



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/20287/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 17 August 2015

Decision & Reasons Promulgated
On 2 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

ARMINDER SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: not represented

For the Respondent: Ms C Johnson Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Malik promulgated on 18 August 2014 which dismissed the Appellant's appeal against a decision dated 25 April 2014 refusing an application for leave to remain in

the United Kingdom as a Tier 1 Entrepreneur under the Points Based System and to make directions for his removal under section 47 of the Immigration, Asylum and Nationality Act 2006.

3. The Appellant's case is linked to that of his wife Satinder Kaur (IA/06336/2014) as they were part of an Entrepreneurial Team in their Tier 1 applications which were made on different dates and were the subject of different refusal decisions. Her case was heard before a different Judge on another date and has also been appealed and came before me today. While there were some common issues inevitably the decisions nevertheless involved different Judges and different issues in refusal so her appeal is the subject of a separate decision.

Background

4. The Appellant was born on 20 January 1986 and is a national of India.
5. The Appellant was in the United Kingdom from 2010 as a Tier 4 Student and after renewing that leave it was due to expire on 6 February 2014.
6. The Appellant and his wife were part of a Tier 1 Entrepreneurial team. On 14 November 2013 the Appellant and his wife Satinder Kaur made an application for leave in that category. That application was refused essentially on the basis that a letter they had produced from the Punjab national Bank dated 24 October 2013 was false.
7. The decision in relation to his wife carried a right of appeal and his did not. The appeal in respect of his wife's decision came before First tier Tribunal Judge O Williams on 6 June 2014 and he dismissed her appeal finding that the bank letter in issue had not been issued by the bank and therefore the refusal under paragraph 322 (1A) and 245DD was in accordance with the Immigration Rules. I heard an appeal against that decision and upheld it as I was satisfied that the Judge made findings that were in accordance with the evidence before him.
8. As this Appellant did not have a right of appeal he reapplied for leave to remain as a Tier 1 Entrepreneur on 6 February 2014.
9. On 25 April 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
 - (a) The Appellant submitted two Fixed Deposit Certificates from Punjab National Bank that were found not to be genuine and therefore the application was refused under paragraph 322 (1A) of the Rules as he had used deception in his application.
 - (b) The Appellant had made a previous application as a Tier 1 Entrepreneur on 14 November 2013 and produced a letter from the Punjab National Bank that was found to be false. The Appellant was advised that any further applications for leave to remain would be refused under paragraph 320(7B) as he had previously attempted to obtain leave to remain by deception.
 - (c) The Appellant also claimed points under Appendix A for Attributes. The Appellant could not be awarded the 25 points claimed for access to funds as the

Fixed Deposit Certificates were not genuine nor would they have met the evidential requirements; the contracts provided in support of the application did not meet the mandatory evidential requirements of 41-SD(e) (iii) and (iv) because they did not state the services to be provided.

The Judge's Decision

10. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Malik ("the Judge") dismissed the appeal against the Respondent's decision. In dismissing the appeal the Judge found :
 - (a) At the time of his application the Appellant sought to rely on Fixed Deposit funds in accounts starting 4899 and 3541 in the Punjab National Bank in the name of Madan Lal.
 - (b) The Judge considered the contents of a Document Verification Report and set those contents out in full at paragraph 13. In essence the Bank confirmed on 23 April 2014 that there was a lien against the account ending 4899 and therefore the available amount was nil and in respect of the second account was also subject of a lien and only Rs 19,032 was available. Thus any certificate in the banks name at the time of the application produced by the Appellant suggesting that more funds were available was false. The report went on to confirm that another certificate 6804 was genuine.
 - (c) The Appellant subsequently obtained further information from the bank namely a letter and computerised printouts which showed that the fixed deposits were paid at maturity in August 2014. The Judge therefore accepted that at the time of her decision the funds were available.
 - (d) The Judge found however that the evidence produced did not address whether liens/ loans were on the FD accounts at the time the Respondent made their checks and were told by the bank that the funds were not available until the loans were paid.
 - (e) In the absence of any evidence to address why the information contained in the DVR of 23 April 2014 would be inaccurate the Judge accepted it was accurate.
 - (f) The Judge found that although there was evidence that the Appellant had in excess of £50,000 in a United Kingdom account in June /July 2014 the Judge could not consider this as it was not before the decision maker when they made their decision nor was there any explanation as to why if they were available at the time of application they were not relied on to support the application.
 - (g) In relation to paragraph 320(7B) the Judge had before her the decision of First-tier tribunal Judge Williams in relation to the appeal against the first application the Appellant and his wife had made for leave to remain as Tier 1 Entrepreneurs. That refusal had been on the basis that the Appellants had submitted a letter from Punjab Bank dated 25 October 2013 that the Respondent was satisfied was false as they confirmed with the issuing body that they had not issued the letter. The Judge noted that Judge Williams had dismissed the appeal and there was clearly a material overlap in evidence. However she also considered the DVR produced in respect of the letter of 25 October 2013. As no evidence had been produced to counter the reasons for refusal there was no reason to look behind the decision of Judge Williams.

