



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-
002271
First-tier Tribunal No:
EA/07467/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

11th September

2023
Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MOHAMED OMAR DAUD
(Anonymity order not made)

Respondent

Representation:

For the Appellant: Mr M A Rana
For the Respondent: Mr T Lindsey

Heard at Field House on 10 August 2023

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the First-tier Tribunal's decision (of 29 March 2023) to allow the appeal of Mohamed Omar Daud, a citizen of Somalia, itself brought against the refusal of entry clearance (of 14 July 2022).
2. The application was for Mr Daud to join his wife, Sahra Abdi Jama, a Norwegian citizen. The application was refused because a document provided on an earlier application, but not the present one, was believed by the Secretary of State to be fraudulent. This was because, having enquired of Monzo Bank whether the bank statement accorded with the bank's own records, the Secretary of State received the reply that whilst the Sponsor held a Monzo

bank account with the reference numbers provided, the entries in the statement provided were not the same as held by Monzo. The refusal letter (in relation to the present application) concluded that “the false documents you have willingly provided cast doubt over the legitimacy of any other claims you have made.”

3. Before the First-tier Tribunal the Sponsor's witness statement confirmed that she and her husband had married in Somalia and had provided the marriage certificate issued by the relevant competent authority. Her husband had indeed previously applied for, and been refused, entry clearance, on grounds of a dishonesty allegation; the previous refusal had been very vague making it difficult to answer the allegation made therein.
4. The First-tier Tribunal did not have the benefit of any representative for the Secretary of State before it. It found that
 - (a) The relevant Immigration Rule did not authorise a decision maker to refuse based on dishonesty in a past, rather than the present, application.
 - (b) Alternatively, on balance of probabilities the Secretary of State had not established dishonesty. There was no reason why the Appellant would have provided false documents with this application of a kind that were not essential for it to succeed. Ms Jama's evidence was that as there was no physical branch to visit it was difficult to pursue matters of this nature was plausible.
 - (c) Having heard oral evidence, the genuineness of the relationship between Ms Jama and Mr Daud was established.
5. The Secretary of State's grounds of appeal argued that it was irrational to exclude the relevance of false documents supplied on previous applications and to conclude there was insufficient evidence of falsification. To contest the Secretary of State's stance would require Monzo Bank to further investigate or to admit they had made an error. The Upper Tribunal granted permission to appeal on 5 July 2023, stating it was arguable that the decision was inadequately reasoned or perverse.
6. For the Secretary of State Mr Lindsey submitted that it was not unreasonable for the decision maker to hold that past dishonesty was a relevant consideration. Whilst admittedly the current refusal letter did not really explain the underlying thinking vis-à-vis the relevance of the asserted dishonesty to the merits of the application, it was nevertheless material to the application in hand, notwithstanding that bank statements were not a document specified as essential to the EU settled status scheme. Someone might put forward false documents even though they were not essential for an application's success to seek to paint a more positive picture of their general circumstances. The Document Verification Report effectively showed that the Monzo Bank statements provided on a historic application did not match up with the Bank's own records - so they could not be explained away as irregular transactions that might, for example, have been the responsibility of someone else dishonestly accessing the account in question. The Secretary of State sought a clear finding on the issue for future reference given the possibility that further applications would need to be determined in the future. It did not appear that a point had been taken below as to the absence of the bank statements: there was an ostensibly live link to the bank statements as shown in the body of the verification report.

7. For Mr Daud Mr Rana submitted that the proper construction of the Immigration Rule was that it was only documents supplied on the present application that were material. MH Pakistan [2010] UKUT 168 (IAC) made it clear that the Respondent was to provide any unpublished document to be supplied to the Tribunal where mentioned in the refusal letter; absent the document in question, a Judge was likely to assume that the document in question was no longer relied on. In any event the genuineness of a bank statement was simply not relevant to the real substance of the appeal, which turned on whether the Appellant was the Sponsor's family member as defined by Appendix EU, a proposition the substance of which had not been disputed by the Home Office on a reasoned basis.

