



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/38667/2013  
IA/38675/2013

THE IMMIGRATION ACTS

Heard at: Manchester  
On: 3<sup>rd</sup> July 2015

Decision and Reasons Promulgated  
On: 4<sup>th</sup> September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Ayesha Junaid  
Asif Junaid

Appellants

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Ms Wilkins, Counsel instructed by Farani Javid Taylor Solicitors  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellants are both nationals of Pakistan. They appeal with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge Holt)<sup>2</sup> to dismiss their linked appeals against the Respondent's decisions to refuse to vary their leave to remain and to remove them from the United Kingdom pursuant to s47 of the Immigration Asylum and Nationality Act 2006<sup>3</sup>.

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<sup>1</sup> Granted on the 16<sup>th</sup> April 2014 by First-tier Tribunal Judge Reid

<sup>2</sup> Promulgated on the 7<sup>th</sup> March 2014.

<sup>3</sup> 9<sup>th</sup> September 2013

## Background and Matters in Issue

2. The First Appellant had applied for leave to remain as a Tier 1 (Entrepreneur) with the Second Appellant, her husband, named as her dependent. She relied *inter alia* on a statement purportedly issued by the Sindh Bank showing her to have funds of in excess of the equivalent, in rupees, of £200,000. The Respondent conducted verification checks and found that document not to be genuine. The refusal was therefore made with reference to paragraph 322 (1A) of the Rules. No explanation was offered, nor evidence submitted, by the Respondent as to why the Sindh Bank statements were not accepted as genuine.
3. The Appellants appealed and in doing so submitted witness statements in which they maintained that the bank statement had been genuine. The account given was that following their initial submission of documents they had decided to close the Sindh Bank account and transfer their funds to Habib Bank. They pointed out that in July 2013 they had actually sent on Habib Bank statements to the Respondent. This suggested that if there was no currently existing account this was not because of any deception; rather it was because the account had been shut by the time the checks were made.
4. Prior to the hearing the Respondent produced a 'Document Verification Report' (DVR). This showed that enquiries made by the High Commission on the 17<sup>th</sup> July 2013 had resulted in information being supplied by a Mr Muhammad Bilal Sheikh of Sindh Bank, Jhelum Branch to the effect that no such account "exists" (in the present tense).
5. At the hearing on the 21<sup>st</sup> February 2014 the Appellant produced in her evidence a chequebook. She said that this had been issued to her by the Sindh Bank; she produced it as further evidence that she had, at one time, held this account. The HOPO cross-examined her on this document. One of the points he made was that the name of the branch was spelled as "Jehlum" instead of "Jhelum". The Appellant protested that this was an alternative spelling. Following the hearing her representatives wrote to the Tribunal providing a screenshot from the Sindh Bank website which confirmed that the bank does spell the name of the Punjabi city 'Jehlum'. That letter was sent on the 24<sup>th</sup> February 2014.
6. On the 7<sup>th</sup> March 2014 Judge Holt promulgated her decision. She was not impressed by the cheque book:

"The cheque book was very different from any cheque book I have ever seen. Bizarre elements included: the quality of the shiny paper, the fact that the binding (green) appeared to have been cut unevenly and applied at different levels on the front and back; a corner was ripped off; figures inside were not on the same level; the spelling of

'Jehlum' was different from other spellings - 'Jhelum' used for example in the DVR email from the bank; and the fact that the perforations running between the counterfoil and the cheques were not in a straight line and appeared to have been created by means of a needle, pin or other sharp instrument. Finally, all the cheques had already been signed by both Appellants.

Overall the cheque book was very strange. However, I do not have any knowledge of Pakistani cheque books or expertise in assessing what is a forgery or not. Therefore my overall assessment of the chequebook itself is that it is a document which I can ascribe any weight whatsoever".

I presume from the tenor of these paragraphs that the final sentence should read " I *cannot* ascribe any weight whatsoever". The determination went on to make adverse findings about the oral evidence and the appeal was dismissed, Judge Holt finding that the refusal under paragraph 322(1A) was justified.

7. The grounds of appeal are that that the determination contains the following errors of law:
  - a) Nowhere is it recognised that the burden of proof in establishing deception lies on the Respondent;
  - b) Nowhere is it considered that the explanation offered by the Appellants - that the bank account had now been closed - had been offered prior to the DVR ever being disclosed and as such should have carried more weight as a consistent explanation for Mr Sheikh's evidence;
  - c) There is no finding as to whether the contents of the DVR are capable of discharging the burden of proof, the Respondent having failed to produce any other evidence that this account was not genuine;
  - d) The findings on the credibility of the Second Appellant are unreasoned: there are no reasons given for having found the evidence to be "convoluted", "vague" or "nonsensical and unreliable";
  - e) The comments about the chequebook in the determination are all unsafe because as the Judge herself notes, she has no experience of Pakistani chequebooks;
  - f) There is a mistake of fact in that the Punjabi town is frequently known as Jehlum as opposed to Jhelum, notably on the Sindh Bank website.

