



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

Appeal Number: IA/10141/2014

THE IMMIGRATION ACTS

**Heard at Field House
On: 17 March 2016**

**Decision and Reasons
Promulgated
On: 20 April 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MR FARHAN AZAM
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr A Bajwa, Legal Representative

For the respondent: Mr S Walker, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistani born on 21 November 1987. He appeals to the Upper Tribunal against the determination of First-tier Tribunal Judge Robison dated 26 August 2015 refusing his appeal against the decision of the respondent cancelling his leave on the ground that either false representations were employed or material facts were not disclosed for the purposes of obtaining a visa/entry clearance, or there had

been a change of circumstances since it had been granted pursuant to paragraph 321A of the Immigration Rules.

2. Permission to appeal was initially refused by First-tier Tribunal Judge Garratt on 18 December 2015 but subsequently granted by Deputy Upper Tribunal Judge Mahmood on 27 January 2016. He was of the view that it was arguable that the Judge misdirected himself at paragraph 15 of his decision whereby he concluded that no proof of income into the appellant's bank account did not actually mean that the appellant did not work at Mamma Mia and placing too much importance on the fact that the appellant had a national insurance number when initially the appellant did have permission to work.
3. The Judge in his determination made the following findings in dismissing the appellant's appeal pursuant to the Immigration Rules. The provisions of paragraph 321a contain mandatory grounds for refusal. If all representations were made of false documents were submitted or material facts not disclosed or that there has been a change of circumstances, then I must refuse this appeal. The judge stated that he has given careful consideration to the evidence. The respondent produced a witness statement informing that the HMRC have record stating that the appellant was earning during 2012/2013 and 2013/2014. The appellant's position was that his national insurance number had been stolen and that someone else must be using his national insurance number.
4. At paragraph 15 the judge stated "I did not consider that the fact that there was no income from Mamma Mia recorded as coming into his bank accounts was proof that he did not work there. I do not accept the appellant's evidence someone had stolen his wallet and was using his national insurance number to work illegally. His evidence regarding why he had a national insurance number at all was unclear, and I considered it significant that the immigration officer noted that he had said that he could not remember what he had done with his national insurance number. I noted that there was no reference in the grounds of appeal to his national insurance number having been stolen. In the circumstances the Judge concluded that false representations were made and therefore the Rules were correctly applied and dismissed his appeal under paragraph 321A.
5. The appellant grounds of appeal state the following which I summarise. On his return to the United Kingdom on 18 February 2014, the appellant was stopped by immigration officials at Heathrow airport and informed that his visa was being revoked as he had been working contrary to the conditions attached to his visa. The appellant sent evidence from Mamma Mia stated that the appellant had never worked for them. The appellant submitted his bank statements to show that no money had been deposited from Mamma Mia into his account. The Judge misdirected himself at paragraph 15 when he stated that the fact that there was no proof of income into his account was not proof that he did not work there. The judge did not refer to the letter from Mamma Mia which stated categorically that the appellant did

not work with them. Appellant stated that his wallet with his national insurance number had been stolen and the judge placed too much importance on the fact that the appellant had a national insurance number at all as proof he had breached his visa conditions. The appellant in his previous conditions for his visa had been permitted to work.

6. The respondent in her Rule 24 response stated the following which I summarise. The respondent will argue that the Judge directed himself appropriately. The grounds contend that the appellant did not work for money and that the judge placed too much weight on the fact that the appellant has a national insurance number. It is open to the Judge on the evidence to consider the fact that the appellant had a NI number and the HMRC documents coupled with the finding that the alleged theft was fabricated. These findings were open to the Judge. The grounds have no merit and are merely a disagreement with the outcome of the appeal. The Judge considered all the evidence available and came to a conclusion open to him based on the evidence and the Rules. There is no material error of law.
7. At the hearing, Mr Bajwa adopted his grounds of appeal and emphasised that there was a letter from the employment that the appellant had not worked. Mr Walker relied on the Rule 24 response and said that the Judge considered the evidence of the HMRC which the judge had to consider. He said that the appellant told the officers at Heathrow airport that his national insurance had been stolen.

The error of law decision

8. This appeal was dismissed under paragraph 321 (1A) of the Immigration Rules. The complaint made against the Judge is that he did not consider the letter from Mamma Mia, which stated that they have never employed the appellant. The judge did not consider his explanation that his national insurance number had been stolen implying that somebody else was working with his national insurance number at mamma Mia. The appellant relied on the letter from this company stating that the appellant has not worked for them.
9. The judge made it very clear that he did not believe the appellant's explanation that his national insurance number was stolen. The appellant claims that he told immigration officials at the airport that his national insurance number was stolen. This was after he was detained on the bases that he was in employment. It was put to him by immigration officials that Home Office records confirm that he has been in continuous employment since 1 May 2012 and he was last in receipt of payment on 31 January 2014. If indeed the appellant's national insurance number had been stolen, there was nothing in the evidence to show that the appellant reported this to the authorities before he was apprehended at the airport. It is implicit that his explanation that national insurance number had been stolen was an afterthought after he was caught at the airport.

10. The respondent also provided HMRC records to show that the appellant had worked. The judge was entitled to rely on the evidence provided by the respondent who had proved in the balance of probabilities that the appellant had worked in the United Kingdom.
11. In order to have made false representations or submitted false documents so as to attract a mandatory refusal under Part 9 of the Immigration Rules, an applicant must have deliberately practised 'deception', as defined at para 6. It follows that such failure also requires dishonesty on the part of the applicant, or by someone acting on his behalf.
12. The judge did not accept the appellant's evidence that he had not worked and was entitled to find that the appellant was dishonest when he said that he has not worked in this country. On the evidence before him the judge was entitled to so find. I find that the Judge has not made a material error of law and I uphold the determination.
13. Even if the Judge did not specifically consider the letter from Mamma Mia, in his decision I consider the letter. The letter does not clarify who exactly worked for them with the particular insurance number, which the appellant claims was his and stolen. In the absence of such clarification, no reliance can be placed on the letter from Mamma Mia that the appellant did not work with them. Given that the person with the appellant's national insurance number worked for Mamma Mia and to whom they paid a wage and HMRC records show that a person with that national insurance number worked for them, the company would have made a report to the police, if indeed the national insurance number had been stolen by somebody else. There is no such evidence. In that event I would remake the decision and dismiss the appellant's appeal.

DECISION

Appeal dismissed

No anonymity direction is made

I have dismissed the appeal and there can be no fee order

Signed by

A Deputy Judge of the Upper Tribunal

Dated this 18th day of April 2016

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Mrs S Chana