



Neutral Citation Number: [2021] EWHC 260 (Admin)

Case No: CO/03/02/2021

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 11/02/2021

**Before :**

**CLIVE SHELDON QC**  
**(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)**

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**Between:**

**R on the application of**

**KAPIL SINGH**

**Claimant**

**- and -**

**THE SECRETARY OF STATE FOR THE HOME  
DEPARTMENT**

**Defendant**

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**Michael Biggs** (instructed by **My Legal Solicitors**) for the **Claimant**  
**Christian Jowett** (instructed by **Government Legal Department**) for the Secretary of State

Hearing date: 3 February 2021

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**JUDGMENT**

**Clive Sheldon QC (sitting as a Deputy Judge) :**

1. This is a renewed application for permission to apply for judicial review brought by the Claimant, Kapil Singh, against the Secretary of State for the Home Department. Mr. Singh is an Indian national who arrived in the United Kingdom on November 15<sup>th</sup> 2020 with the stated purpose of attending Heriot Watt University (“the University”) to study Business Administration. On November 10<sup>th</sup> 2020, Mr. Singh had been granted leave to enter the United Kingdom for the purpose of those studies. Following Mr. Singh’s interactions with immigration officers at Heathrow Airport, his grant of leave to enter was cancelled. He subsequently waived his right to an administrative review; and was detained pending removal. Mr. Singh was released from detention in December 2020.
2. Mr. Singh challenges: (i) the decision to cancel his leave to enter; (ii) the decision not to allow, or to refuse to consider, an application for administrative review after it had been waived by him; (iii) the decision to remove him, with removal directions being set on November 19<sup>th</sup> 2020; and (iv) the decision to detain him, and to maintain his detention.
3. Permission to challenge these decisions was refused by Nicol J. on the papers on December 14<sup>th</sup> 2020. The application for permission was renewed before me. I refuse permission. The grounds of challenge are not arguable and/or I refuse permission pursuant to section 31(3D) of the Senior Courts Act 1981 as it appears to me that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred.

Factual Background

4. Mr. Singh was accepted by the University to study Business Administration. As part of the application process, he had persuaded the University that his English skills were suitable for the course that he wished to study: he had attained competence in English at level B2 of the CEFR framework. Mr. Singh has explained in a witness statement that he “was interviewed via telephone by a University representative before issuing the” Confirmation of Acceptance for Studies.

5. Mr. Singh applied for a visa. As part of his visa application, he was asked a question: “We may have to talk to you about your application. Which language would you prefer to use?” Mr. Singh answered: “English”.
6. On arrival at Heathrow airport, Mr. Singh proffered his passport which contained his student visa. He stated that he was here to study. According to the minute sheet signed by the immigration officer, “it became immediately apparent that his command of the English language was woefully inadequate”. A desk interview was subsequently conducted. The following questions and answers were recorded:

*Are you happy to be interviewed in English? Yes Sir.*

*How much is your course for the first year? 4 Years.*

*How much have you paid towards your course so far? Administrator and Business courses.*

*When does your course start? 15<sup>th</sup> September 2020.*

*Did you take an English exam for your student visa? [no answer].*

7. A baggage search was subsequently undertaken. This resulted in the discovery of two A4 hand written sheets in English with sub-headings such as ‘After this course I can work as’, and ‘Who is funding?’
8. Mr. Singh was asked if he would like his interview to be conducted in English. He declined, saying that he wished to be interviewed in Hindi. An interview was conducted with a Hindi interpreter. Mr. Singh confirmed that he was fit and well, and not under any medication. He confirmed that he understood the interpreter and the questions asked at the interview.
9. A number of key points from the interview were as follows:
  - (i) Mr. Singh confirmed that the University course would be conducted in English;
  - (ii) When asked how he intended to partake in the course, he said “I will do it”
  - (iii) When asked how, he said “It’s the first time I have come to a foreign country. It will be a little bit difficult, but I will do it.”

