



IAC-FH-NL-V1

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

Appeal Numbers: VA/12255/2013
VA/12257/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 5th August 2015**

**Decision & Reasons Promulgated
On 11th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**ENVER BAKALLI
DILFIQAR BAKALLI
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr D Balroop, Counsel instructed by EU Migration Services
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Enver Bakalli and Dilfiqar Bakalli against the decision of First-tier Tribunal Judge Mitchell who in a determination promulgated on the 1st December 2014 dismissed their appeals against the refusal of visit visas by the ECO in Tirana. The applications had been made before the new rules limiting right of appeal came into force and accordingly they had a full right of appeal on both applications in respect of the application of paragraph 41 of the Immigration Rules.

2. One basis for the refusal of their applications was that dishonesty had been employed in making the applications, 320(7A) and paragraph 320(7B)(ii) had been considered in the determination. The complaint is that the judge at paragraph 15 made findings which are inconsistent and contradictory to those made in paragraph 17. At paragraph 15 the judge said this:

“Therefore despite the fact that the entry clearance officer did not comply with directions and produce the relevant information from the Albanian border guards it is quite clear that the appellants have each individually given false information to the entry clearance officers.”

At paragraph 16 the Judge said:

“I therefore conclude that the decision to refuse the appellants entry clearance as visitors was correct under paragraph 320(7A) of the immigration rules. The appellants’ appeals must therefore fail.”

3. At paragraph 17 of the decision he returned to the issue and concluded in this way:

“Therefore, having considered the issue and heard all the representations I conclude that there is insufficient evidence to show that the appellants utilised deception in any of the applications for entry clearance that they have made.”

4. That conclusion contradicts paragraph 15 and it is impossible to reconcile the two conclusions. There is no logical basis for preserving one set of findings in preference to the other. On that basis I am satisfied that the error is material. It follows from that that the case will have to be re-decided. The issue of deception under paragraph 320(7A) has to be decided, because this is an appeal to which the old rules apply the provisions of paragraph 41 and whether the Appellants can meet those provisions will also need to be determined.

NOTICE OF DECISION

5. For the reasons given I set aside the decision of Judge Mitchell remit the case to the First-tier Tribunal for re-hearing by a different judge.
6. I have given directions separately but those directions are that:
 - (i) there is a one hour time estimate;
 - (ii) there will be one witness

No anonymity direction is made.

Signed

Date 7th August 2015

Deputy Upper Tribunal Judge Parkes

To The Respondent
Fee Award

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable in respect of the appeal to the Upper Tribunal. I make no fee award at this stage in respect of the fee payable for the appeal to the First-tier Tribunal as that is a matter to be decided dependent on the outcome of the remitted hearing.

Signed

Date 7th August 2015

Deputy Upper Tribunal Judge Parkes