



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/34324/2015  
IA/34325/2015  
IA/02287/2016  
IA/02288/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 21 March 2018

Decision & Reasons Promulgated  
On 10 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

LANKA DARSHI DHAMPE ACHARIGE  
JANAKA PADMAPERUMA  
ROHANA PATHIRANNHALAGE  
SELUMBA HETTIGE PRIYANTHI RENUKA RANATHUNGA  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss E Harris, Counsel instructed by Nag Law Solicitors  
For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision and reasons by First-tier Tribunal (“FtT”) Judge Hussain promulgated on 3<sup>rd</sup> August 2017 in which he dismissed the appeals of each of the four appellant’s against the decisions served by the respondent to refuse the

applications made by the first and third appellants, for leave to remain in the UK as Tier 1 (Entrepreneur) Migrants, and in consequence, to refuse the applications of the second and fourth appellants, as dependants.

2. At the conclusion of the hearing before me, I announced that in my judgement, the decision of the FfT is not infected by a material error of law and the appeal is dismissed. I provided my reasons in short form at the hearing of the appeal, and said that I would give the fuller reasons for my decision in writing. This I now do.

### The appeal and decision of the FfT judge

3. The first appellant's application for leave to remain was refused by the respondent under paragraph 322(1A) of the immigration rules because the first appellant had previously relied upon a TOEIC test certificate to be awarded the necessary points for English language. However, ETS concluded that the certificate was fraudulently obtained by the use of a proxy test taker and the test results were cancelled. The FfT Judge found at [24], that the respondent has not discharged the legal burden of proving that the appellant employed deception. Notwithstanding that finding, the Judge found at [25], that the first appellant's appeal could not succeed for reasons common to the application made by the first and third appellant's.
4. The third appellant's application for leave to remain was refused by the respondent for a number of reasons. First, the third appellant had previously relied upon a TOEIC test certificate and as with the first appellant, ETS had concluded that the certificate was fraudulently obtained by the use of a proxy test taker and the test results were cancelled. At paragraph [27], the Judge concluded that the respondent has not satisfied the Tribunal that the third appellant has used deception. Second, the respondent refused the application because the third appellant had been requested on two occasions to provide alternative evidence of an English language test. The respondent considered that the appellant had failed to provide that information or evidence required by the respondent, and refused the application

under paragraph 322(9) of the immigration rules. The Judge found, at [28], that the appellant had provided a satisfactory explanation as to why he did not provide alternative evidence of an English language test, and in any event, the need for alternative evidence did not arise because of the prior finding that the respondent had not established that the appellant had used deception in relying upon the TOEIC certificate previously submitted. Third, the respondent wrote to the third appellant on two occasions inviting him to attend an interview. The third appellant had claimed that he was unable to attend for health reasons but the letter relied upon in support from the appellants GP did not confirm that the third appellant could not travel to an interview. The Judge found, at [29], that the third appellant had failed to attend the interview and has not provided a reasonable explanation for not doing so.

5. The final reason relied upon by the respondent for refusing the third appellant's application was that the third appellant provided a letter from Swaranamahal Financial Services dated 13<sup>th</sup> September 2014 that was false. That letter was relied upon by both the first and the third appellants. The Judge noted, at [32], that it was unsatisfactory but the appellants application made in September 2012 should be the subject of an investigation some four years later in April 2016. However the Judge was satisfied that the verification document relied upon by the respondent discharged the evidential burden upon the respondent. The Judge went on to consider the first and third appellants account of events, and stated as follows:

*"34. The appellant's evidence in regards the verification report is that in July 2014 they transferred their deposits to another institution upon hearing rumours that the manager of Swaranamahal Financial Services Ltd was appropriating the customer funds. Since their accounts have been closed it is understandable that the institution was not able to provide any information. I reject that position because whilst the institutions unwillingness to confirm or deny the issuance is understandable, their evidence with regards to whether the account itself existed is clear. In my view, even if an account is closed an institution is likely to have retained a record of that.*

*35. I am also troubled by the lack of any evidence from the appellant as to the withdrawal of the funds and closure of their account. Whilst they have provided evidence of funds in a different institution, that does not prove that the account with Swaranamahal Financial Services Ltd was genuine.*

36. *I am also concerned at the contradiction in the evidence of the two appellants in this regard. The first appellant said that when she learned of the Home Office verification Report she did nothing. The third appellant by contrast whilst initially stating that he did nothing, changed his position to say that contact was made with the institution and that telephone contact was discussed with his business partner. Significantly, he claimed that he was told that the funds were still in the account which clearly contradicts his and his partners evidence that the funds were withdrawn and transferred to another account in July 2014.*

37. *Having considered the totality of the evidence the conclusion to which I have come is that the Secretary of State has proven that the letter from the Swaranamahal Institution was false."*

6. Having found that the letter from Swaranmamal Financial Services Ltd relied upon by the first and third appellants was false, the appeals of the first and third appellants were dismissed. It follows that the appeals of the second and fourth appellant's were also dismissed.