Decision and reasons

8. Appendix EU (Family Permit) provides at FP7(4):

“(4) An application made under this Appendix may be refused on grounds of suitability where, at the date of decision, the entry clearance officer is satisfied that:

(a) It is proportionate to refuse the application where, in relation to the application and whether or not to the applicant's knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application); and the information, representation or documentation is material to the decision whether or not to grant the applicant an entry clearance under this Appendix.”

9. One might usefully contrast that language with that found in the Refusal reasons that apply generally to immigration applications, located in Part of the Immigration Rules.

“9.7.1. An application for entry clearance, permission to enter or permission to stay may be refused where, in relation to the application, or in order to obtain documents from the Secretary of State or a third party provided in support of the application:

(a) false representations are made, or false documents or false information submitted (whether or not relevant to the application, and whether or not to the applicant's knowledge); or
(b) relevant facts are not disclosed.”

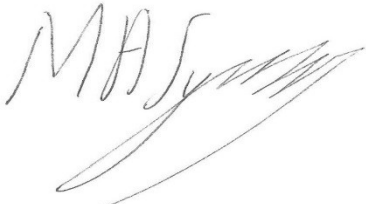
10. Careful analysis of the wording of FP7(4) strongly indicates that its focus is upon documents submitted with the present application: see the wording “in relation to the application”. There is a distinct enjoiner to have regard to the extent to which the submission of false information is material to the decision in question. That enjoiner is not, tellingly, found in the domestic equivalent, Rule 9.7.1.
11. In any event, the Home Office refusal letter in this case failed to give any detailed reasons why it was that the suspicions as to the reliability of the bank statements previously supplied materially bore on the genuineness of the Appellant's marriage. It seems to me that more is required than simply to refer to some historic dishonesty before the genuineness of a relationship is

rejected. So the Secretary of State's case as to why the submission of false information was material to the decision in question was inchoate from the outset. The First-tier Tribunal heard oral evidence from the Sponsor and made a rational decision that was perfectly open to it to accept the genuineness of the relationship that she described. The Secretary of State had the opportunity to attend the hearing and cross-examine the Sponsor, but chose not to do so.

12. In any event, neither party put the bank statements before the First-tier Tribunal. Given it was the Secretary of State who bore the burden of proof of demonstrating the materiality of any past dishonesty to the present application, it is on her that that failure rebounds, as exemplified by the decision in MH Pakistan. I appreciate that the bank statements had originated from Mr Daud and his wife. But the document verification report originated with the Secretary of State, and its precise import can only be understood by reference to those bank statements. I do not accept that the mere possibility that there might have been a live link available in the original version of the verification report suffices, absent any indication that the Secretary of State drew this potential resource to the First-tier Tribunal's attention, sufficed for the Secretary of State to adequately make good her assertion of dishonesty. This is particularly the case given that Mr Lindsey before me asserted that the natural reading of the verification report was that third party dishonesty could not be responsible for the record-keeping discrepancy. The merit of that submission can only be tested with sight of the underlying bank statements.
13. I therefore conclude that
 - (a) The natural reading of FP7(4) is that only false documents provided on the present application are relevant to Suitability refusals under Appendix EU (Family Permit).
 - (b) In any event, it is incumbent on a decision maker to distinctly explain how it is that the historic provision of a false document is relevant to the present determination of the genuineness of a relationship: and that exercise was not performed in the refusal letter now appealed against. The First-tier Tribunal was entitled to come to its own conclusion as to the relationship's veracity.
 - (c) Alternatively, even were those first two conclusions to be wrong, the Secretary of State failed to provide the relevant evidence to seek to persuade the First-tier Tribunal to a decision other than that to which it came.
14. The Secretary of State has therefore failed to persuade me that there was any material error of law in the First-tier Tribunal's conclusions. Those, it seem to me, should close the door on any further reliance by the Secretary of State on the assertion of dishonesty whose relevance to the present appeal she failed to adequately explain when the opportunity was open to her.

Decision:

The decision of the First-tier Tribunal contained no material error of law. The appeal is dismissed.

A handwritten signature in black ink, appearing to read 'M.A.S. Symes', with a long, sweeping underline that extends to the left.

Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

29 August 2023