## Error of Law

8. An initial 'error of law' hearing took place on the 21<sup>st</sup> November 2014. The Respondent was that day represented by Senior Presenting Officer Mr Diwnycz. Following that hearing I made the following findings.
9. This was not, at first glance, a promising case. As can be seen from the extract above, the First-tier Tribunal gave numerous reasons as to why the chequebook was not reliable, and was damning in its assessment of the oral evidence.
10. Having heard from Ms Wilkins I am however persuaded that the determination is unsafe and must be set aside. At paragraph 7 the determination states that the burden of proof lies on the Appellants. In fact in respect of the 322(1A) decision it lay on the Respondent. The only evidence that the Respondent had produced was the DVR relating to the communications with Mr Sheikh. The Appellant's had, before they had ever had sight of the DVR, explained that the account was closed. This offered an apparently straightforward explanation as to why it no longer existed. There is no reasoned finding in the determination as to whether the Respondent had discharged the burden of proof in showing that the Sindh Bank statements were forged.
11. There is an error of fact in that the Tribunal appears to have attached weight to the spelling of Jhelum: it is apparent from the Sindh Bank website that they use the transliteration "Jehlum". It may be that some or all of the remaining points made about the chequebook were perfectly justified and it is a document to which no weight can be attached, but this does not establish that the *bank statements* were forgeries.
12. In respect of the reasons given for rejecting the oral evidence Mr Diwnycz was unable to extract any from the determination. He could not for instance point to where there was a "lack of internal consistency" or in what respect the evidence had been "ambiguous".
13. For those reasons the decision was set aside. At the close of the 'error of law' hearing Mr Diwnycz indicated that he would like some time in order to take instructions on whether the Respondent wished to conduct a verification check on the Sindh Bank chequebook that had troubled the First-tier Tribunal. I agreed to this request and the matter was set down for a CMR. That hearing was not convened until the 22<sup>nd</sup> April 2015 when Mr Harrison appeared for the Respondent. He said that no verification checks had been undertaken or requested and that the Respondent did not intend to take any further action in respect of the chequebook. The Appellants were that day represented by Mr Karnik of Counsel whose instructions were that they no longer wished to rely on the chequebook at all. The matter was therefore set down for a full hearing.

## The Re-Made Decision

14. I remind myself that the burden of proof in respect of an allegation of deception lies on the Respondent. The standard of proof is at the higher end of the spectrum of the balance of probabilities: see JC (Part 9 HC395, burden of proof) China [2007] UKAIT 00027 at [13]

“So far as the standard of proof is concerned, we consider that what the Immigration Appeal Tribunal said in Olufosoye [1992] Imm AR 141 still holds good: “insofar as the justification consists of deception or other criminal conduct the standard of proof will be at the higher end of the spectrum of balance of probability” (see also R v IAT ex parte Nadeem Tahir [1989] Imm AR 98 CA). This approach reflects that of the House of Lords in R v Secretary of State for the Home Department ex p.Khawaja [1984] AC 74 and is consistent with subsequent case law (see e.g. Bishop [2002] UKIAT 05532). In R (AN & Anor) v Secretary of State for the Home Department [2005] EWCA Civ 1605 Richards LJ stated at [62]: “Although there is a single *civil standard of proof* on the balance of probabilities, it is flexible in its *application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proven, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities”.

15. In this case the applications were refused by way of a letter dated 9<sup>th</sup> September 2013. That letter simply states “as false documents have been submitted in relation to your application, it is refused under paragraph 322(1A) of the Immigration Rules”. The reasons for that conclusion were not given until the production of the Document Verification Report shortly before the First-tier Tribunal hearing. The substance of that document is reflected in the email received on the 5<sup>th</sup> July 2013 by the investigating officer from Mr Muhammad Bilal Sheikh, President and CEO of Sindh Bank:

“Please note that the statement of account, mentioning the number as 0635-066249-6106 is totally bogus. Neither this number nor the title of account (Asif and Ayesha Junaid) exists at any of our branches.

