



IAC-FH-AR-V1

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

Appeal Numbers: IA/39978/2014
IA/40030/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 November 2015
Oral decision**

**Decision & Reasons Promulgated
On 16 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SYED ALI NAQI
RABAB MEHDI
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer

For the Respondents: Mr P Saini, Counsel, instructed by Saj Law Chambers

DECISION AND REASONS

1. This is an error of law hearing in which the Secretary of State is the appellant. For convenience I shall refer to the parties as the "Secretary of State" and the "appellants" as before the First-tier Tribunal. The Secretary of State appeals a decision made by First-tier Tribunal (Judge Housego) ("FtT") who in a decision promulgated on 6 May 2015 allowed the appeals against the decision to refuse to grant leave to remain as a Tier 1

(General) Migrants and to remove them by way of directions under Section 47 of the 2006 Act.

2. The Tier 1 application made by the appellants, who are husband and wife, were refused with reference to paragraphs 322(1A) and 322(2) Immigration Rules that in a previous application the appellant relied on false evidence of employment and earnings from a company Envo Green Limited found to be bogus and which existed only to provide false document of earnings for immigration purposes. In the Tier 1 application it was that previous deception that was of relevance to UK experience.

First-tier Tribunal

3. The FtT found that the Secretary of State failed to make out her case evidentially under paragraph 322(2) with reference to the previous application and that a refusal under that paragraph was not mandatory [14]. The Secretary of State produced no documentary evidence to show that Envo Green Limited was engaged in illegal activity. The FtT was not prepared to simply accept what was stated in the refusal letter. There was no certificate of conviction, no record of sentencing remarks and no indication of time scale as to when the deception had occurred [21]. The Secretary of State failed to produce adequate evidence that the appellant used false documents in connection with a previous application [23].

4. The FtT had no evidence to prove that the criminal proceedings related to the relevant time and /or any link to documents produced by the appellant in or about 2010 when he claimed to be working for that company. Further, there was no challenge made as to the documents relied on by the appellant which included payslips and P60s [17]. The FtT appeared to proceed on the basis that it was plausible that the appellant could have genuinely worked for that company in 2010 given that the prosecution was in 2014.

5. The FtT followed the approach in **A v SSHD [2010] EWCA Civ 773**. It was not the case that the appellant was relying on false documents for his present application. He had been awarded points save under UK experience where the deception was relied on.

Grounds for permission

6. The Secretary of State contended that the FtT erred in failing to rely on reference made in the refusal letter to the criminal proceedings in June 2014 at Harrow Crown Court in **R v Sultan Shahzad and Others** where it was found that Envo Green Limited was one of many ghost companies used by persons convicted and that it had no genuine trading existence. It was not possible for evidence to be produced with every refusal notice presented at an error of law hearing. The Secretary of State further contended that there was nothing in the evidence to show assertions were erroneous.

7. The Secretary of State was granted permission to appeal by Upper Tribunal Judge Gleeson on 25 August 2015, following refusal of permission by First-tier Tribunal Judge Simpson. Judge Gleeson issued directions for the respondent to produce the sentencing remarks in **R v Sultan Shahzad and Others**, the Companies House registration for Envo Green Ltd and any evidence to show a connection between that company and the defendant Sultan. The appellant was to produce evidence in rebuttal. The matter was to be listed as a rolled up hearing. In a letter dated 25th September 2015 the Secretary of State produced the sentencing remarks. Although the letter also claims to produce “the evidence relied on by the Crown in that appeal that led to a conviction,” that evidence was not attached to the Tribunal’s bundle. It was submitted that the evidence provided a clear link with Mr S. Sultan and Envo Green Ltd which was incorporated on 26th May 2010 and dissolved on 27.12.2011. There was no registration of any employees and no tax returns submitted.

Preliminary issue

8. Mr Saini argued that the directions made by Judge Gleeson resulting in the production of further material were not of relevance until the Tribunal had reached the stage of finding an error of law. It would be wholly unfair for new evidence to be considered at the initial stage that was not before the FtT. No application had been made for new evidence to be admitted pursuant to the Practice rules.

