Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/07625/2020
UI-2022-001995

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 September 2022	**On 17 October 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

WALET MEWES MESQEL TESFAMICHAEL
(ANONYMITY DIRECTION NOT MADE)

Appellant
and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the appellant: Mr M West, counsel, instructed by Affinity Law Solicitors
For the respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Curtis promulgated on 22 January 2022 dismissing her appeal against the decision of the Entry Clearance Officer dated 4 September 2020 refusing her application entry clearance as the child of a relative with leave to remain as a refugee under paragraph 319X of the Immigration Rules.

2. The hearing took place in person in Field House. We heard submissions from Mr West and Mr Whitwell and we reserved our decision.

Background

3. The appellant, a national of Eritrea who was born on 1 January 2004, applied on 16 February 2020 for entry clearance to join her sister, Werku Mewes Mesqel Tesfamichael, who has been recognised as a refugee in the UK. The appellant claimed that she was dependent on the sponsor and provided six money transfer receipts. It is claimed that, since the application was refused, the sponsor sent money to the appellant on three occasions using friends who were travelling to Sudan to deliver cash to her. The sponsor is in receipt of child benefit, disability living allowance and universal credit. She has two children and lives in a two bedroomed property.

4. In the refusal decision the respondent noted that checks had been conducted as set out in a Document Verification Report (DVR) dated 3 September 2020 which concluded that cash receipt vouchers from Dahabshiil are not genuine and refused the application under paragraph 320 (7A) of the Immigration Rules on the basis that the appellant had provided a non-genuine document. As the documents were deduced not to be genuine the Entry Clearance Officer doubted the genuineness of the relationship with the sponsor and the sponsor's ability to support her financially. Accordingly, the Entry Clearance Officer refused the application under paragraph 319X (vii), not being satisfied that the sponsor is able to maintain the appellant's stay in the UK without access to public funds. The respondent was not satisfied that the appellant's circumstances are such that leave should be granted outside the Immigration Rules.

First-tier Tribunal decision

5. The First-tier Tribunal Judge considered the evidence including the DVR and the Dahabshiil receipts as well as the oral evidence of the sponsor and concluded that false documents of money transfers were provided with the application and that the application fell to be refused on suitability grounds. The judgement went on to consider paragraph 319X of the Immigration Rules applying the appropriate calculations to the sponsor's income and concluded that the decision-maker was wrong to conclude that the appellant could not be adequately maintained in the UK by the sponsor without (further) recourse to public funds and that accordingly the appellant satisfies paragraph 319X (vii) and therefore satisfies the relevant eligibility requirements in paragraph 319X. However the judge acknowledged that, as the application fell to be refused on suitability grounds, the appeal must be dismissed.

The challenge to the First-tier Tribunal Judge's decision

6. The appellant's application for permission to appeal was refused by First-tier Tribunal Judge Cruthers on 26 April 2022.

7. The appellant renewed her application to the Upper Tribunal. Only one ground was advanced. The appellant contends that the judge's reasoning in relation to the suitability issue was flawed. The grounds refer to the decision in RP (proof of forgery) Nigeria [2006] UKAIT 00086, the head note summarises the decision as follows:

> "An allegation of forgery needs to be proved by evidence and by the person making it. The procedure under s108 of the 2002 Act remains available to respondents. A bare allegation of forgery, or an assertion by an Entry Clearance Officer that he believed the document to be forged can in these circumstances carry no weight. The Tribunal treats a document as forged only on the basis of clear evidence before it. KS (Allegations by respondent: proof required?) Pakistan [2005] UKA1T 001 71 should not be read as implying the contrary."

8. The appellant contends that the evidence before the judge was not clear, it is noted that the judge accepted that the evidence "could have been clearer" [18]. It is contended that the DVR was not clear because no evidence was provided by the respondent of what exactly was shown to the representative at Dahabshiil; there is no name for the author of the DVR; and there was no statement from the person who compiled the DVR. It is contended that the judge did not state in the determination that the burden of proving the forgery is on the respondent.

9. It is further contended that the judge erred in finding at paragraph 20 that the TTNO on the transfer receipts was designed to be a unique reference number pertaining to that specific money transfer given that the respondent had not produced any evidence to the tribunal that the TTNO was a unique reference number.