- (h) In respect of the refusal based on the evidential requirements not being met in relation to the contents of the contracts the Judge found that contrary to the arguments of the Appellant the provisions relating to evidential flexibility in paragraph 245AA did not apply as the application was being refused for another reason.

11. Grounds of appeal were lodged arguing that :

- (a) The Appellant submitted an appeal bundle that contained computerised bank statements for the Fixed Deposit accounts in issue for the period 3.2.2014-22.5.2014 which confirmed that the Appellant had access to the funds at the time when the home office made their checks.
- (b) In the appeal bundle there was also a letter from the bank which confirmed that there was no lien on the Fixed Deposits.
- (c) The DVR dated 23 April 2014 gave an incorrect number for the bank branch and for the name of the contact there. The Appellant produced a copy of a print out from the banks website as evidence and this had been included in the appeal bundle and claims this was discussed in the appeal hearing but not referred to by the Judge in her decision.
- (d) In relation to the decision by Judge Williams there was also a letter in the appeal bundle from the Punjab National Bank dated 2 July 2014 confirming that they had issued the letter of 24 October 2013. This was discussed in court but Judge Malik did not consider this letter in her decision.

12. On 26 September 2014 First-tier Tribunal Judge Molloy gave permission to appeal.

13. At the hearing I heard submissions from the Appellant that :

- (a) There was evidence in the appeal bundle to the Upper Tribunal at pages 26 and 27 that showed that the money relied on by the Appellant in the fixed deposit accounts was available as he claimed at the date of the DVR on 23 April 2014.
- (b) There was a letter dated 22 July 2014 from the Punjab national Bank at page 28 confirming there was no lien on the FD account and an affidavit from his father at page 29 dated 21 June 2014 to the same effect.
- (c) The letter at page 2 of the bundle dated 2 July 2014 from the Punjab National Bank stating that the Bank certificate issued on 24 October 2013 to Madan Lal was genuine and this was not considered by Judge Malik at the hearing.

14. On behalf of the Respondent Ms Johnson submitted that ;

- (a) The Judge recorded in detail at paragraphs 7-9 the evidence that the Appellant seeks to suggest she did not take into account.
- (b) The documents relied on by the Appellant in his Upper Tribunal bundle were printed on 14 October 2014 and cannot have been before the Judge.
- (c) The Judge however at paragraph 15 of her findings clearly considered the computerised print outs relied on by the Appellant.
- (d) The Appellant had been refused on the basis of not meeting other requirements of the Rules as to the contracts he submitted not containing required information.

Legal Framework

15. Of some significance in this case are those legal provisions which were set out by the Judge at paragraph 6 of her decision that govern what evidence she was able to consider in reaching her decision in this appeal because paragraph 322 (7B) is not a PBS case but the refusal of the application as a Tier 1 Entrepreneur is a PBS case.
16. Under section 85(4) of the 2002 Act on appeal under section 82(1) and 83 the Tribunal can consider evidence about any matter which it thinks is relevant to the substance of the decision including evidence which concerns a matter arising after the date of decision. However, section 85(4) of the 2002 Act is now subject to the exceptions contained in section 85A, which was brought into force by section 19 of the UK Borders Act 2009. Pursuant to exception 1, in appeals against the refusal of entry clearance or a refusal of a certificate of entitlement under section 10 the Tribunal "may consider only the circumstances appertaining at the time of decision".