9. Mr Melvin responded that the evidence had been available at the time of the FtT hearing and it was open to the FtT to have adjourned for evidence to be produced. Mr Melvin submitted that Judge Gleeson granted permission on the basis that the FtT’s approach was erroneous. There was no rebuttal evidence from the appellant. Whilst it was accepted that the detailed evidence had not been provided for the FtT, evidence was referred to in the Reasons for Refusal Letter and was a matter of public record, that the Tribunal could take into account.

Decision re preliminary issue

10. I decided that there was no reason for me to depart from the standard procedure in an error of law hearing. In the event that (and if) I find a material error of law I will then be in a position to consider whether or not to admit the further material produced consequent to the directions made.

Submissions

11. Mr Melvin relied on the grounds of appeal on which permission had been granted and a skeleton argument. The FtT failed to grant a further opportunity to the Secretary of State to substantiate the reasons in the refusal letter by way of further evidence. Given the gravity of the criminal proceedings the FtT itself should have requested further evidence from the Secretary of State. The conviction was a matter of public record. The appellant had adduced no evidence in rebuttal. The FtT erred in its

approach to the assertions made by the Secretary of State as to matters of public record.

12. Mr Saini replied that the Secretary of State had ample time in which to substantiate the allegations made in the refusal letter; the refusal letter was dated 13.9.14, the bundle for hearing was dated 26.11.14 and the FtT hearing took place on 22.4.15. The adjournment point had not been raised in the grounds of application for permission. There had been no application made at the FtT for more time or for an adjournment and the Home Office Presenting Officer (“HOPO”) was content to proceed and rely on the refusal letter (Mr Saini appeared at the FtT). It was a matter for the Secretary of State who had the burden to discharge that false documents were relied on. The appellant was under no obligation to produce rebuttal evidence until the deception was established. The HOPO failed to obtain the necessary documentary evidence to support the allegation made, and it was insufficient to request that the FtT check Lawtel [11]. In any event for the FtT to have done so would have amounted to the Judge going off on a frolic of his/her own. The refusal letter makes no connection with the appellant in the prosecution. The sentencing remarks produced fail to meet the standard to show deception in **AA (Nigeria)**.

Discussion and decision

13. I have carefully considered the submissions made this morning including those with regard to the grant of permission and directions made by Upper Tribunal Judge Gleeson. I have to consider whether or not the First-tier Tribunal materially erred in law such that the outcome of the decision would be different. I do so with reference to the grounds of appeal relied on and having regard to the evidence that was before the FtT. I take the view that the correct approach was for the FtT to follow **AA (Nigeria)**. Where deception is alleged the burden is on the respondent to produce evidence to show that deception has been used. The standard of proof is the civil standard, the balance of probabilities. The evidence must be cogent and reliable. In this instance the respondent relied on the reference made in the Reasons for Refusal Letter to **R v Sultan Shahzad and Others** but there was no specific evidence before the FtT to connect the appellant in those proceedings. Indeed at the FtT hearing there was not even generic evidence produced by the respondent.

14. The Appellant is entitled to know the reasons for the decision made, and where deception is alleged the respondent must discharge the burden and produce the relevant evidence. The opportunity for that to be done is in Reasons for Refusal Letter or at the hearing before the FtT. The FtT found that the respondent had not met the evidential burden. The FtT is required to make findings based on evidence and for it to rely on assertion is not enough. Whilst acknowledging that the respondent was not a party to the criminal proceedings and the fact that the conviction was a matter of public record, those factors take the matter no further in addressing the absence of any evidence linking the appellant in and/or establishing the deception. Even if the sentencing remarks had been before the FtT, the

FtT would have had to consider whether there was strong and cogent evidence that this appellant was involved in the particular deception to the required standard, and make findings accordingly. There was no application made for an adjournment by the HOPO and the Secretary of State had ample time in which to substantiate her case in advance of the hearing. It was not incumbent on the FtT to search out evidence in support of the Secretary of State's allegations or claim.

15. I conclude that there is no material error of law disclosed in the FtT decision and reasons. The Secretary of State has failed to make out the grounds of appeal that the FtT erred in its approach. The appeal is dismissed.

Notice of Decision

The appeal is dismissed. The FtT decision shall stand.

No anonymity direction is made.

Signed

Date 3.12.2015

GA Black
Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 3.12.2015

GA Black
Deputy Upper Tribunal Judge G A Black