



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

**APPEAL NUMBER: IA/17599/2014
IA/17600/2014**

THE IMMIGRATION ACTS

**Heard at: Field House
On: 9 April 2015**

**Decision and Reasons Promulgated on
On 28 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR SANTOSH GULAIGARI
MRS DIVYA VARSH SAI
(NO ANONYMITY DIRECTIONS MADE)**

Respondents

Representation

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer

For the Respondents: Mr V Makol, legal representative

DETERMINATION AND REASONS

1. I shall refer to the appellant as the Secretary of State and to the respondents as the claimants.
2. The Secretary of State appeals with permission from the decision of First-tier Tribunal Judge Russell, promulgated on 18 November 2014, allowing the claimants' appeals against the decision of the Secretary of State refusing to grant them further leave to remain.

3. The background to this appeal is as follows. The claimants are nationals of India. The second appellant is the first claimant's dependant. The first claimant originally entered the UK as a student and was granted further periods of leave until 24 May 2013. On 20 May 2013 he applied for further leave to remain in the UK as a student and his dependant. On the same day his leave was curtailed to expire that day by reference to paragraph 322(2) of the Immigration Rules.
4. The claimants appealed that decision, which came before First-tier Tribunal Judge Blundell. On 24 February 2014, he found [17] that there was nothing before the Tribunal to establish the assertion in the curtailment letter that the two companies for which the first claimant works, namely Aspire Solutions Ltd - Aspire - and Synapse Solutions Ltd – Synapse - run by a Mr Kolleti, were shell companies which provided bogus salary remittances for Tier 1 applications such as those made by the claimants. They were not named in the Court of Appeal, Criminal Division, decision, involving Mr Kolleti. The Secretary of State had not sought to provide any evidence from the proceedings before the Crown Court to establish that Aspire and Synapse were anything other than legitimate companies run by a man who was also involved in serious fraud [17].
5. There was thus no evidential basis for the conclusion that all of Mr Koletti's businesses were fraudulent. Judge Blundell allowed their appeals against the curtailment decisions. The Secretary of State did not seek to appeal that determination.
6. The claimants' leave to remain was reinstated and the applications dated 20 May 2013 were again considered by the Secretary of State.
7. In a further decision dated 27 March 2014, the Secretary of State rejected their applications.
8. I have had regard to the two decisions dated May 2013 and March 2014 respectively. It is evident that the same allegations were made, namely that the first claimant gained his leave to remain by providing false previous earnings documents issued by Aspire and Synapse. It is contended in the reasons of both refusals that Aspire and Synapse have never participated in any legitimate trade in the UK. Accordingly, as false representations had been made in relation to a previous application, the current applications were refused under paragraph 322(2) of the Immigration Rules.
9. At the hearing before First-tier Tribunal Judge Russell, the Secretary of State produced a bundle containing a witness statement dated 7 August 2011 from a detective constable Protheroe-Jones of the Metropolitan Police.
10. The presenting officer contended at the hearing, that there had been a change in circumstances since the original refusal which had no evidence to support it. Now there was a witness statement. The presenting officer informed the First-tier Tribunal that the statement was used in the criminal trial but conceded that there was no evidence to support that submission. He noted that Judge Blundell had stated that the Secretary of State had failed to produce evidence from the proceedings before the Crown Court to establish that the companies the claimant said he was working for were anything but legitimate.
11. First-tier Tribunal Judge Russell had regard to the Devaseelan guidelines [2003] Imm AR 1. He noted that the guidelines had been approved by the Court of Appeal in Djebbar v SSHD [2004] EWCA Civ 804.

