



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/12858/2014
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THE IMMIGRATION ACTS

**Heard at Field House
On 22nd September 2015**

**Decision & Reasons Promulgated
On 20th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**PINALKUMAR KIRTIBHAI PATEL
CHARUBEN PINALKUMAR PATEL
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No appearance

For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

The Appeal

1. This is an appeal against the decision promulgated on 7th November 2014 of First-tier Tribunal Judge Walker who refused the Appellants' appeal against the decisions of the Respondent given on 5th February 2014 to refuse leave to remain in the United Kingdom as a Tier 1 (Entrepreneur)

Migrant and dependent under the points-based system (PBS) and for Biometric Residence Permits.

2. Judge Walker dismissed the appeals on the basis that the bank documentation provided by the appellants from Punjab National Bank and Allahabad Bank were not genuine. Judge Walker was satisfied that paragraph 322(1A) had been properly proved by the Respondent.
3. Permission to appeal on error of law grounds was granted by Upper Tribunal Judge McWilliam on 30th April 2015. This was on the basis that the Respondent had produced a Document Verification Report (DVR) relating to the document from Punjab National Bank.
4. The report related to an email that the senior manager of the bank sent to the Respondent confirming that the document had not been issued by the bank. There was written confirmation in the report from the visa support assistant trained in forgery detection, who verified that documents submitted in support of the application are false. There was no evidence specifically relating to the statement from the Allahabad Bank. At the hearing, after the conclusion of the evidence and during submissions, the Home Office Presenting Officer produced the DVR relating to the Allahabad Bank statement. It would appear that its absence was due to an error in photocopying only alternate pages of the DVR.
5. The judge recorded that the missing pages from the DVR were submitted by the Presenting Officer after the conclusion of the evidence and that it had not been seen by the Appellant. However, he proceeded to admit the document. The email referred to in the DVR relating to the Punjab Bank was not produced by the Respondent. Permission was granted that, albeit the bank statement from Allahabad Bank had always been in issue as set out in the reasons for refusal letter, there was no support for the assertion that it was not genuinely produced until submissions before the First-tier Tribunal.

The Hearing before the Upper Tribunal

6. There was no appearance by or on behalf of the Appellants. The Appellants' representatives are listed as Maalik & Co Solicitors of 78 South Road, Southall, Middlesex UB1 1RD. On attempting to contact the representatives the clerk to the Tribunal established that the number provided for the representatives was no longer in service. The clerk also established that a subsequent Google search of the representatives indicated that the telephone number listed was unchanged. I considered the relevant Procedural Rules and noted that there was no request for an adjournment. I proceeded to consider the appeals before me.
7. In relation to the non-appearance of the Appellants, I note that the files before me contain an email dated 22nd May 2015 from Pinalkumar K Patel who states that his Home Office reference number is P1679485 and his date of birth 11th March 1982. The email of 22nd May 2015 goes on to

state that the Appellant wishes to change his address and that “I took voluntary departure. And I am in India right now. But my appeal is still going on.” I advised Mr Clarke of the existence of this email. Mr Clarke indicated that there was no indication either way on the Home Office records. However, in line with the relevant Procedural Rules and Section 104(4) of the Nationality, Immigration and Asylum Act 2002, Mr Clarke agreed with my interpretation that the departure of the Appellants from the UK meant that the appeal before me was abandoned.

8. In the alternative that I am wrong and the appeals are not abandoned, I am of the view that there is no material error of law in the decision of Judge Walker. In relation to the issue of the missing emails relating to the Document Verification Report about the Punjab National Bank document, Judge Walker in my findings adequately addressed this at paragraph 16 of his determination: finding that the absence of this correspondence was not fatal to the Respondent showing to the appropriate standard that the bank letter was not genuine. The judge made findings properly open to him that the information contained within the DVR in relation to the Punjab National Bank document showed that proper enquiries were made of a senior manager at the bank and a conclusive response was received from him to the effect that the letter had not been issued by the bank.
9. In relation to the missing part of the DVR relating to the enquiries made of Allahabad Bank, Mr Clarke argued that the judge made full findings including addressing at paragraph 19 that the only efforts made by the Appellant was a claimed attempt to speak to Mr Shah on the telephone. The judge also found that the Appellant’s evidence was inconsistent in that he said he called the Allahabad Bank but then later said he also called the Punjab National Bank. The judge established that there was no proof of these telephone calls. When it was put to the Appellant by the Presenting Officer before the First-tier Tribunal that he had not contacted either of the banks and that it was a lie, he chose not to answer. I accept the submissions of Mr Clarke that the argument in the Grounds of Appeal at paragraph 9 that the “Appellant did not even know Allahabad Bank had an issue with him until the appeal date” was disingenuous. Indeed, it was incorrect, as in the Reasons for Refusal Letter dated 5th February 2014 it clearly states that the Respondent had:

“... received correspondence from both of these banks confirming that these documents were not issued by Punjab National Bank or Allahabad Bank and that the documents are not genuine.”
10. It was Mr Clarke’s submission that the Appellants had known for some time about these issues and had not taken any adequate steps to address the Respondent’s concern that correspondence had been received from both banks stating that the documents were not genuine. I am satisfied therefore that the representatives would have been aware from the refusal that Allahabad Bank was part of the Respondent's case, including a verification report; given that there was oral evidence that the Appellant stated he tried to obtain information from both banks it is unclear what

further information might have been obtained, or what unfairness there was to the appellants by the judge continuing. There is also merit in Mr Clarke's argument that directions were given by the Upper Tribunal that the case would proceed before the Upper Tribunal and no further rebuttal evidence was produced before the Upper Tribunal.

11. In the alternative that I am wrong in relation to the above, I am satisfied that any error made by Judge Walker in proceeding and giving weight to the Allahabad Bank document verification report was not material. This is because the judge made clear freestanding findings in relation to the documents and the document verification report on Punjab National Bank and that the document was not genuine. These are specifically set out at paragraph 16 and further at paragraph 19. Therefore the appeal before the First-tier Tribunal could not succeed, even if the findings in relation to the Allahabad Bank are disregarded.

Notice of Decision

12. The decision of the First-tier Tribunal did not contain an error of law and shall stand. In any event, I find that the appellants have abandoned their appeal against the refusal of further leave to remain by leaving the UK.

Anonymity

13. No anonymity direction was sought or made either before the First-tier Tribunal or the Upper Tribunal.

Signed

Date: 24 September 2015

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT FEE AWARD

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

Signed

Date: 24 September 2015

Deputy Upper Tribunal Judge Hutchinson