



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

Appeal Number: VA/13034/2013
VA/13308/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 15th January 2015**

**Decision and Reasons
Promulgated
On 12th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**(1) ZHENRONG HAN
(2) ZHIMING HAN**

(ANONYMITY NOT DIRECTED)

Appellant

and

THE ENTRY CLEARANCE OFFICER - BEIJING

Respondent

Representation:

For the Appellant: Mr S Vokes, Counsel instructed by Maggie Wong & Co
Solicitors

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of the Peoples Republic of China and are father and son. The first appellant was born on the 18th December 1958 and the second appellant on the 2nd June 1989. They appeal, having been granted

permission upon renewed application, against the decision of the First-tier Tribunal (Judge Kelsey) to dismiss their appeals against refusal of their applications for entry clearance to the United Kingdom as family visitors.

2. The respondent refused the applications, amongst other things, under paragraph 320(7A) of the Immigration Rules (making a false statement or submitting a false document in support of an application). This decision was based upon the respondent being satisfied that the second appellant had submitted a letter, signed by the first appellant, which falsely stated that he was employed by his father's company whereas he was in fact unemployed. The second appellant had admitted that he was unemployed in a telephone interview with the respondent and had blamed his parents for the submitting the letter with his application. In the Notice of Appeal, which was drafted by the second appellant's sister, Ms Hui Hui Han, it was claimed that the second appellant had "totally misunderstood" the question that he was being asked in the telephone interview, and that he had in fact been working continuously for his father's company since he left school in 2008.
3. The judge set out his findings and reasons at paragraphs 15 to 20 of his decision. I have given added emphasis to the arguable error of law that gave rise to the granting of permission to appeal in paragraph 17:

15 These two applications were refused for similar reasons. Mr Zhenrong Han is said to have been the general manager of the company since August 1997. His son, Mr Ziming Han was interviewed over the telephone and as a result of that conversation the respondent concluded that Mr Zhiming Han could not give the name of his supposed employer. He then said he was unemployed. In addition he had not submitted any payslips, bank statements or other evidence of having an income. Mr Zhenrong Han claimed that he had worked for his company as general manager since 1997. However, the respondent noted that the telephone number given for the company was a residential number, and no information about the company could be found. It did not appear to have any website, and that fact alone is extraordinary in 2013. The sponsor Ms Huihui Han has not explained satisfactorily why the company does not advertise itself. It appeared that Mr Zhenrong Han was complicit in providing a false employment letter in support of his son's application to obtain entry to the UK, since the company could not be reached on the telephone number, and there is very little documentary evidence to confirm the company's operations. Both the applications were refused under paragraph 320 (7A) of the Immigration Rules. I find that the appellants have not satisfied me that they run a genuine business as transporters and hauliers.

16 Those conclusions have not been addressed or explained in the grounds of appeal or in the documents submitted to support the appeals. The appellants have not submitted any evidence to show that they have telephone numbers belonging to or used by the business, or that Mr Zhiming Han actually receives a salary or income from the company. In his interview he said he was unemployed and that his parents had arranged an employment letter for the purpose of the application. He did not appear to have any knowledge any knowledge of the business. It was later suggested that the appellant did not speak Mandarin fluently and did not understand

the interviewer. There is no satisfactory evidence that Mr Zhiming Han has a role in working in the business.

- 17 Mr Zhiming Han had also failed to provide any evidence of his own financial circumstances or any evidence of income from other sources. That remains the situation. His sister has made a number of assertions in the grounds of appeal and other written submissions that she has made to the tribunal, but there is no evidence to support the assertion that he is employed by the company. No payslips have been submitted and there are no relevant bank statements. The sponsor has made a number of assertions and claims with regard to the family business but there is very little independent evidence of any kind to prove the business actually trades, and no cogent evidence to show that Mr Zhiming Han works for the business. New evidence, submitted after the appeals, includes documents which came into being after the decision, so I cannot take them account. The sponsor has also submitted documents claiming that they refer to the business and the vehicles that are used in the business, but there are only a few pages translated by an independent translator. Such documents do not have any weight or evidential importance.
- 18 Many of the documents have been translated by the sponsor herself; she may be an accurate translator, but she has not provided any evidence that she is qualified as a translator. Nor did she take the opportunity to come to the tribunal in order to give evidence at the hearing to explain the various papers. In any event there is still no cogent evidence which addresses the main reason for refusing the applications, namely that her brother was unemployed and did not work for the family business. The documents supplied do not explain any of the reasons why the applications were refused. The fact that some lorries may belong to the firm is no evidence that her brother works on behalf of the company and receives a salary from the company.
- 19 I also note that Mr Zhanerong Han has submitted a letter in support of the appeal confirming that his son Mr Zhiming Han has been working for the company. There is no independent evidence to support that and I can place little or no weight on a letter from the father. I have not seen evidence to show that Mr Zhiming Han performs work for, or receives any remuneration from, the company.
- 20 In all the circumstances I can find little evidence of any weight to show that Mr Zhiming Han has any roles or status in the company. There is no evidence which really addresses the conclusions of the entry clearance officer following the interview. For all those reasons I find the appellants have failed to meet the burden of proof to show that they are genuinely applying to come to the UK for a family visit of no longer than six months and that they would return. The appellants have failed to supply evidence which satisfies me that the appellants are genuinely seeking a family visit. For all those reasons the appeals are dismissed.

4. In granting permission to appeal, Upper Tribunal Judge Reeds noted that,

“... it is arguable that the judge erred in law by rejecting all consideration of the evidence provided for the purposes of the appeal. The fact that it was provided

after the decision did not necessarily make the evidence inadmissible as “post decision evidence”.

5. The judge’s concern was in fact not merely that the documents had been *provided* after the date of decision, but that they had been *created* after that date. This was a fact that was undoubtedly capable of reducing the weight that he might otherwise have attached to them. It nevertheless did not render them inadmissible under the terms of Section 85 of the Nationality, Immigration Act 2002. To that extent, the judge made an error of law. However, in spite of Mr Vokes best efforts to persuade me to the contrary, I have concluded that the error was immaterial to the outcome of the appeal. This is for the following reasons.
6. Firstly, as I have already observed, the judge would have been entitled to attach less weight than otherwise to the documents in question (those attached to the Notices of Appeal) on account of them having been created after the date of the decision. Secondly, the documents were not relevant to the issue of the falsity or otherwise of the letter that the appellant had submitted in support of his application and which ultimately led to the dismissal of both appeals. It is true, as Mr Vokes pointed out, that these documents were relevant to the existence of the first appellant’s company; a matter that had also been put in issue by the respondent. Nevertheless, they were not relevant to the ultimately decisive question of whether the second appellant was working for that company, as claimed in the letter signed by his father. Thirdly, the legally erroneous statement that is contained within the sentence that I have underlined was but one of many reasons that the judge gave for dismissing the appeal. The judge’s other reasons were all perfectly sustainable upon the evidence that was before him. He might have added that the second appellant had not in fact retracted the admission that he was unemployed, or explained how he had come to make it in the first place.

Notice of Decision

7. The appeal is dismissed, and the decision of the First-tier Tribunal therefore stands.

Anonymity is not directed

Signed

Date

Judge D Kelly

Deputy Judge of the Upper Tribunal