The Law

17. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
18. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Finding on Material Error

19. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
20. The Appellant made an application dated 6 February 2014 in which at G10 of his application he claimed on the basis of a letter from the Punjab National Bank to have access to £50,000 Fixed Deposits.

21. The Judge had before her and set out in full at paragraph 13 a Document Verification Report including the contents of a phone call made on 23 April 2014 to Dev Raj Dutt Senior Manager of GT Road Branch of the PNB whose number was obtained from the DVU database. He gave the Manager the account numbers for the accounts relied on and was told that as there were liens on both accounts and that the available balance on one account was nil and the other was less than the amount required.
22. The Appellant argues that the judge failed to consider those documents that he submitted in his appeal bundle to the First-tier tribunal that included computer generated bank statements of the FD accounts and a letter suggesting that there was no lien on the account.
23. I am satisfied that the Judge had before her and took into account those documents that the Appellant asserts she did not consider because she clearly refers to them in detail in the context firstly of his oral evidence at paragraphs 7-9 and in her findings at page 15. However the Judge found that the Appellant had produced no evidence as to why the bank manager provided to the consular official who made the enquiry on 23 April 2014 the information that there were liens on the accounts. She accepted that there was new information to suggest that the funds were *now* available but this did not address the fact in issue as to whether on the date of the enquiry there were liens on the accounts as of course the Manager made clear in the DVR that when the liens were paid the funds became available.
24. The other documents produced by the Appellant fail to be relevant for the same reason: the affidavit from his father dated 21 June 2014, the letter from the bank dated 22 July 2014 which although hard to read appears to state 'no lien on FDR', the letter from the bank dated 30 July 2014. None of the documents before the Judge address the issue underpinning the claim of deception which was whether there had ever been a lien on the accounts and specifically on the date of the DVR. The Judge took into account the explanations offered by the Appellant but preferred to rely on the contents of the DVR and this was a finding open to her.
25. The Judge was entitled to refuse to take into account evidence that the Appellant had £50,000 in a United Kingdom bank account because this was not the basis of the application made by him.
26. In relation to the refusal under paragraph 320(7B) the Judge set out her findings at paragraph 17-18 and concluded that the starting in her case was, given the guidance in Devaseelan [2002] UKIAT 000702, the decision of Judge Williams in as it related to an application made by the Appellant's wife as part of a joint Entrepreneurial team with him using a letter dated 24 October 2013 which the Respondent asserted was false on the basis of a DVR. The Judge made a finding that the letter from Punjab Bank dated 24 October 2013 was not issued by them and that is a decision that I have upheld.
27. This Appellant claims that in stating at paragraph 19 that the Appellant had failed to counter the reason for refusal in relation to the letter of 24 October 2013 she did not consider the letter he produced from Punjab Bank(signed by the Manager although his name is not printed and is otherwise unclear)dated 2 July 2014 in which they stated that a bank certificate issued on 24 October 2013 to Madan Lal was issued by

their branch. This was before the Judge in the appeal bundle that she has otherwise clearly referenced. She is not of course obliged to make findings in respect of every document before her. Given her other findings even if she did not consider this document the error was not material as the appeal failed for other reasons that were not challenged in the grounds of appeal such as the failure of the contracts to meet the requirements of paragraph 41-SD . I am bound to say that even had she considered it I am satisfied that her conclusion would not have changed as again it fails to address the issue of why the manager spoken to by the consular official stated both on the telephone and confirmed in writing that the bank did not issue the letter of 24 October 2013.

28. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1): *“Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.”*
29. I was therefore satisfied that the Judge’s determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

30. **I therefore found that no errors of law have been established and that the Judge’s determination should stand.**

DECISION

31. **The appeal is dismissed.**

Signed

Date 30.8.2015

Deputy Upper Tribunal Judge Birrell