Upper Tribunal
(Immigration and Asylum Chamber)

Begum (false documents and false statements) [2015] UKUT 00041 (IAC)

THE IMMIGRATION ACTS

Heard at Newport	**Promulgated on**
2 October 2014	.....

Before

MR C M G OCKELTON, VICE PRESIDENT

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

MEHMOODA BEGUM

Appellant

and

THE ENTRY CLEARANCE OFFICER – ABU DHABI

Respondent

Representation :

For the Appellant: Mr M Biggs, instructed by Mayfair Solicitors

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer.

A document which is not itself 'false' within the meaning of A v SSHD [2010] EWCA Civ 773 may fall equally foul of para 320(7A) if it contains a statement that is, to a relevant person's knowledge, untrue.

DETERMINATION AND REASONS

1.
The appellant is a national of Pakistan. She applied to the Entry Clearance Officer for a visa for a visit to the United Kingdom to visit her son and daughter-in-law. She had been to the United Kingdom on a number of previous occasions on visit visas and it is said without dissent from the Secretary of State or the Entry Clearance Officer that on those previous occasions she complied with the terms of her visa.

2.
On the present occasion, the application was supported in usual form by documents relating to the sponsor's income and the accommodation which the appellant would have if she came to the United

Kingdom. The accommodation was the sponsor's home; there is no dispute that the accommodation there would be perfectly adequate for the appellant.

3.
The difficulty arises because the accommodation report was the subject of investigation by the Entry Clearance Officer and at that stage the information received by the Entry Clearance Officer was that the report and indeed its purported author were disowned by the organisation, CEA Homes, which appear to have produced the report. In those circumstances the application was refused. The appellant appealed to the First-tier Tribunal. At a hearing before First-tier Tribunal Judge Y J Jones on 30 January 2014, the sponsor gave oral evidence and there was cross-examination and submissions were made. Judge Jones concluded that the substantive requirements of the immigration rules in relation to visitors were met but she concluded that this was, as the Entry Clearance Officer had said, an application which fell to be refused under the general grounds of refusal, specifically because either a false representation had been made, or a false document had been produced. It is that finding of hers which is now the subject of the appellant's appeal. She has been today, ably and at short notice, represented by Mr Biggs who has made submissions based upon A v SSHD [2010] EWCA Civ 773 which emphasises first of all the difference in approach between cases where there is what within the definition applied by that decision is a false document and other cases where falsity is asserted.

4.
The starting point is paragraph 320(7A) of the Statement of Changes in Immigration Rules , HC 395 (as amended). That provides that entry clearance is to be refused:

"(7A) 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…."

5.
The gloss placed on those words by A is that falsity carries the meaning of deliberately dishonest, rather than merely incorrect. The question then is whether the Entry Clearance Officer has established that any incorrect statement was intended to deceive. The other words of the paragraph are not however, said to carry anything other than their ordinary meaning, that is to say that where there is such an intention, it is irrelevant whether the matter was material to the application and it is irrelevant whether the falsity was to the applicant's knowledge.

6.
What then is the false statement said to be in the present case? The letter from CEA Homes, which was obtained by the sponsor and sent to his mother, began with an assertion that the author of the letter had inspected the house. That statement was not true; the author of the letter had not inspected the house; it is said that he had been to the house, but in his capacity as a property consultant or expert he had made no inspection of the house. It is not said that his description of the house was incorrect in any respect. The statement which was not correct was that he had inspected it. The sponsor knew that the author of the letter had not inspected the house; but sent the letter containing the statement that the author of the letter had inspected the house to his mother in order to assist in supporting her visit visa application. We say that because no other explanation has been provided for why he should suddenly send his mother a letter about the accommodation in a house she knew.

7.
The Judge, having heard the evidence which included a clear statement by the sponsor that he always knew that the author of the letter had not inspected the house, wrote this:

“28. Having considered all the documents and the evidence carefully Mr Dar the sponsor has always stated that CEA Homes did not inspect his property yet he forwarded a letter from them saying that they had inspected the property to the appellant who then submitted it with her application. This was a mistake on his part and I am sure if he had realised the possible consequences he would not have relied on the letter from CEA Homes to support his mother’s visa application.

29. Regrettably, the law is very strict in respect of the submission of a false document and I find it to be false on the basis that the document claims that the property was inspected when it was not. I also find on the balance of probabilities that the letter is a genuine letter from CEA Homes which they have denied because of an argument with Mr Dar about the cost of providing a letter.

30. I have found that the claim by CEA Homes to have inspected the property is false and that the document containing that false claim dated 22 April 2013 was submitted with the application and that the sponsor knew that there was a claim within the letter that was false.”

And on that basis she reached the conclusion to which we have already alluded.

8.
Mr Biggs has argued that the judge erred in her approach to the law as set out in A. As set out in A , a document is only to be regarded as false if it is either fraudulently amended or itself a forgery. The judge’s conclusion that the document was a false document was therefore not justified either by the evidence or by her other conclusions. On the contrary the document was to that extent a document which was not false but it contained a statement which was not the truth, the statement being that the property has been inspected. In those circumstances Mr Biggs argues that the judge erred in law and to that extent we accept Mr Biggs’ argument.

9.
The question then, is whether that is sufficient to require the determination to be set aside. On that, the position is as follows. First the statement that the house had been examined was an untrue statement. Secondly, it is a statement that, despite Mr Biggs’ submissions to the contrary, was clearly material; it was the only statement which validated the document for the purposes of supporting the claim that the accommodation would be adequate. If the statement had been made by a person who avowedly had not visited the property it would not have been regarded by the Entry Clearance Officer as sufficient for the purposes. Thirdly, the maker of the statement was clearly aware that the statement was false, that is to say the maker of the statement said he had inspected a property which he had not inspected. Fourthly, the sponsor has always said that he knew that the statement was false. Mr Biggs’ submission was that there was no clear evidence that at the time the sponsor submitted the document he was aware that it contained the statement that the house had been inspected. But the sponsor’s position has always been that the contents of the letter were in all other respects accurate and it is simply not plausible that the sponsor had read all the words of the letter other than the opening phrase indicating that the house had been inspected.

10.
Despite the error of law by the judge in treating the letter as a false document, her conclusion at paragraph 30 is, in our judgement, unassailable. The statement was a false statement. It was dishonest, both by its maker and in the form of its production by the sponsor, and in those circumstances, applying as we do, the interpretation of the Rules as set out in A , there was a false representation made in connection with this application. It therefore fell to be refused under paragraph 320(7A). The consequences of a refusal under that paragraph are, as has been noted, both mandatory and draconian. As the judge said, it was a bad mistake by the sponsor to submit a

document which contained a statement which he knew to be false. But that was the judge’s conclusion and although, as we have said, she erred in the characterisation of precisely where the falsity lay, her findings of fact were clearly open to her and in our judgement were virtually inevitable on the material before her.

11.
For those reasons, we dismiss the appeal.

C M G OCKELTON

VICE PRESIDENT OF THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Date: 12 November 2014