#### The appeal before me

7. The appellants advance two grounds of appeal. First, the FfT Judge erred in his assessment of the document verification report relied upon by the respondent, and the evidence of the appellants. Second, the FfT Judge unreasonably rejected the third appellant's explanation for his failure to attend an interview with the respondent.
8. Permission to appeal was granted by FfT Judge Baker on 30<sup>th</sup> January 2018 and the matter comes before me to determine whether there is a material error of law in the decision of the FfT Judge, and if so, to remake the decision.
9. Before me, Miss Harris submits that the document verification report that was relied upon by the respondent was not conclusive, because the manager did not make any observation as to the genuineness of the document itself. The manager had been unable to comment upon the letter dated 13<sup>th</sup> September 2012, because it had been issued in 2012. She submits that it is unsurprising that the manager had been unable to find any record of the fixed deposit account because the appellants case is that the funds had been transferred.

10. Miss Harris submits that insofar as the third appellant's failure to attend an interview is concerned, the third appellant had provided medical evidence. She referred me to the letter from Dr Gorasia dated 21<sup>st</sup> December 2015 that was at page [26] of the appellant's bundle. The letter is not addressed to anyone specifically, and concludes "*.. I would be grateful if you could take this letter as proof of his eye condition and the tremor he suffers and take this into consideration in any assessment you make.*". Miss Harris also referred me to a letter sent by Hounslow IAPT to the third appellant's GP dated 22<sup>nd</sup> September 2015 that was at page [54] of the appellants bundle, and a letter sent by Hounslow IAPT to the third appellant dated 17<sup>th</sup> August 2015 that was at page [59] of the appellants bundle. I do not set out in this decision the contents of that correspondence, but I have had careful regard to it. Miss Harris submits that the Judge failed to acknowledge the strength of the medical evidence and failed to consider the totality of the situation in which the third appellant found himself.
  
11. In reply, Mr Bramble submits that the Judge was entitled to conclude, having carefully considered all of the evidence before him, at [37], that the respondent has proven that the letter from the Swaranamahal Institution was false. The document verification report confirmed that the manager had been unable to find any record under the fixed deposit account number provided. In reaching his decision, the Judge had not only had regard to the document verification report, but also the oral evidence given by the first and third appellants regarding the account. Mr Bramble submits that in reaching his decision as to whether the third appellant had provided a reasonable explanation for his failure to attend interview, the Judge had considered the explanation provided by the third appellant and a careful reading of the medical evidence relied upon does not establish that the appellant was in some way unfit to attend an interview. He submits that it was open to the Judge, at [29], to conclude that the third appellant had not provided a reasonable explanation for his failure to attend an interview.

## Discussion

12. I have carefully considered the two grounds of appeal that are advanced on behalf of the appellants. The focus of the first ground is upon the Judge's findings in relation to the letter that was relied upon by the appellant's from Swarnamahal Financial Services Limited dated 13<sup>th</sup> September 2013, the respondent's document verification report, and the finding reached by the Judge. The second ground related to the Judge's assessment of the evidence relating to the health of the third appellant and why he was unable to attend the interviews.

13. I have carefully read the document verification report and it is right, as Miss Harris submits, that the report is not conclusive. It is to be noted that the manager, when contacted, was requested "*if she was able to verify a bank balance confirmation letter and fixed deposit receipt issued by Swarnamahal Financial Services Ltd.*". It appears that an email was requested. The response recorded in the document verification report records as follows:

*"Received an email reply confirming that she was not able to find any record under the fixed deposit account number provided. (It then sets out the account number). Email confirmation as follows. She further informed via call stated that she cannot confirm/ comment anything regarding the letter dated 13/09/2012 since it's old and has been issued in 2012. Requested us to come through the CEO if we require this to be verified and she does not want to fall into trouble. she can only confirm that there is no account as such."*

14. The respondent concluded that the document was not genuine. In the respondent's decision letter addressed to the third appellant it is stated:

*"Also in your application you submitted letters and a bank statement from the Swarnamahal Financial Services Limited dated 13 September 2012. I am satisfied that the documents were false because we have received correspondence from the bank confirming that these documents are not genuine."*

15. The document verification report does not confirm that there is correspondence from the bank that the document was not genuine. However, the appellants were aware that the respondent's case is that the document is not genuine and the document verification report formed part of the respondent's bundle that was

before the FfT. The appellants were aware of the case that they were required to meet.

