False documents in UK immigration and Visa applications

By Vitalis Madanhi

The use of false documents in immigration matters or in any other facets of life is not acceptable. There are instances whereby false documents have been used by people desperate to work in the UK during the times whereby their applications would be under process. Some people have been arrested in this regard and others have been sent to prison for various periods and others have been given community service. There are quite a number of criminal cases which have been considered by the courts.

It is intended to make a few observations with regards to the use of false documents in support of Immigration applications. In terms of paragraph 320(7A) of the immigration rules, the use of false documents leads to mandatory refusal of any immigration application. This provision deals with refusal of the present application and may also even affect past applications. In terms of paragraph 320(7A) where false representation 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), or material facts have not been disclosed, in relation to the application; this would result with a sufficient ground on which entry clearance or leave to enter the UK is to be refused. The refusal becomes mandatory in those circumstances. When the rule was debated in the House of Lords as reported in the hansard of the 17th March 2008, the house agreed that by a false document they meant a document which has been forged or altered to give a false information. It was clearly stated that if people submit such documents, then they were to be refused. However they added an important rider to the effect that the Border and Immigration Agency then, would have to prove that a document is false and the standard of proof is very high.

In a recent determination by the Upper Tribunal in the case of MH and the Entry Clearance officer, Islamabad, a Pakistan born national applied to come to the UK to join his father who was studying in the UK. His application was refused mainly under paragraph 79 of the Statement of Changes in Immigration Rules (HC395): It was argued that the father was not able to maintain and accommodate him without recourse to public funds.

This refusal was based on the fact that the Entry clearance officer had disputed the father's bank's statements as false. These were bank statements issued by a Bank in Pakistan. In this case the Entry clearance officer and the initial court relied on paragraph 320(7A) emphasising that false documents had been used and as such the application was to be refused. The first court ruled that false documents had been used and there had been very serious allegations from the entry clearance officer with regards to the documents being false. The father requested further supporting documents from his bank in Pakistan which further documents were not accepted because the first court relied mainly on the verification report which was relied on by the entry clearance officer. This verification report was not made available to the court.

The case was heard as a reconsideration appeal and full proceedings followed in the Upper Tribunal and the verification report which the entry clearance officer had relied upon was not available. The burden of proof to prove falsity was on the Entry clearance officer and in that case there was no such verification report. In the premises there was no evidentiary basis to prove that the documents were false and the assertion by the entry clearance officer was

unsupported by any other documents. The court had occasion to clarify that in terms of rule 13 of the Asylum and Immigration procedure rules 2005, the respondent was among other things obliged to serve any unpublished document which is referred to in a document mentioned or to be relied upon by the respondent. In as much as the entry clearance officer had doubts and suspicions about those bank statements, the evidence before the Judge was wholly insufficient to enable him to make a finding. There was simply no verification report on the court bundle. In the premises the Appeal for this Pakistani boy was allowed despite the suspicions. Basically a person who avers falsity must prove it. It is also important to note that failure to disclose a conviction on the belief that it was spent did not constitute a breach of rule 320 (7A). The court made reference to the case of A v SSHD which was promulgated on the 6th July 2010 which made it clear that mere non disclosure of driving convictions in the mistaken belief that they had been spent did not amount to a breach of Rule 320 (7A) as false representation within the meaning of that Rule is confined to deception and with it necessary element of deliberate dishonesty.

This principle may also apply in various other matters other than in entry clearance applications. A number of people have had their applications refused on the basis that they used false documents in support of their applications in circumstances whereby others may as well have used genuine documents. This could also apply in asylum matters where documents are questioned by the UK Border Agency. Such documents as birth certificates, marriage certificates, pay slips and bank statements have been challenged and yet some challenges could be based on mere suspicions which may not be confirmed in court. A number of ancestry applicants have also been victims of false documents being alleged without proper verification reports. Each case may be based on its own facts. It is important to satisfy oneself that the documents being used are genuine. Where forgery is alleged it is important to provide evidence to allay any such suspicions.