10. It is further contended that, whereas the DVR impugned two of the remittances (10/8/2019 and 15/7/2019), the first-tier Tribunal Judge considered and impugned all four of the remittances in circumstances where the respondent had not produced any evidence that the remittances from 6/6/2019 and 2/2/2019 were forged.

11. It is further contended that the judge erred at paragraphs 21 to 22 in finding that, because three of the four remittances had static currency conversion rates, it was likely that the same template document has been used. It is contended that it is not implausible that exchange rates might not fluctuate regularly depending on how the company operated but that, in any event, the respondent produced no evidence that the rate had changed over the period of any of the remittances. It is contended that the judge invited supposition and conjecture within the assessment of the forgery issue which was an arguable error. It is contended that the respondent did not furnish the tribunal with evidence of "sufficient strength and quality" and the judge failed to subject the evidence to critical heightened and anxious scrutiny given the seriousness of the allegation being made by the respondent (NA & Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00021).

12. Permission to Appeal was granted by Upper Tribunal Judge O'Callaghan on 3 August 2022 on the basis that he was satisfied that it is arguable that the First-tier Tribunal Judge failed to adequately observe that the burden of proof rests upon the respondent to establish that the TTNO was a unique reference number. He noted that 'several of the other contentions, appear, on initial consideration to be weaker' but permitted challenge on all grounds.

Discussion

13. The sole issue before the judge, as set out in the decision, is whether application for entry clearance was properly refused on suitability grounds. The judge set out the provisions of paragraph 320 (7A) of the Rules, which applied at the date of refusal, and the current paragraph 9.71 which replaced that provision. The relevant provision for the purposes of this appeal is the contention that false documents have been submitted in relation to the application.

14. As recently confirmed by the Upper Tribunal in DK and RK (ETS: SSHD evidence, proof) [2022] UKUT 00112, the burden of proving fraud or dishonesty is on the Secretary of State, the standard of proof is the balance of probabilities and the burdens of proof do not switch between the parties but are those assigned by law. In considering the case before it, the Upper Tribunal said;

> "60. We therefore ask first whether the Secretary of State's evidence would enable a properly-instructed trier of fact to determine that the burden of proof had been discharged on the balance of probabilities. If the evidence at this point would not support a finding that the matter was proved on the balance of probabilities, the appellants would be entitled to succeed in their appeals. If, however, it would support such a finding, the evidence as a whole falls for consideration in order to decide whether the appeals succeed or fail. ..."

15. In our view the judge did not need to set out the burden and standard of proof, he was required instead to properly apply the burden and standard of proof.

16. The judge set out the details of the document verification report (DVR) submitted in support of the assertion that the money transfer receipts were not genuine [17]. The judge went on to consider the transfer receipts provided with the application. The judge considered it clear that the appellant submitted six separate transfer receipts with the application but that, in his view, two of the six are duplicates. The judge stated "the information provided in the DVR could have been clearer" highlighting that, whilst the report refers to "all the receipt numbers requested", only two of the receipts are actually detailed within Dahabshiil's response.

17. The judge went on to state at paragraph 19:

> "That said, my interpretation of Dahabshiil's response is that they have checked the receipt number GBR00106693, in relation to the receipts

> dated 10 August 2019 and 15 July 2019, and the information on those receipts does not match their internal database. The Respondent says they were, accordingly, "false documents".”

18. Mr West submitted that there was no supporting evidence for the statement in the DVR from Dahabshiil. He submitted that there is no statement from anyone from Dahabshiil or from the Entry Clearance Assistant who conducted the verification check. He submitted that it is not clear what documents were examined by Dahabshiil officials.

19. In our view the DVR is clear. The names and contact details of the officials have been redacted, however we consider that this is standard practice and reasonable in the circumstances in order to protect confidentiality and sensitive investigative methods. It is clear that the author of the DVR was from the ‘Enrichment Team’ and his/her verification experience was set out and said to be part of his or her daily duties. The email from the Compliance Manager (name redacted) with the Dahabshiil logo and sent to the Enrichment Team dated 2 September 2020 was set out in DVR. The judge was clearly aware of the contents of the DVR and the fact that two of the receipts were specifically said not to match the internal database. In our view it is clear from paragraphs 17 to 19 that the judge considered the DVR to be clear enough evidence to discharge the burden of proof upon the respondent.