- (iv) When asked about the two sheets of paper, Mr. Singh stated that “It was my cousin wrote the answers”, and when asked why, he replied “I had a problem that’s why I had sheets”;
- (v) When asked what the problem was, Mr. Singh replied “A pain on my right side”. When asked what difference that would have made, Mr. Sign said “Because I was in a problem; that’s why”;
- (vi) Mr. Singh maintained that he had taken the English examination himself, although he was unable to remember his score. He said “I don’t remember. I am a little bit nervous”;
- (vii) Mr. Singh was asked whether his educational certificates were false, and said “No”. When asked if his certificates were genuine, why could he not speak English to the stated level, Mr. Singh replied “I had a problem . . . because of my illness, I became very nervous”;
- (viii) Mr. Singh was asked why he had told the immigration officer that his cousin had taken the exam for him. He replied that his cousin had filled out the visa application for him. He had taken the exam. He had studied and passed.
- (ix) Mr. Singh was asked why he could not speak English now, and he replied “Because I am scared inside”. When asked why he was scared, Mr. Singh replied “First time I have come to a foreign country.”

10. The immigration officer formed the view that Mr. Singh should be refused entry “due to a change of circumstances”. This was confirmed by a more senior officer. The reasoning for refusing entry was set out in more detail in a form IS.82, which was explained to Mr. Singh. The reasoning was as follows:

“On 10/11/20 you were given entry clearance which had effect as leave to enter the UK as a D student but I am satisfied that false representations were employed or material facts were not disclosed for the purpose of obtaining the leave, or there has been such a change of circumstances since the leave was granted that it should be cancelled.

The change of circumstances in your case is that you obtained leave to enter as a D student to follow a degree course at Heriot Watt University and your entry clearance was given on the understanding that, as specified in your Certificate of Acceptance for Studies, you had attained competence in English at level B2 of the CEFR framework, the minimum standard required under the Immigration Rules.

Paragraph ST13.1 of the Immigration Rules requires that you must show English language ability on the Common European Framework of Reference for Languages in all four components (reading, writing, speaking and listening) of at least level B2, but you have conclusively failed to demonstrate that you meet this requirement. According to the official CEFR guidelines, someone at the B2 level in English:

- Can understand the main ideas of complex text on both concrete and abstract topics, including technical discussions in his/her field of specialization.
- Can interact with a degree of fluency and spontaneity that makes regular interaction with native speakers quite possible without strain for either party.
- Can produce clear, detailed text on a wide range of subjects and explain a viewpoint on a topical issue giving the advantage and disadvantage of various options.

However, on examination on arrival today you were unable to hold a conversation in English with the Immigration Officers or answer questions at a basic level of English and when asked whether you spoke English, your response was. "No". Your subsequent interviews were necessarily conducted in Hindi.

I therefore cancel your continuing leave under paragraph 321A(1) of the Immigration Rules and refuse you leave to enter the United Kingdom. Furthermore, because you have failed to meet a fundamental requirement of the Immigration Rules relating to students and I am satisfied that the standard of English you have demonstrated you do not have and have not had a genuine intention to study in the United Kingdom and are therefore not a genuine student as required by paragraph ST 5.1

I therefore cancel your leave to enter and refuse you leave to enter in accordance with paragraphs 321A(1) of the Rules."

11. The form IS.82 also contained reference to "Administrative Review". It stated as follows:

"You may seek administrative review of the decision to cancel your continuing leave. You may only seek administrative review of this decision if you think there has been a case working error.

...

You do not have to leave the United Kingdom while your administrative review is pending."

12. After the immigration officer read out the form IS82, Mr. Singh confirmed that he had understood the reasons for the refusal and stated "I want to go back to India now." Mr. Singh said that he wished to waive his rights to an administrative review and signed form IS30, after the administrative review process and the waiver form had been

explained in Hindi via the interpreter. The “Administrative review waiver form” included the following, above Mr. Singh’s signature:

“I waive my right to apply for an administrative review of this decision. Although I am entitled to make an application for administrative review, I will not do so. I understand that having waived my entitlement, I cannot later apply for an administrative review of this decision. If you wish to stay in the United Kingdom you must make a fresh immigration application as soon as possible. I understand that I am liable to be removed from the UK if I require leave to enter/remain but do not have it.”

In his witness statement, Mr. Singh has said that he “literally did not even know what ‘review’ meant in the circumstances and what it would entail. The only thing I could understand was the possibility to come out of the situation by opting to return to India”. He also says that he was not offered any legal advice.

13. Arrangements were then made for Mr. Singh to be detained overnight, and removal directions were set for a flight to India the following morning.
14. After Mr. Singh had signed the waiver, solicitors (who had been contacted by his father in India) were instructed to challenge what had taken place. An application was made to the Administrative Court, out of hours, and an order was granted restraining the Defendant from removing Mr. Singh.