16. When addressing the letter from Swarnamahar Financial Services Limited, it is in my judgment, important to read the decision as a whole, and in particular what is said by the FfT Judge at paragraphs [32] to [36] of the decision. Importantly, the Judge states at paragraph [33] that whilst the person to whom contact was made by the respondent could not verify the issuance of the letter, they were able to say that the account did not exist. At paragraph [34], the Judge considered the evidence that was given by the appellants' in relation to the account, and the Judge noted the appellants' evidence as to the content of the verification report. Having considered the appellants evidence, the Judge rejected it.
17. Although the document verification report is a little ambiguous as to whether an account has ever existed, the Judge was required to consider that document together with the appellant's evidence. That is what the Judge did at paragraphs [34] to [36] of his decision, noting that there was a lack of evidence confirming the withdrawal of the funds and the closure of that account, and significantly in my judgment, that there were contradictions in the evidence of the first and third appellants regarding those funds and the account. The Judge had the opportunity of hearing the appellants and having their evidence tested. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence was a matter for him. The obligation on a Tribunal Judge is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision.
18. In my judgment, a careful reading of the decision of the FfT establishes that the FfT Judge reached his overall findings by reference to a combination of inconsistencies in the account given by the first and third appellants, a lack of detail or sufficient explanation, and the matters set out in the document verification report.

19. In my judgment it was open to the judge, having looked at the evidence in the round, to conclude as he does at paragraph [37], that having considered the totality of the evidence the respondent has proven that the letter from the Swarnamahal institution was false.
  
20. I then turn to the second ground of appeal that only relates to the appeal by the third appellant and concerns the Judge's conclusion at paragraph [29] that he was not satisfied that the third appellant has provided a reasonable explanation for his failure to attend interview. At paragraph [8] of the decision, the Judge notes the invitations to attend interviews on 17 November 2015 and 14 December 2015 sent to the third appellant. The Judge refers to the third appellant's evidence that he wrote to the respondent stating that he could not attend due to his eyesight problems. At paragraph [16] of the decision, the Judge again refers to the evidence of the appellant regarding the failure to attend the interviews and the explanation provided. I accept that the recording of the evidence by the Judge is brief. Miss Harris has helpfully taken me to the medical evidence that was relied upon by the third appellant in support of his claim that he was unable to attend the interview and, as I have said, I have carefully considered that evidence for myself. The letter from the third appellant's GP dated 21<sup>st</sup> December 2015 sets out in some detail the eye problems that the third appellant suffers from, but does not suggest that the third appellant was not fit to attend an interview or that there is a reason why he should not attend an interview. I was also taken to a letter of 21<sup>st</sup> December 2016, about a year after the interviews were to have taken place, from the Moorfields Eye Hospital that appears at page [49] of the appellants' bundle. The appellant had recently undergone a corneal transplant operation at the Moorfields Eye Hospital. That cannot have been a reason for not attending an interview a year earlier, and does not begin to suggest a reason as to why the appellant could not have attended an interview in November or December 2015.
  
21. There was evidence of the difficulties that the third appellant was facing because of the underlying eye problems, but the evidence does not in any way suggest that the



third appellant would be unable to attend an interview in or about November or December 2015. There were in the appellant's bundle a number of outpatient appointment letters that I do not need to specifically address and evidence in the form of letters from Hounslow IAPT confirming that the third appellant has been referred to that service. That correspondence does not suggest that the third appellant would have been unable to attend an interview in or about November and December 2015. The Judge accepted that the third appellant did have a serious eyesight issue, as the Judge noted, the medical evidence did not say that the third appellant was unable to attend. In my judgment, looking at the evidence that was before the *FtT* Judge, the finding that the third appellant has not provided a reasonable explanation for his failure to attend the interview was a decision or a finding that was properly open to the Judge. I accept, as Mr Bramble appears to accept, that another Judge might have come to a different conclusion on that evidence, but that is not to say that there is an error of law in the decision under appeal before me.

22. Having carefully considered the decision of the *FtT* Judge, I am entirely satisfied that it was open to the Judge to dismiss the appellants appeals for the reasons set out in the decision.
23. In my judgment, the decision of the *FtT* Judge does not disclose a material error of law, and the appeal is dismissed.

### **Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

Signed

Date

16<sup>th</sup> June 2018

Deputy Upper Tribunal Judge Mandalia

**TO THE RESPONDENT**  
**FEE AWARD**

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

Signed

Date 16<sup>th</sup> June 2018

Deputy Upper Tribunal Judge Mandalia