



**Upper Tribunal  
Number:OA/05860/2013  
(Immigration and Asylum Chamber)**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 August 2014**

**Determination  
Promulgated  
On 7 August 2014**

**Before**

**UPPER TRIBUNAL JUDGE WARR**

**Between**

**SATYAM BHARATBAI PANDHI**

**and**

**ENTRY CLEARANCE OFFICER, MUMBAI**

Appellant

Respondent

**Representation:**

For the Appellant: Ms S Iqbal, of counsel, instructed by Bhogal Partners  
For the Respondent: Mr N Bramble

**DETERMINATION AND REASONS**

1. The appellant is a citizen of India. He applied on 25 October, 2012 for an entry clearance to settle in the United Kingdom as the spouse of an Indian national Avni Raichura, whom he had first met in September 2000

when they were at school together. They were married on 17 January, 2012 in India. They had lived together in the UK before their marriage and after their marriage while in India.

2. The appellant had been studying accounting and had a visa from 18 August, 2005 until 31 January, 2008. It was the appellant's case that he had done an MBA in accounting which was to finish in September 2008 and he had applied for further leave to remain to complete the course and he said that he had been granted a six-month extension until 30 November, 2008.
3. The appellant then approached a Mr Patel to make a further application and on the basis of that he obtained a residence permit on 5 August, 2008 valid until 4 August 2013.
4. On 12 March, 2012 the appellant was stopped at Mumbai airport on his way back to the United Kingdom and was told that his residence permit was not valid. There are charges in relation to this residence permit pending in India.
5. The appellant's application for an entry clearance was refused on 19 December, 2012 on the basis of the false UK resident permit visa. The Entry Clearance Officer found the appellant's explanation - that he had been defrauded - was not credible because the appellant had chosen not to apply to the Home Office but instead had used an agent thousands of miles away. It was not credible that a person in the UK would use an agent in another country to assist them with a genuine application for leave to remain.
6. The appellant had been issued with a student visa from 18 May, 2005 until 31 January, 2008 but had not made an application to the Home Office for further leave to remain in the UK and therefore overstayed his visa as he had not left the UK until at least 2009. He had been in the UK illegally and had not attempted to regularise his stay through the Home Office. The application was refused under paragraph 320 (11) as the appellant's immigration history showed that he had contrived in a significant way to frustrate the intentions of the immigration rules. Further in the light of the use of non-genuine documents the Entry Clearance Officer doubted the appellant's intentions and he was not satisfied that the appellant was in a genuine and subsisting relationship or that the appellant intended to live together with his wife permanently in the UK.
7. The appellant appealed against the decision and his appeal came before a First-tier Judge on 28 March, 2014. The judge recorded the claim that the appellant had applied for further leave to remain as a student on a May 2008 expiring on the 30 November, 2008. He explained that there was no indication at any time that his residence permit was not genuine although it was accepted by Miss Iqbal (who represented the appellant

before the judge as she does before me) that the resident permit was false. However it was submitted there was insufficient evidence that the appellant had knowingly obtained the false permit and he had been the victim of fraud and there was need to exercise care when considering the matter: PS (India) [2010] UKUT 440 (IAC).

8. The First-tier Judge accepted the submission that the Entry Clearance Officer had made a mistake in saying that the appellant had relied on an agent who was not in the UK, there was no evidence to that effect.
9. However the judge noted that in the appellant's passport there was a residence permit said to have been issued in May 2008 and expiring on 30 November, 2008 which the appellant says was his extension as a student and the judge commented: "if that is genuine, I would have expected there to be a record at the Home Office." In paragraph 23 the judge commented that in the absence of confirmation from the Home Office that the appellant had obtained an extension as a student "the appellants immigration record must be more doubtful [than] he has represented." The judge returns to this theme in paragraph 24 stating that the Entry Clearance Officer had recorded that the appellant had not made an application to the Home Office for further leave to remain as a student "something he now claims to have done but for which there continues to be no record." The Entry Clearance Officer's conclusion that the appellant had unlawfully overstayed his original student visa was a conclusion which was supported by the evidence. The judge found that the Entry Clearance Officer's decision under paragraph 320 (11) was in accordance with the law. The decision was not disproportionate.
10. The appellant appealed and in ground two of the grounds of appeal it was stated that the appellant had obtained his subject access report which clearly demonstrated the extension application that he claimed to have been made, expiring on 30 November, 2008.
11. Before me Mr Bramble accepted that Home Office records did indeed show that that the appellant had been granted leave to remain until 30 November, 2008. It was also to be noted that the Presenting Officer at the hearing before the First-tier Judge did not challenge the genuineness and subsistence of the relationship between the appellant and the sponsor. The sole issue remaining was the issue under paragraph 320 (11).
12. Mr Bramble acknowledged that the key to the case was the appellant's application and the Home Office record of it. The judge had given great emphasis to the appellant's claim to have made this application, a claim which the judge had rejected. She had found in particular that the appellant's immigration history was doubtful and that no application for further leave to remain had been made.

13. Mr Bramble further accepted that there was a need for aggravating circumstances in cases of this type. It was now clear that the point taken by the Entry Clearance Officer and focused on by the judge was not a good point and the appellant had indeed been granted an extension of leave to remain until 30 November, 2008.
14. The other point taken by the Entry Clearance Officer had been in relation to the appellant using an agent thousands of miles away but the judge had found that that was not a good point. Mr Bramble asked rhetorically what was left. In the circumstances he did not resist the arguments advanced and agreed that the decision of the First-tier Judge was materially flawed in law and that it should be reversed and that the appellant's appeal should be allowed.
15. It does appear that the decision of the Entry Clearance Officer was flawed in two material respects. The judge, while accepting the error in relation to one matter (the use of an agent thousands of miles away) placed heavy emphasis on the fact that there was no evidence the appellant had made a further application for leave to remain expiring in November 2008. As there was an entry in the appellants passport to that effect this would be a significant countervailing circumstance (see paragraph 21 of the determination). It is now accepted that this point was without foundation.
16. In the light of the fact that Mr Bramble accepted that the judge's decision should be reversed it is not necessary for me to produce a lengthy determination. I only mention the fact that the Entry Clearance Officer proceeded on the basis that the appellant's relationship with the sponsor was neither genuine nor subsisting, points which were conceded by the Presenting Officer at the hearing before the First-tier Judge.
17. It is accepted that the First-tier Judge is decision was materially flawed in law. By agreement this appeal is allowed.

Appeal allowed

Signed

Upper Tribunal Judge Warr

6 August 2014