#### Grounds of Challenge

- (i) the decision to cancel the Claimant’s leave to enter

15. Mr. Singh challenges the decision to cancel his leave to enter. It is argued that there was procedural unfairness in the way in which the matter was conducted, as Mr. Singh did not have a reasonable opportunity to address the Defendant as to the immigration officer’s concerns about his English language ability.
16. In my judgment, this ground of challenge is plainly unarguable. The interview record shows that Mr. Singh had ample opportunity to address the immigration officer’s

concerns about his English language ability. Mr. Singh was asked clear questions, and gave answers to them at interview, through an interpreter. The fact that this interview took place after the initial questions where Mr. Singh's English language ability was shown to be demonstrably lacking does not mean that procedural unfairness was not afforded to him. Mr. Singh had ample opportunity to try to explain his earlier poor performance in English.

17. It is also argued that the reasoning of the Defendant was irrational and/or based on a material mistake of fact: the reasons given for the cancellation included that Mr. Singh was unable to hold a conversation in English or answer questions at a basic level in English, when it appears that he was able to answer a couple of questions correctly. This is not arguable. It is not a correct reading of the decision letter, and in any event does not go to the gist of what was being said against Mr. Singh.
18. I do not read the immigration officer's decision as meaning that Mr. Singh could not answer any questions at a basic level in English; the immigration officer knew that Mr. Singh could answer a couple of such questions, and so when he said that Mr. Singh was unable to answer questions he was referring to the fact that Mr. Singh had given totally incorrect answers to two of the questions, and did not answer one of the questions. In addition, I note that the immigration officer's evidence was that Mr. Singh was "unable to hold a conversation in English", and Mr. Singh, through his own evidence, has not contradicted this.
19. Mr. Singh also argues that the reason given for the cancellation decision – that there has been a "change of circumstances" within the meaning of paragraph 321A(1) of the Immigration Rules – was not properly made out. Mr. Biggs, acting on behalf of Mr. Singh, contends that there was no "change" in circumstances of Mr. Singh's case since he was initially granted entry clearance; instead an immigration officer had formed the view that Mr. Singh's English was not adequate for his course of studies, in disagreement with the assessment that had been made by Mr. Singh's sponsor, the University, and Mr. Singh's qualifications.
20. I agree with Mr. Biggs that it is arguable that the reference to "change of circumstances" in paragraph 321A(1) of the Immigration Rules does not include a difference of opinion

between the person who initially granted entry clearance and an immigration officer who subsequently interviews the applicant. It is, in my judgment, arguable that a “change of circumstances” is referring to something which has objectively changed in the circumstances of the applicant or his case between those two dates. The language of the rules is:

“The following grounds for the cancellation of a person’s leave to enter or remain which is in force on his arrival in, or whilst he is outside, the United Kingdom apply . . . there has been such a change of circumstances of that person’s case since the leave was given, that it should be cancelled”.

21. Whilst it appears on the face of the documents that the immigration officer did rely on paragraph 321A(1) of the Immigration Rules for the decision to cancel entry clearance (this is reflected in the minute, and also in the decision letter itself), it is clear that what was being said in substance was that how Mr. Singh presented on his arrival at Heathrow on November 15<sup>th</sup> 2020 was not consistent with someone who had apparently persuaded the University that he had attained the relevant level of English language. Mr. Jowett, on behalf of the Secretary of State, has argued that the same outcome – cancellation – was inevitable, even if the immigration officer had relied on paragraph 321A(2) of the Immigration Rules

“false representations were made or false documents were submitted (whether or not material to the application, and whether or not to the holder's knowledge), or material facts were not disclosed, in relation to the application for leave”.

I agree.

22. It is clear that the immigration officer was satisfied that, in Mr. Singh’s case, “false representations were employed or material facts were not disclosed for the purpose of obtaining the leave”, as this is explicitly referred to in the decision letter. Accordingly, although the immigration officer did not go on to refer to paragraph 321A(2) of the Immigration Rules, it is clear to me that he could have done. Indeed, I consider that the evidence available to the immigration officer to support that conclusion was overwhelming, such that it is highly likely that the same decision would have been reached – cancellation – even if the immigration officer had not relied on paragraph 321A(1) but on paragraph 321A(2) instead.