20. In any event, the judge went on to consider the receipts himself. Mr West submitted that the judge erred in looking at four of the receipts given that the DVR only referred to two. However, Mr West also accepted that if only two of the receipts were not genuine, as set out in the DVR, this was sufficient to lead to a finding that the respondent had discharged the burden. In our view the criticism that the judge examined for rather than the two receipts referred to in the DVR is not valid.

21. The judge stated at paragraph 20 that there are other features of the receipts that caused him concern as to their genuine provenance. He noted that all four of the receipts bear the same TTNO (GBR00106693) (noting two were duplicates). In our view this was an observation which was open to the judge on the evidenceIt was open to the judge to note that it would be highly unusual for money transfer receipts not to bear some kind of unique reference number. He noted that a separate customer number is provided on the receipt. He concluded that the TTNO is designed to be a unique reference pertaining to that specific money transfer. Those findings were open to the judge and properly reasoned particularly as the email from Dahabshiil set out in the DVR, referred to and gave the ‘receipt numbers’ which related to the TTNO references.

22. In fact, in our view, one of the submissions made by Mr West at the hearing highlighted the issue identified by the judge. Mr West submitted that the judge concluded that two of the money remittances were duplicates, but, in his submission this could not be said with absolute certainty as, although they bore the same date, they could have been

submitted at different times on the same day. However, in our view, as two of the remittances bore the same TTNO and contained no time of transfer, they looked identical and could not be said with certainty to refer to different transfers. This perfectly illustrates the judge's concern set out at paragraph 20 of the decision.

23. Mr West submitted that the currency conversion rates referred to by the judge in the table at paragraph 21 were not based on any evidence as no currency exchange rates appear on the money remittances. Although he accepted that it would be expected that exchange rates would fluctuate, in his submission there was no evidence before the judge as to currency exchange rates. He therefore submitted that the judge's findings are paragraphs 21 and 22, based on the assumption about the exchange rates, were made in the absence of evidence from the respondent who bears the burden.

24. We accept that it appears that the judge calculated the currency conversion rates and may have speculated about the fluctuation of the currency conversion rate. However the calculation would have stemmed from the receipts themselves and we consider that the judge was entitled to make an observation about the currency conversion rate remaining static in three of the four receipts considered. In any event, the findings are paragraphs 21 and 22 were not central to the judges assessment of the DVR and the receipts. In our view it is clear from paragraphs 17 to 19 that the judge accepted that the DVR was sufficient to discharge the burden on the respondent and the findings and observations at paragraphs 20 to 22 were in addition to, and not central to, the findings about the DVR.

25. We consider that the judge's treatment of the sponsors evidence further demonstrates that he applied the correct burden and standard of proof. At paragraph 23 the judge said "I am also driven to conclude that there were aspects of the sponsor's evidence which cast doubt on the innocent explanation put forward by her". It is clear here that the judge considered the explanation put forward by the appellant and sponsor in response to the DVR. The judge took into account that the sponsor was unable to give the location for the coffee shop from where she claimed to have transferred the money to the appellant. The judge also referred to the lack of evidence from the appellant confirming that she had collected the money transferred, the absence of the WhatsApp messages relating to transfers, and the lack of collection receipts. The judge was entitled to take account of the evidence from the sponsor and appellant and assess whether it was capable of addressing the evidence produced by the respondent.

26. That the judge applied the appropriate burden and standard of proof is further evidenced by the conclusion at paragraph 26 where the judge summarised the decision stating; "the reasons I have set out above support the information in the DVR that the transfers were not genuine. I am consequently satisfied that false documents of money transfers were

provided with the application and, accordingly, the application failed to be refused on suitability grounds …". It is clear from this passage that the judge accepted that the DVR was sufficient evidence that the Dahabshiil receipts referred to therein were not genuine.

27. We reject Mr West's submission that the judge's conclusions are irrational. In our view the judge was entitled to attach weight to the DVR for the reasons given. Weight is a matter for the judge. This submission was not made out.

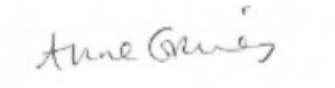
28. For the reasons set out above we find that the appellant has not established that there is a material error of law in the decision of the First-tier Tribunal Judge.

DECISION

29. For the foregoing reasons, our decision is as follows:

- **The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and we do not set aside the decision but order that it shall stand.**

Signed: Date: 12 September 2022



Deputy Upper Tribunal Judge Grimes