



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/03623/2013

THE IMMIGRATION ACTS

Heard at : Field House
On : 29 July 2013

Determination Promulgated
On : 30 July 2013

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MAJID ALI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms E Martin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan born on 5 April 1990. He arrived in the United Kingdom on 23 December 2010 with entry clearance conferring leave to enter until 17 May 2012. On 17 May 2012 he applied for leave to remain as a Tier 4 (General) Student Migrant.

2. The appellant's application was refused on 11 January 2013 under paragraphs 322(1A) and 245ZX(a) of the immigration rules, both in relation to the evidence produced as to funds available to meet the maintenance requirements. The respondent considered that the documents produced by the appellant in that regard, namely bank statements and a letter from Metropolitan Bank Limited, were false documents, as confirmed in a document verification report.
3. The appellant appealed against that decision and his appeal was determined on the papers on 9 May 2013 by the First-tier Tribunal. In a determination promulgated on 17 May 2013, First-tier Tribunal Judge Aziz dismissed the appeal, referring to the document verification report and finding on the basis of that report that the Metropolitan Bank Ltd documents were false and that the respondent had therefore properly refused the application under paragraph 322(1A).
4. The appellant applied for permission to appeal against that decision on the basis that his bundle of evidence, which he had submitted in accordance with the Tribunal's directions, had not been considered by the First-tier Tribunal.
5. Permission to appeal was granted on 7 June 2013.

Appeal hearing and submissions

6. Neither the appellant nor his representatives were present at the hearing. I noted the written request for the appeal to be determined on the papers owing to the appellant's inability to attend following a road accident which had resulted in restricted mobility.
7. I advised Ms Martin that the chronology of events leading to the determination of the appeal suggested that there had been a procedural error on the part of the Tribunal, since the appellant had been advised in a form IA35 that he had until 15 May 2013 to submit all his evidence, but his appeal was determined on 9 May 2013. His appeal bundle was faxed to the Tribunal on 15 May 2013, after the appeal had been considered. On that basis Ms Martin accepted that the decision should be set aside and re-made and she went on to make submissions before me.
8. She submitted that the appellant had produced no evidence to support the claim made at paragraph 10 of his grounds of appeal before the First-tier Tribunal as to his bank's confirmation that they had not denied the genuineness of his bank statement. The respondent had never been provided with the appellant's explanation for the false documents, since his statement and accompanying evidence had been submitted only to the Tribunal for a papers determination. The national savings account and certificates had never been submitted to the respondent for verification. The only documents provided to the respondent had been verified as false. It was not credible that the appellant would have signed a blank application form, as he now claimed. There was no evidence to confirm his account of having sought legal advice against Mr Yaqoob, whom he claimed to have been responsible for the false documents. By his own admission he did not have

sufficient funds to meet the requirement of the rules, as can be seen from the Lloyds TSB and Barclays bank statements. The appellant had not provided a proper reason for not wishing to attend an oral hearing as the medical evidence did not confirm his claimed lack of mobility. The decision to refuse to vary leave did not breach Article 8 of the ECHR as it was not unreasonable to expect him to return to Pakistan. The appeal ought to be dismissed.

Consideration and findings

9. As stated above, it seems that the Tribunal made a procedural error by determining the appeal before the deadline given to the appellant for filing his evidence, resulting in the bundle of evidence filed in accordance with directions not having been taken into account in the decision. As such, the Tribunal's decision has to be set aside and re-made.

10. In re-making the decision I have had full regard to the appeal bundle submitted by the appellant. Within that bundle is a statement in which he sought to explain the false bank statements. He did not deny that the documents were false, but he stated that he had nothing to do with their submission and that he had not been involved in the deception. He claimed to have loaned a sum of £2,950 to a Mr Yaqoob on 11 June 2012 and to have contacted him for the return of the funds when he received a request from the UKBA in August 2012 to make a new application within 60 days, with evidence of funds. Mr Yaqoob was reluctant to repay the loan but finally agreed for his close friend in Pakistan to deposit an equivalent sum in Pakistan rupees in his overseas account. Mr Yaqoob then took him to his friend Mr Rao, an immigration advisor, who told him that his agent in Pakistan would obtain his bank statement once Mr Yaqoob had deposited the amount in his overseas account and would then make his application for leave to remain on his behalf. Mr Rao asked him to sign a blank application form, which he did, and he provided him with his Lloyds TSB and Barclays account statements, and he was later advised that his application had been submitted. When his application was refused and the question of deception raised, he contacted Mr Rao, but was subsequently unable to get hold of either Mr Yaqoob or Mr Rao. He had sought legal advice against both but was advised that he could do nothing without their addresses or dates of birth, which he did not have.

11. I do not accept that explanation. It is not supported by any independent evidence and is completely inconsistent with the evidence in the grounds of appeal before the First-tier Tribunal. Whilst the appellant now denies having submitted the application form and accompanying documents himself, it was previously his case, as set out in the grounds of appeal at paragraphs 9 to 11, that he had submitted genuine bank statements with his application and that he had contacted his bank who had denied receiving any enquiry from the UKBA. He has not provided any evidence from his bank to confirm that explanation and it is notable that no bank statements for his overseas account have been produced.

12. Furthermore, with regard to the explanation now given by the appellant, I note that the Lloyds TSB and Barclays bank statements produced in the appeal bundle do not show any withdrawal of funds to the sum of £2,950 in the days preceding 11 June 2012 and neither is

there evidence of such withdrawals from any overseas accounts. His claim to have signed a blank application form is lacking in all credibility and neither he nor his witness Mr Ahmed sought to attend an oral hearing to give evidence and face cross-examination. For the appellant it is claimed that his injuries from a road traffic accident have left him with limited mobility, but the medical evidence does not confirm that to be the case. There is, furthermore, no evidence to confirm the appellant's claim to have sought legal advice about Mr Yaqoob and Mr Rao. The entire account is plainly a fabrication and I have no doubt that the appellant willingly exercised deception in submitting false documents with his application. I do not place any weight upon the national savings certificates and account.

13. In any event, it is clear from the guidance in AA (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 773 that deception is not a necessary requirement for a mandatory refusal in cases of forged documentation (paragraph 67):

"It is highly likely therefore that where an applicant uses in all innocence a false document for the purpose of obtaining entry clearance, or leave to enter or to remain, it is because some other party, it might be a parent, or sponsor, or agent, has dishonestly promoted the use of that document. The response of a requirement of mandatory refusal is entirely understandable in such a situation. The mere fact that a dishonest document has been used for such an important application is understandably a sufficient reason for a mandatory refusal. That is why the rule expressly emphasises that it applies "whether or not to the applicant's knowledge"."

14. As such, I consider that the respondent properly refused the appellant's application under paragraph 322(1A) and that the appellant was accordingly unable to meet the requirements of paragraph 245ZX(a) of the rules.

15. With regard to Article 8 of the ECHR, there is no suggestion that the appellant has established a family life in the United Kingdom. Whilst he may well have established a private life here, given his two and a half year period of residence, I do not consider that any interference with that private life would be disproportionate to the legitimate aim of maintaining an effective immigration control. There is no evidence of studies or other activities undertaken here and any private life the appellant has established is clearly limited. He has submitted false documents and used deception in so doing and in denying having done so. There is no reason why he cannot return to Pakistan and resume his private life there. His removal as a consequence of the respondent's refusal to vary his leave is clearly not in breach of Article 8.

DECISION

16. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision has been set aside. I re-make the decision in the appeal by dismissing it on all grounds.

Signed

Date

Upper Tribunal Judge Kebede