



**Upper Tribunal
(Immigration and Asylum Chamber)
OA/06585/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 12th January 2016**

**Decision & Reasons
Promulgated
On 16th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR NIZAR NOOR ALI DAREDIA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

**ENTRY CLEARANCE OFFICER
Mumbai**

Respondent

Representation:

For the Appellant: Mr Zane Malik instructed by Malik Law Chambers Solicitors
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant, a citizen of India born on 18th December 1960, appealed with permission, against the First-tier Tribunal decision promulgated on 21st April 2015, which dismissed his appeal under the Immigration Rules and on Human Rights grounds. The appellant had applied to enter the United Kingdom as a Partner under Appendix FM of the Immigration Rules and his application was refused by an Entry Clearance Officer on 12th May 2014.

2. The application for permission to appeal relied on an unreported decision of the Upper Tribunal in **Gurpreet Singh v ECO** (OA/04089/2011) and the requirement within the respondent's published guidance that refusal under paragraph 320(11) of the Immigration Rules requires prior Entry Clearance Manager authorisation. It was submitted in the application for permission to appeal that, and there was one ground only, the Entry Clearance Officer's decision to refuse the appellant's application under paragraph 320(11) of the Immigration Rules was inconsistent with her own published policy and therefore not in accordance with the law and therefore; the judge erred in upholding the Entry Clearance Officer's refusal.
3. At the hearing before me Mr Malik initially contested that the argument centred on whether the point of the prior Entry Clearance Manager's authorisation was raised before the First-tier Tribunal and whether this could now be properly considered.
4. Mr Malik, however, conceded that in fact the decision of the Entry Clearance Officer made on 15th May 2014 made no reference to Paragraph 320(11) but reference to refusing the application for entry clearance on the basis of EC-P.1.1(c) and in particular Immigration Rule S-EC.1.4(c) and S-EC.1.5. Those Rules are set out as follows:

"S-EC.1.4. The exclusion of the applicant from the UK is conducive to the public good because they have:

(c) been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 12 months, unless a period of 5 years has passed since the end of the sentence.

S-EC.1.5. The exclusion of the applicant from the UK is conducive to the public good because, for example, the applicant's conduct (including convictions which do not fall within paragraph S-EC.1.4.), character, associations, or other reasons, make it undesirable to grant them entry clearance."

5. I note that the Entry Clearance Manager, in error, made reference to the Entry Clearance Officer exercising his discretion under paragraph 320(11) but the ECM was in fact incorrect. The decision for the purposes of the appeal is the decision of the Entry Clearance Officer.
6. Mr Kandola also noted that paragraph 320(11) of the Immigration Rules was not in play in this appeal and that the appeal was bound to be dismissed.
7. Both S-EC.1.4 and S-EC.1.5, unless contrary to the Human Rights Convention, are mandatory in their operation.
8. Mr Malik accepted that there was no reference to Paragraph 320(11) in the Entry Clearance Officer refusal decision and also accepted that there

was no Article 8 challenge within the permission to appeal; only the application of the Immigration Rules was challenged.

9. In conclusion, it is clear from the decision that the appellant applied for entry clearance as a partner under Appendix FM of the Immigration Rules. The Entry Clearance Officer detailed the appellant's immigration history in the refusal and noted that records held in the United Kingdom indicated that the appellant was convicted of a criminal offence on 7th March 2006 and sentenced to imprisonment for fifteen months. In the light of that conviction the appellant was therefore refused under paragraph ECP.1.1(c) and S-EC.1.4(c) for ten years from the date of sentence and which meant that he was banned from entering the UK until 7th March 2016. That conviction was not in dispute and I observe that unless the fact on which the decision rests is in dispute the application of that rule is mandatory.
10. The Entry Clearance Officer also considered the circumstances of his application and that the appellant had a family unit in the UK but noted his immigration history which was that the appellant arrived illegally in the UK in 1996 and applied for indefinite leave to remain which was refused in 1997 and he appealed against this decision which was refused in 1998. The appellant failed to comply with reporting restrictions and absconded and made an application in September 1999 to the Home Office using a false identity and he was issued with an EA residence permit and re-entered the UK using a false Portuguese passport and on each occasion was an illegal entrant. He submitted a Portuguese passport in support of an application for indefinite leave to remain in March 2003 but it was noted that that passport had been previously reported lost or stolen. In May 2003 he was refused indefinite leave to remain and given 28 days to leave the UK and in November 2003 he applied along with his stated family members for indefinite leave to remain. On 15th January 2006 he was arrested and taken to a police station and was questioned regarding the false Portuguese passport and was then charged, convicted and sentenced to fifteen months for obtaining property by deception and twelve months for seeking to obtain leave to enter by means including deception.
11. On 26th July 2007 removal directions were sent with an emergency travel document and he was removed from the UK (voluntary departure).
12. In 2008 the appellant made a further application as a family visitor and after interviews, in which he admitted to the Entry Clearance Officer the above noted immigration and criminal history, his application was refused. He made a further application in 2011 as the spouse of a person present and settled in the UK and this was refused on 12th August 2011 on the basis of paragraph 320(18) and 320(19). It was on the basis of the history of the appellant that the Entry Clearance Officer also refused the application under paragraph S-EC.1.5.
13. At no point did the Entry Clearance Officer refer to paragraph 320(11) and indeed neither the appellant's conviction nor his immigration history was disputed by him. The refusal makes mention of a previous Entry

Clearance Officer decision dated 12th August 2011 being refused under Paragraph 320(18) and 320(19) but even that decision did not refer to Paragraph 320(11).

14. The First-tier Tribunal Judge proceeded [15 of the decision] to deal with the appeal on the basis of paragraph 320(11) but that was incorrect. That was an obvious legal error. As these are mandatory grounds there is no discretion on the part of the Entry Clearance Officer which can be challenged by way of appeal and thus the grounds for permission to appeal are misconceived.
15. There was no challenge within the application for permission to appeal and no grant with respect to Article 8 and on human rights grounds and although the judge proceeded in error in dealing with the application under paragraph 320(11) I nonetheless retain the findings in respect of the human rights grounds but remake the decision with respect to the Immigration Rules and dismiss the appeal on the mandatory grounds as cited above.
16. The First-tier Tribunal made an error of law and his decision is set aside in relation to the Immigration Rules. The decision is preserved in respect of the dismissal on Human Rights grounds.

Notice of Decision

I remake the decision and dismiss Mr Daredia's appeal.

The appeal is thus dismissed both under the Immigration Rules and on Human Rights Grounds.

No anonymity direction is made.

Signed

Date 10th February 2016

Deputy Upper Tribunal Judge Rimington

TO THE RESPONDENT **FEE AWARD**

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

Signed

Date 10th February 2016

Deputy Upper Tribunal Judge Rimington