12. Judge Russell directed himself at [10] that the first determination is the starting point and does not bind him. However, he should not revisit findings of fact made by Judge Blundell on evidence which had been available during the first appeal. Matters arising since that determination and facts not determined by Judge Blundell could be determined by him.
13. Judge Russell stated that the matter should never have come before the Tribunal: The reasons for refusal were substantially the same, which had been found to be inadequate. It was not enough for the Secretary of State to append a witness statement from DC Protheroe-Jones as it did not meet the objections of Judge Blundell set out at paragraph 17 of his determination.
14. Judge Russell accordingly allowed the appeal under the Immigration Rules.
15. Mr Clarke on behalf of the Secretary of State relied on the grounds of appeal for permission to appeal. It was unclear whether Judge Russell's determination meant that the statement of DC Protheroe-Jones was admissible or that no weight should be placed on it. He submitted that the only rule of evidence before the Immigration Tribunal is "relevance." There was no finding on the relevance of that statement. The exclusion was thus a misdirection and/or inadequately reasoned.
16. The Judge had minimised or reduced the weight to be given to the statement solely by reference to an earlier IAC decision in which the statement had not been provided. Without some explicit consideration of the contents of the evidence, it cannot be discerned why the Judge placed no or little weight only on the statement of the constable.
17. Nor did the Secretary of State seek to circumvent Judge Blundell's decision. The claimants' leave was reinstated after that successful appeal. The decision is therefore distinguishable. The Judge's assessment of the case "betrays a flawed approach".
18. Mr Clarke submitted by way of summary that the Judge did not deal with the evidence of DC Protheroe-Jones properly. The contents of that statement should have been considered.
19. On behalf of the claimants, Mr Makol, who represented the claimants before Judge Blundell as well as Judge Russell, submitted that the evidence of DC Jones was not before Judge Blundell. The evidence of DC Jones had been available before Judge Blundell. There had been ample time to adduce that evidence. The witness statement in fact pre-dated the earlier reasons for refusal.
20. Even though the applications were refused for the same reasons in 2014, that was more than six months later. There was still no witness statement of Detective Constable Protheroe-Jones. Moreover, the evidence of DC Protheroe-Jones was, I was informed, part of the matters considered by the Court of Appeal which had considered the applications of seven applicants seeking to renew the application for leave to appeal against their convictions. The applications were all refused on 23 May 2013.
21. Mr Makol submitted that it was only on the date of the actual hearing before Judge Russell, namely 10 November 2014, that the witness statement of DC Protheroe-Jones dated 7 August 2011, was produced.

Assessment

22. I have had regard to the 'guidelines' set out in Devalseeelan, *supra*. The effect of that decision is that the later Tribunal should not revisit findings of fact made by the First-tier Tribunal on the basis of evidence that was available to the Secretary of State at the time of the first hearing. They may be revisited in the light of evidence that was not available at the time of the first appeal.
23. Judge Blundell stated at paragraph 17 of his determination that there was no evidential basis for concluding before the Crown Court that the two companies, Aspire and Synapse, had never participated in any legitimate trading in the UK.
24. There is no dispute as to the date upon which DC Protheroe-Jones' statement was made, namely 7 August 2011. That pre-dated the 2013 decision by a lengthy period, almost two years.
25. Judge Russell has properly directed himself in accordance with the guidelines. He stated at [10] that he should not revisit findings of fact made by Judge Blundell on the evidence that was available during the first appeal. The statement tendered did not meet the objections raised by Judge Blundell at paragraph 17 of his determination.
26. It is evident that the witness statement sought to be relied on constituted evidence that had been available during the first appeal. No evidence was presented by or on behalf of the Secretary of State as to why that statement, which clearly pre-dated the first refusal decision had not been available. The Secretary of State had contended that the claimants' wage slips were false, as confirmed in the conviction of Mr Kolletti at the criminal trial.
27. There was however nothing to show that it had been confirmed before the Court that Aspire and Synapse had never participated in legitimate trading in the UK. There was thus no evidential basis that all Mr Kolletti's businesses were fraudulent and that the claimants' reliance on the the Aspire and Synapse payslips were part of that scheme managed by Kolletti.
28. In the circumstances Judge Russell was entitled to find that the evidence of DC Protheroe-Jones was available during the first appeal and that the earlier findings should not in the circumstances be revisited.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

The Secretary of State's appeal is dismissed.

No anonymity direction is made.

Signed

Date 24/4/2015

Deputy Upper Tribunal Judge Mailer