



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: OA/09802/2014**

Appeal

OA/09805/2014

THE IMMIGRATION ACTS

Heard at Birmingham

**Decision & Reasons
Promulgated**

On 28 January 2016

On 4 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**Mr BALWANT GILL
Mrs INDERJIT GILL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Samra, Solicitor, Harbans Singh Solicitors

For the Respondent: Mr I Richards, Senior Presenting Officer

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by First-tier Tribunal Judge Lambert dated 25 May 2015. The appeal relates to a decision by First-tier Tribunal Judge Hussain promulgated on 11 March 2015. The Judge at the First-tier Tribunal had dismissed the appeal on all grounds.

2. The Appellant had appealed against the First-tier Tribunal Judge's decision and relied on grounds which can be summarised as follows:
 - (1) The Judge had failed to identify what evidence or reliance or weight he was placing on documents served at the hearing by the Home Office Presenting Officer;
 - (2) The Judge failed to make relevant findings at paragraphs 21 to 24 of his decision;
 - (3) The Judge failed to take into account the Appellant's excellent immigration history since 2003 and the Sponsors' credibility and oral evidence;
 - (4) The statements and witness statements had to be accompanied by a statement of truth otherwise little or no reliance can be placed upon them.
3. At the hearing before me Mr Samra said there was an error of law because the Judge did not adequately deal with visitors entering in respect of Paragraph 41 of the Rules. There was no description at paragraph 4 or 5 of whether the questions were in English. There were no witness statements or statements of truth from the Respondent's side. In the interview transcript there was no reference in respect of who it was referring to. The signatures were postdating the interview so how could they be contemporaneous? They are really events some 6 months later. It was not clear who the Judge was referring to. His findings begin at paragraph 21. They did not seem like findings.
4. In his submissions Mr Richards said that this was simply an attempt to re-argue the case. This was the conduct of the two Appellants in assisting an illegal entrant and it was for the Judge to make what he would of the evidence. It was for the Appellants to rebut the evidence and they failed to do so. There were clear findings of fact which were set out at paragraph 26 of the decision. The Judge made no material error of law. The findings were clearly explained and there was no error of law disclosed. I should dismiss the appeal.
5. I heard from Mr Samra in reply. He said that the immigration officer's notes are taken into consideration as there are British passports. They had a British passport.
6. I had reserved my decision.
7. As I had indicated during the hearing, I would not countenance this appeal being dressed up as an appeal alleging a material error of law if, in reality, it was no more than an appeal based on a tactical mistake. What I had meant by that was that it was open to the Appellants to seek an adjournment at the First-tier Tribunal if they had thought they were surprised or ambushed by the new evidence presented on the day by the Presenting Officer for the first time. It is clear though that the Appellants sought to continue with the hearing. Therefore as I stressed during Mr Samra's submissions, there cannot

be a material error of law “just because” the Appellants now wished they had taken a different approach to the case and if they believed they would have been better off seeking an adjournment to address the new evidence.

8. As I also explained during the hearing, I found the grounds of appeal and their attempted amplification at the hearing somewhat unclear.
9. Ultimately, having reflected on matters, it comes to this. The Judge found at paragraph 7 of his decision that the Secretary of State had been ordered to serve a bundle in readiness for the hearing before him but had only done so a few minutes before the hearing. The Judge said this was dilatory on the part of the Respondent. It clearly was.
10. Serious allegations were being against the Appellants. Namely that they had attempted to facilitate the illegal entry to the United Kingdom an Indian national travelling on a British passport which did not belong to him.
11. There is a sub-heading in the Judge’s decision above paragraph 21 “Findings of Fact” but those are not findings (or cannot be) because there is no reasoning. Paragraphs 21 to 24, in reality, recite the Respondent’s case.
12. The findings, such as they are, are to be found at paragraphs 26 to 27 of the Judge’s decision. I have struggled to follow the Judge’s decision as to why the line of authority which the Judge was referred to and which he set out at paragraph 12 of his decision (save for the case of Shen (**paper appeals: proving dishonesty**) [2014] UKUT 00236 which was wrongly distinguished too) was not adjudicated upon. This was a case in which serious allegations were being made against the Appellants. It was not for the Appellants to have to “prove their innocence” in their pre-filed witness statements. Not least because at the time they had filed their witness statements the Respondent had not even served the evidence/bundle of documents. It was not clear at that time precisely what the case was against the Appellants and what the evidence against them was. It was therefore not surprising that the Appellants’ witness statements did not contain a fuller explanation of matters.
13. The fact that one of the Appellant’s said “I told him not to give him a lift but he did not listen to her” is not an admission that the Appellants were part of a conspiracy or plan to assist illegal entry.
14. In my judgment the Judge’s decision contains material errors of law. The burden of proof has been wrongly considered. Thereafter there have been inadequate findings.

15. Accordingly, I set aside the decision of the Judge and there shall be a rehearing. None of the findings shall remain.

Notice of Decision

The decision of the First tier Tribunal Judge contains material errors of law and is set aside.

The appeal shall be reheard at the First-tier Tribunal.

An anonymity direction is not made.

Signed

Date: 1 February 2016

Deputy Upper Tribunal Judge Mahmood