in June 2011.
47. It is contended that the bank statements submitted by the appellant for the period October 2011 until 26 April 2012 (A33-35) referred to the bank as "the City Bank Ltd, Dhaka Chamber Branch." That relates to a joint account held by the appellant and her father. However, the letter dated 30 October 2012 (A29) from the City Bank had the address as "Dhaka Chamber Branch", 65-66 Motijheel C/A Dhaka, Bangladesh. It is accordingly still referred to in 2012 as the Dhaka Chamber Branch with the address 65-66 Motijheel. It is not referred to as the "City Bank Motijheel Branch" as asserted in the DVR report dated 5 May 2013.

48. I have also had regard to Ms Kenny's submission that the bank statement itself is described as "type Savings Bank - Staff." It goes on to state that this is a "status active" account. There is no evidence as to what the description "savings bank staff" refers to or comprises. The respondent has had the opportunity to obtain evidence as to whether or not there is any particular significance in the description as implicitly contended by Ms Kenny. At best it is speculative. However, I do not find in the circumstances that this assists the respondent in discharging her burden of proof.
49. The document verification report relied sought to examine the bank statements produced. It was asserted in the report that the bank representative informed the official who made the request on behalf of the respondent, that the bank records indicated this account and branch did not exist. As already noted, it goes on to state somewhat inconsistently that the information held by the bank differs from what is detailed in the documents that were provided in support of the application form.
50. However, as repeatedly noted, there is no clear evidence as to how the information held by the bank has differed. In the later DVR dated 5 May 2013, it simply states that the information held by the bank differs from what is detailed in the documents that were provided in support. That is merely to repeat what had been contained in the earlier report. It is stated that the City Bank Dhaka Chambers Branch has been renamed the City Bank Mojitheel Branch, in June 2011. However, as already noted, the bank statements produced are not consistent with the bank letter that had been sent after the change of name in June 2011, contained at A29 and 30. The letter still refers to the "Dhaka Chambers Branch."
51. The appellant in evidence both before the First-tier Tribunal and Upper Tribunal has maintained her assertion that the account at City Bank had been closed at the end of June 2012. There was also a letter produced from the Social Islami Bank dated 23 October 2012 confirming that the appellant had opened an account there on 23 October 2012 and that on that date, BDT 270,000,000.00 had been deposited in her name.
52. On 15 September 2013, Mr Abu Noman Md Abdul Basset, the Vice President and Manager of Social Islami Bank, Islampur Branch, Dhaka, wrote to Mr Sarker from the Immigration Section at the British High Commission in Bangladesh, stating that "we would like to inform you that we issued a certificate on bank account number 05413400 5734 favouring Labany Akter, entitled to whom it may concern dated 17 June 2013." However, the content of the certificate as attached with Mr Sarker's email seemed different from the content of the actual certificate said to have been issued by the Social Islami Bank Ltd. Accordingly, it is presumed that the certificate has been modified.
53. However, the Social Islami Bank Ltd did not dispute that the account had been opened "...fvg Labany Akter". There is no contention that the deposit into her name had not been effected. It is not explained by Mr Basset how the content "is seemed difference" from the actual certificate issued by them.

54. There have been further letters exchanged between the appellant and Mr Basset regarding that account. It has not been contended in any letter that the appellant does not have the relevant amount in that account.
55. The letter from the Social Islami Bank Ltd that was produced in evidence before the First-tier Tribunal was dated 23 October 2012. This is a detailed letter which confirms that she has been maintaining various term deposit receipt accounts which has an equivalent value of £203,374.
56. As part of the evidence accompanying the application there is a letter dated 29 April 2012 from an advocate of the High Court, Mr Iqbal, who confirmed that the declaration of Mr Mohammed Mohasin, the appellant's father, that the funds held in City Bank were to be invested by his daughter, is valid and that his signature has been verified.
57. That document was placed before the First-tier Tribunal and it is not contended that it is not authentic or in any other way suspect.
58. The appellant has maintained throughout that the City Bank account was closed on 10 June 2012 and that the amount was transferred to Social Islami Bank Ltd. However, she did not give the date on which the transfer took place to that bank.
59. At paragraph 6 of her witness statement, dated 20 May 2014, the appellant stated that to avoid unwanted complications, her father decided to give all the money to her account. She accordingly opened six Mudaraba term deposit receipts (MDTR) accounts with the Social Islami Bank and the taka were accordingly transferred into it.
60. The Social Islami Bank Ltd has written a letter dated 23 October 2012 confirming that this occurred as at 23 October 2012.
61. As already noted, the letter from City Bank dated 30 October 2012 suggested that the funds had been transferred to Social Islami Bank on 10 June 2012 (A29).
62. The appellant has stated throughout, albeit not very clearly, that the money had left the City Bank and has been transferred to Social Islami Bank after the Citi Bank account was closed and that it had been at the Social Islami Bank in their joint names prior to the transfer to her sole account. Accordingly, the letter dated 30 October 2012 corroborated the appellant's subsequent explanations as to the destination of the money.
63. I also have had regard to the fact that the initial DVR was only made in August 2012. By that date, the appellant had stated that the account had been closed at City Bank. Accordingly, the fact that the account was closed on 10 June 2012 did not mean that it had not existed on that day. Nor did it follow that there had been a "non genuine" account as asserted.

64. Having regard to the evidence as a whole, I find that the respondent has not established on the balance of probabilities that false documents were produced or relied on in making the application.
65. I accordingly find that the appellant has shown that she has had access to the funds as required. She was accordingly entitled to the points under Appendix A. Further, I also find that she has the minimum of ten points required in accordance with Appendix C.

Notice of Decision

The appeals are allowed under the immigration rules

No anonymity direction is made.

Signed

Dated: **6 January 2015**

Deputy Upper Tribunal Judge Mailer