



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/21165/2013

THE IMMIGRATION ACTS

Heard at Field House
On 21 April 2015

Determination Promulgated
On 30 April 2015

Before

THE HONOURABLE LORD BANNATYNE
UPPER TRIBUNAL JUDGE WARR

Between

MR MUHAMMAD SALEEM KAYANI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr P Nath, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan who was born on 3 March 1960. He appeals the determination of First-tier Judge Ross. At that hearing as before us there was no appearance on behalf of the appellant and accordingly Judge Ross determined the matter on the material before him. In the absence of any explanation it appears appropriate for us to proceed in the absence of the appellant or representative.
2. The appellant had been issued with a multi-visit passport valid until 15 February 2014 on 19 February 2009. In support of the application for the passport the appellant had submitted a letter from Habib Bank dated 2 December 2008 which stated that he was a regular employee of the bank since joining it in 1980. He was

working as the assistant manager of a branch in Lahore. On 20 July 2011 he had been reissued with the visa valid as before until 15 February 2014.

3. The appellant was refused entry to the UK on 7 November 2013 because he had left the employment of the bank on 31 May 2011 having opted for premature retirement. The refusal notice reads:

“On 28 July 2011 you were issued with an entry clearance which had effect as leave to enter the United Kingdom but I am satisfied that false representations were employed or material facts were not disclosed for the purpose of obtaining the leave, or there has been such a change of circumstances in your case since the leave was granted that it should be cancelled, I therefore cancel your continuing leave. If your leave was conferred by an entry clearance, this will also have the effect of cancelling your entry clearance.

You were employed as an assistant bank manager at the time of your visa application, however you state that you have since retired from this position, which represents a change of circumstances to your current employment. Furthermore you have stated that you have paid for the Holiday Inn Express at Heathrow for five days, however the hotel confirms that this booking was cancelled by your travel agent and you hold the limited cash funds of US\$550 which is approximately £341 at the current exchange rate. These funds are to accommodate and maintain yourself for the period of five days and also for three days in Istanbul. You have stated also that your debit card has no funding available to you and I am not satisfied that these funds are enough to accommodate and maintain yourself for the period stated.”

4. Accordingly directions were given for the appellant’s removal.
5. The judge records that the appellant argued that he had not made any false representations at the time of obtaining the visa in 2009 because at that stage he was employed by the bank. The judge records as follows in paragraph 4 of the determination:

“I accept that no false representations were made in this case, however there was a change of circumstances when the appellant retired on 31 May 2011, because he did not have any employment. The visa had been issued on the basis that the appellant had a job with the bank, and now he did not have a job. I consider therefore that the appellant has not acted in a way which is in any way to be criticised, but the fact remains that there had been a change of circumstances.”

6. In paragraph 9 of the determination the judge reminds himself of the applicable burden of proof:

“The burden of proving that the appellant has either been subject to a change in his circumstances, or that he has submitted false representations rests on the respondent to a high degree of probability. In relation to the false

representations the respondent must also prove that the false representations were made dishonestly.”

7. In paragraph 10 of the determination the judge found that the respondent had not proved that there were any false representations and the visa had been obtained on the basis that the appellant had been employed at the bank, which was true. Although he subsequently obtained a replacement visa on 20 July 2011 it was clear that the appellant’s circumstances had changed on 31 May 2011. He had taken early retirement. When obtaining the replacement visa for the one issued in 2009

“it would seem that he did not disclose the fact that he was no longer employed, because the letter which has been submitted from the bank is dated 21 November 2013. However, I consider that there is no evidence to suggest that the appellant, who has been perfectly straightforward about his employment history, failed to disclose this information for dishonest reasons. The position was that he simply wanted a replacement visa for one that he already had. He should have disclosed at that stage that his employment had ceased, but there is no evidence that he was asked about it, and I am prepared to accept that he may not have known that he was required to disclose this information. In any event I consider that the Immigration Officer was entitled to refuse entry to the UK on the basis that the appellant’s circumstances had changed, and that this change in circumstances was a significant one and that he was right to cancel his leave. The reason for this is that in relation to visas which give permission to enter the UK, the appellant’s circumstances in his home country are anxiously scrutinised with a view to deciding whether he has sufficient ties to his home country, and that these are such that he will return at the end of his trip. His finances are also examined in some detail because it is essential that he is able to afford to maintain and accommodate himself in the UK. Although the hotel appears to have made a mistake in his booking, this does not alter the central problem which is that the appellant was no longer employed.”

8. The judge concluded the determination by dismissing the appeal but adding this:

“But I make it clear that I have made no findings of fact in relation to any dishonest behaviour by the appellant, and I consider that this should be taken into account in any future applications for a visa.”

9. The appellant appealed the decision and permission was refused by First-tier Judge Nicholson on 18 July 2014. Judge Nicholson noted that the grounds essentially reiterated the appellant’s case. He observed that the fact that the appellant was unaware that the change might lead to cancellation of his visa did not alter the position and the decision of the judge had been open to him. However, the judge had emphasised that he had made no findings of dishonesty and thus the appellant would not be precluded from making a further application for a visa in the light of his change of circumstances.

10. An application for permission to appeal to the Upper Tribunal was made and on 16 January 2015 permission was granted although the Upper Tribunal Judge found great difficulty in understanding the points being made in the appellant's lengthy grounds. Permission was granted on the point that save for the reference at paragraph 9 "there is no mention anywhere in the determination of the burden and standard of proof being applied."
11. The respondent filed a response on 6 March 2015 noting that the grounds of application were wholly incomprehensible and no material error of law was identified and the First-tier Tribunal Judge had directed himself appropriately.
12. Mr Nath submitted that no arguable error of law had been identified and he referred to the reasons given by the First-tier Tribunal for refusing permission to appeal.
13. We reserved our decision. In our respectful view the First-tier Judge made it abundantly clear what standard of proof he was applying in paragraph 9. He was not satisfied that the respondent had shown that false representations had been made and there has been no appeal from that aspect of the decision by the respondent. While the judge accepted that the appellant should have disclosed the change of circumstances he did not identify any dishonest motivation on the appellant's part. He had simply failed to bring to the respondent's attention a change in his circumstances. He had retired from the bank. The judge accepted that the appellant had been perfectly straightforward as we have indicated above. The judge went to some length to make it clear to the respondent that he was not attributing any dishonesty to the appellant.
14. We do not find that any error of law has been identified in the grounds and we agree with the respondent's view that they are incomprehensible. We see no evidence of any misdirection in the judge's approach to the issues before him.
15. For these reasons and for the reasons given by First-tier Tribunal Judge Nicholson when refusing the application for permission to appeal, this application is refused and we direct that the decision of the First-tier Judge shall stand.
Appeal dismissed

Signed

Date 24 April 2015

Upper Tribunal Judge Warr

TO THE RESPONDENT
FEE AWARD

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