23. In this regard, I note that:

- (i) Mr. Singh’s English language skills when presenting himself at Heathrow were “woefully lacking”, and did not reflect someone who was capable of attaining the appropriate level of competence in English;
- (ii) Mr. Singh’s poor English skills were reflected in the crib sheets that were found in his luggage. Mr. Singh would not have needed these sheets if his English language skills were of the appropriate level;
- (iii) Mr. Singh’s excuses for why he needed those sheets, and why his English language skills were “woefully lacking”, were wholly unconvincing;
- (iv) Mr. Singh did not complete the visa application form, rather this was filled out by his cousin. His cousin also wrote out the crib sheets. This all begs the question as to whether Mr. Singh had disclosed material facts as to the true nature of his English language skills when he initially applied for and obtained entry clearance.

(ii) the decision not to allow, or to refuse to consider, an application for administrative review after it had been waived by Mr. Singh

24. Mr. Singh contends that he should have been afforded legal advice before being asked to waive the administrative review; and that it is open to an applicant to revoke or withdraw his waiver.

25. In my judgment, this is not arguable as a matter of law or on the facts. I do not consider that it is arguable that Mr. Singh should have been afforded the opportunity to access legal advice before he signed an administrative waiver. This is not an aspect of procedural fairness or, as Mr. Biggs put it, a constitutional entitlement of access to justice: c.f. *R (UNISON) v. Lord Chancellor* [2017] 3 WLR 409. There was nothing to suggest that Mr. Singh did not understand the nature of the waiver that he was being asked to sign. It was obvious to Mr. Singh that he would not have to leave the United Kingdom while his administrative review was pending; and that he would not be able to withdraw his waiver at a later date. Furthermore, Mr. Singh was not a vulnerable individual. He was not unwell, or on medication, and he had the benefit of an interpreter. In the circumstances, there was no reason why Mr. Singh should have been

asked proactively if he wished to take legal advice before signing the waiver. Furthermore, Mr. Singh had not asked to take legal advice, but had been refused. His case is, therefore, clearly distinguishable from that of *R v Secretary of State for the Home Department, Ex p Anderson* [1984] QB 778 (quoted at [78] of *UNISON*) where rules prevented a prisoner from obtaining legal advice in connection with proceedings that he wished to undertake, until he had raised his complaint internally.

26. Mr. Singh did seek to withdraw the waiver subsequently and this was refused. It is not arguable, however, that he had an entitlement to do so. The rules do not provide for revocation and revocation cannot be implied.

(iii) the decision to remove Mr. Singh, with removal directions being set on November 19<sup>th</sup> 2020

27. Mr. Singh contends that the decision to remove him from the United Kingdom was unlawful. This is not arguably unlawful. Save for one matter, this ground of challenge is dependent on being able to make out that one of the previous decisions complained about was unlawful, such that there was no basis for a removal decision. As I consider that the challenges to those decisions are not arguable (or a substantially similar outcome was highly likely to have been arrived at in any event), then there is no basis to challenge the removal decision.

28. The additional matter raised by Mr. Biggs is that the removal decision was taken in breach of Mr. Singh's entitlement of access to justice, as he was not given notice of his removal in sufficient time to allow him to seek legal advice and challenge removal in the Courts. It seems to me that this argument is academic. Within hours of the removal decision being made, but before it went into effect, Mr. Singh obtained legal advice, and within a matter of days an order was sought and made by the Administrative Court preventing his removal.

(iv) the decision to detain Mr. Singh, and to maintain his detention

29. Similarly, with respect to the challenge to the decision to detain and then to maintain Mr. Singh's detention. This ground of challenge is dependent on being able to make

out that one of the previous decisions complained about was unlawful, such that there was no basis for a detention decision. Detention pending removal was entirely appropriate and the evidence indicates that there was a lawful and rational continuing review of detention, where there were no barriers to removal (save for interim relief in this pending claim) and a high risk of absconding.

30. By the time that the matter came before me, Mr. Singh had been released from detention, and so it would not have been appropriate to grant permission in respect of the detention claim in any event. A claim for damages for unlawful detention is more appropriately dealt with in the County Court.

### Conclusion

31. For the foregoing reasons, therefore, I refuse permission and dismiss this application for judicial review.