You are requested to please take serious note of any statement received by you on account of our Jhelum branch for confirming its genuineness through a telephone call to us. We shall immediately verify it and inform you on telephone regarding its genuineness”

16. As I note above it is the Appellants’ case that before they had ever had sight of that DVR they had closed their Sindh Bank account and had opened a new one, providing statements from the new account to the Respondent. In his statement dated 11<sup>th</sup> January 2014 the Second Appellant explains that he had decided to close the account because the bank was not providing a good service and had not been able to provide a letter confirming that the money was held in the account. The bank had required him to visit the branch in person which obviously he could not do because he was in the UK. He had therefore transferred the funds to his cousin’s account at Habib Bank. By the time the check was conducted by the Respondent, the Sindh Bank account no longer existed. In his oral evidence he said that since the refusal he had tried many times to speak with the branch manager but had been unsuccessful. He had in

the end received a reply by email dated 11<sup>th</sup> March 2015. A copy of this email was produced in evidence. It is from Kashif Iqbal of Sindh bank in Clifton, Karachi and it reads:

“Dear sir,  
your account with reference 0635066249-6106 was opened in our Jehlum branch no longer exist...kindly visit branch for any further inquiry”

17. As to the origin of the funds held in that account the Appellants rely on an affidavit sworn by Mr Ali Shah, who is cousin to both of them. He writes that he had agreed to give the Appellants the sum of PKR 32,000,000 for the purpose of starting a business in the UK. He had personally deposited the money in their account at the Jhelum branch of Sindh Bank. In May 2013 they had asked him to go there and get a statement for the purpose of supporting their visa application in the UK. The branch manager Mr Shahzad Hafeez had told him that because he was not the account holder that was not possible. He told Mr Ali Shah that the bank had raised a query about the account and where the large amount of funds had come from. The bank had written to the Appellants' address in Pakistan but the post had been returned as obviously the property was empty. Ali Shah explained to the branch manager that he had given his cousins the money and that he had made it in his occupation as a businessman owning a chain of restaurants in Pakistan. The branch manager had then informed him that it was contrary to Pakistani law for a third party to keep money in an account not belonging to him – if it was not the Appellants' money they should not have it in their account. In addition it was bank policy that holders of such accounts had to be in Pakistan. Because of these infringements the account was blocked. The branch manager asked Ali Shah to give a written statement explaining where the money had come from and why he had given it to his cousins. He was assured that when the investigation was complete the funds would be released. Ali Shah then went to the Appellants house in Pakistan and collected the chequebook. He posted it to them in the UK so that they could sign some cheques. They sent it back to him so that if in the case of an emergency he could withdraw money in an alternative way.
18. It is apparent that there is a fundamental contradiction between the evidence given by the Second Appellant in his written statement dated 11<sup>th</sup> January 2014 and the undated affidavit of his cousin Mr Ali Shah. It was the Appellants' written evidence that they had closed the Sindh Bank account because of poor service: “as a result we felt the need to change to Habib Bank”. By contrast the evidence of Ali Shah is that it was the bank which froze the account for various regulatory breaches, including the account holders not being present in Pakistan, having failed to reply to correspondence and the account holding funds belonging to a third party. In his oral evidence the Second Appellant attempted to resolve that contradiction by telling me that it was the bank which closed the account of its own motion. That was not his written evidence.
19. A further contradiction emerges from the affidavit of Mr Ali Shah in that he appears to state that he organised the signing of the chequebook so that funds

could be withdrawn – presumably by him in Pakistan – in an emergency. It is not clear how this would have been possible if the account had been blocked or frozen. If the bank were concerned about the origin of PKR 32,000,000 in cash – a natural enquiry that any bank operating with due diligence would have made – it is in my view very unlikely that they would have simply allowed the funds to be transferred from a frozen account. It is even more unlikely that this history of account freezing and investigation would not appear on the records of the bank. The unambiguous email from Mr Sheikh is expressed in the present tense but it is in my view extremely unlikely that the name of the Appellants, coupled with that account number, would not have shown up in the bank records as a closed account. The same can be said of the recent email from Mr Iqbal, relied upon by the Appellants.

20. Having considered all of this evidence I am satisfied that the Respondent has produced cogent evidence in support of his conclusion that the Sindh Bank statements were indeed forged. The Respondent has discharged the burden of proof and the appeals must be dismissed.

### **Decisions**

21. The determination of the First-tier Tribunal contains an error of law and it is set aside.
22. I re-make the decision in the appeals by dismissing both under the Immigration Rules.
23. I was not asked to make a direction as to anonymity and on the facts I see no reason to do so.

Deputy Upper Tribunal Judge Bruce  
10<sup>th</sup> August 2015