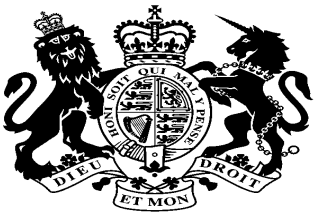

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/45019/2013**
IA/45026/2013

THE IMMIGRATION ACTS

Heard at Field House, London	Determination Promulgated
On 25 September 2014	On 26 September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

BHUPINDER SINGH PLAHA
NEHA PLAHA

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellants: Ms E Daykin instructed by ATM Law solicitors
For the respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants, nationals of India, appealed to the First-tier Tribunal against decisions by the respondent dated 15 October 2013 refusing to grant indefinite leave to remain as Tier 1 (General) Migrants and against decisions by the respondent to remove them from the UK under section 47 of the Immigration Nationality and Asylum Act 2006. Judge of the First-tier Tribunal Trevaskis considered the appeals on the papers and dismissed the appeals. The appellants now appeal with permission to this Tribunal.

2.The background to these appeals is that the first appellant entered the UK as a working holidaymaker with the second appellant, his dependant spouse, and was subsequently granted leave to remain as a Highly Skilled Migrant until 30 August 2009. On 13 August 2009 he was granted further leave to remain as a Tier 1 (General) Migrant until 30 August 2012. On 21 August 2012 he applied for indefinite leave to remain as a Tier 1 (General) Migrant and the second appellant was named as his dependant. The applications were refused under paragraph 322 (2) of the Immigration Rules because the respondent considered that the first appellant had employed deception in a previous application for leave to remain, that submitted on 22 July 2009, when he claimed that he had earned £4422.88 through contracted work with Ransab Limited between 1 January 2009 and 30 June 2009. That application was submitted on the appellant's behalf by Migration Gurus. It was contended by the respondent that following an investigation by the Home Office and the police, individuals involved with Migration Gurus were convicted of unlawful immigration practices including the use of bogus companies to falsify earnings of visa applicants and one of those bogus companies was Ransab Limited.

3.The appellants originally requested an oral hearing however on 29 May 2014 the apps representatives notified the Tribunal that the appellants wished instead to have the appeals determined on the papers. The hearing had been scheduled for 19 June 2014 and the First-tier Tribunal Judge determined the appeals on the papers on 20 June 2014. The Judge accepted that false representations had been made or false documents submitted and dismissed the appeal under paragraph 332 (2) and under Appendix FM and paragraph 276ADE of the Rules.

4.There are two grounds of appeal. The first is on the basis of procedural unfairness. The second is that, in considering the general grounds of refusal, the First-tier Tribunal Judge applied the wrong paragraph of the Rules, paragraph 322(1A) instead of paragraph 322(2).

5.In relation to the procedural unfairness issue Ms Daykin submitted that the appellants' representatives were advised by telephone that they would be given a date by which further evidence should be submitted for the paper appeal. However I do not accept that this would be normal practice when an appeal is changed from an oral hearing to a paper appeal. It is not in dispute that the respondent served documents on the Tribunal received on 12 June 2014. The appellants received the documents the same day. The hearing was scheduled for 19 June. The original directions in this case were issued by the Tribunal along with the Notice of Hearing on 28 November 2013. These required both parties to send further documents to be relied on to the tribunal and the other party to arrive no later than 5 days before the date of the full hearing. I am satisfied that the respondent failed to comply with that direction in serving the additional documents which arrived on 12 June. Mr Whitwell submitted that the appellant was legally represented and that if he did not have sufficient time to respond to the further documents he should have sought additional time. Ms Daykin clarified, and I accept the evidence on this matter, that the appellant was not in fact legally

represented at this time. The documents were sent instead to a relative who had helped him complete the appeal notice. The documents served by the respondent included witness statements and the Court of Appeal decision in relation to the proceedings against those involved with Migration Gurus. I am satisfied that the appellant did not have sufficient time to respond to those documents before the scheduled date for the hearing when the appeals were considered on the papers.

6.The second ground of appeal is that the Judge considered the wrong paragraph of the general grounds for refusal. The relevant provisions of paragraph 322 are as follows;

> **"322**. In addition to the grounds for refusal of extension of stay set out in Parts 2-8 of these Rules, the following provisions apply in relation to the refusal of an application for leave to remain, variation of leave to enter or remain or, where appropriate, the curtailment of leave:
>
> **Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused**
> …
>
> (1A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application.
> …
> **Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom should normally be refused**
>
> (2) the making of false representations or the failure to disclose any material fact for the purpose of obtaining leave to enter or a previous variation of leave or in order to obtain documents from the Secretary of State or a third party required in support of the application for leave to enter or a previous variation of leave.
>
> …"

7.Paragraph 322 (1A) is therefore a mandatory ground of refusal and paragraph 322 (2) is a discretionary ground. The respondent refused the application under paragraph 322 (2). The Judge referred to this in paragraph 6 of the determination. However the Judge went on to consider this issue and, at paragraph 10, said;

> "I find that false representations have been made or false documents have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge). The Appellants do not appear to dispute this"

8.Mr Whitwell submitted that paragraph 10 should be read with paragraph 9 where the Judge outlines the convictions relating to Migration Guru and an apparent conflict in the first appellant's evidence in that he claims that he was innocent yet said in his grounds of appeal that he trusted Migration Gurus 'not really understanding the methods employed by them'. I am not satisfied that paragraph 9 casts light on the Judge's findings at paragraph 10.

9.I am satisfied that there is a difference between the test to be applied in considering paragraph 322 (1A) as opposed to 322 (2). It is not clear from reading the determination which test the Judge applied. For that reason the Judge made an error of law.

10. I am satisfied that both errors identified in the grounds of appeal together amount to a material error. As the errors go to the heart of the issues to be determined in this case and undermine the findings made I am satisfied that none of the findings of fact can stand.

11. I am satisfied that the appellants have not therefore had their appeals properly considered by the First-tier Tribunal. Mr Whitwell submitted that due to the issues involved and the probability of the respondent adducing further evidence the appeals should be remitted to the First-tier Tribunal. Ms Daykins agreed. I am satisfied that the nature and extent of the judicial fact finding which is necessary in order for the decision to be remade is such that (having regard to the overriding objective in Rule 2 of the Upper Tribunal Procedure Rules 2008) it is appropriate to remit the case to the First-tier Tribunal.

Decision

The Judge made an error on a point of law and the determination of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be remade.

Signed Date: 25 September 2014

A Grimes
Deputy Upper Tribunal Judge