



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/13238/2014

THE IMMIGRATION ACTS

Heard at Field House

**On 7 October 2014
Delivered Orally**

Determination

**Promulgated
On 20 October 2014**

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MD. SHAHINUR ALAM

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

For the Respondent: No Appearance

DETERMINATION AND REASONS

1. This is an appeal by the Appellant (hereinafter referred to as the Secretary of State) against the decision of First-tier Tribunal Judge Malone who in a determination on the papers at Yarl's Wood on 14 July 2014 and subsequently promulgated on 24 July 2014 allowed the appeal of the Respondent (hereinafter referred to as the claimant), a citizen of Bangladesh born on 12 July 1987 against the decision of the Secretary of

State dated 16 March 2014 to refuse the claimant leave to enter the United Kingdom and to cancel his continuing leave.

2. The basis of that refusal was set out in the notice of refusal as follows:

"You were given notice of leave to remain in the United Kingdom as a Tier 4 (General) Student on 10/09/13 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 in your case since the leave was granted that it should be cancelled. I therefore cancel your continuing leave. If your leave was conferred by an entry clearance, this will also have the effect of cancelling your entry clearance.

This is because in order to obtain your current leave to study Level 6 Diploma in Management and Leadership at Bradford Regional College you submitted an academic transcript issued by Whitechapel College. This document is listed in Home Office records as being among the documents used to obtain the offer of your current course. However, during interview you have been unable to give details of your previous studies at Whitechapel College and subsequently when asked about the academic transcript you effectively admitted that you had only studied English. You also admitted that you did not complete the units on the course and that you did not obtain the grades that were listed on the academic transcript, and you have stated that at the time Whitechapel College's Tier 4 Sponsor licence was revoked the Principal supplied you with the academic transcript to help you obtain entry into another college. I am satisfied that the document was false because you have admitted that it was obtained without having completed the studies detailed therein, as well as your inability to give any account of such studies.

For the above reasons I am satisfied that you made false representations in relation to your application for leave to remain. I am therefore satisfied that you should also be refused leave to enter the United Kingdom under paragraph 320(7B) of the Immigration Rules. Future applications for leave to enter/entry clearance will be automatically refused (unless it would breach your rights under the Human Rights Act 1998 or the Refugee Convention) for a period of one year starting on the date on which you are removed from the United Kingdom following this refusal.

You have not sought entry under any other provision of the Immigration Rules.

I therefore refuse you leave to enter the United Kingdom/I therefore cancel your continuing leave. If your leave was conferred by an entry clearance, this will also have the effect of cancelling your entry clearance. The cancellation of your leave will be treated for the purposes of the Immigration Act 1971 and the Nationality, Immigration and Asylum Act 2002 as a refusal of leave to enter at a time when you were in possession of a current entry clearance (the Secretary of State's emphasis).

REMOVAL DIRECTIONS

I have given/propose to give directions for your removal to Bangladesh by flight/ship/train."

3. The claimant appealed that decision and in his Grounds of Appeal he stated at paragraph 10 that he denied the allegations made by the Respondent and confirmed that all the certificates and transcripts were "absolutely genuine and duly awarded by the issuing authorities".

4. At paragraph 12 of his grounds the claimant had this inter alia to say:

"12. The Respondent having raised an allegation of deception means that the burden rests with them and they need to provide evidence of sufficient cogency and strength."

5. At paragraph 16 of the grounds the claimant submitted that he had confirmed that the relevant academic papers or indeed all papers were "absolutely genuine and issued by the relevant issuing authority".

6. In concluding his grounds the claimant in summary contended that the Secretary of State's decision was "Wednesbury unreasonable".

7. The claimant also placed before the First-tier Tribunal his statement purportedly signed and dated by him on 16 June 2014. Of relevance the claimant had this to say over paragraphs 6 to 10 of that statement as follows:

"6. I do not find any valid reason how the Immigration Officer came to conclude that my transcript is not genuine. This is a level 5 course, I did undertake and complete after coming to the UK.

7. I can confirm that my transcript of HND in Business Administration issued by Whitechapel College is absolutely genuine.

8. I do not know any reason why the Home Office is alleging that my previous transcript issued by Whitechapel College had been proven to be false.

9. I never stated that any of my documents was false as stated by the relevant Immigration Officer or otherwise as all of my documents are absolutely genuine and have been gained by studying properly.

10. Despite the fact that I have stated again and again that all of my documents are genuine, **I was forced by the Immigration Officer to admit that my document was false** (my emphasis)."

8. As I have earlier mentioned this was a determination on the papers and the First-tier Judge explained in his determination that the documents that he had before him consisted of the Respondent's Notice of Decision, Notice of Appeal, Grounds of Appeal and the claimant's witness statement

of 16 June 2014. He went on to say that the Respondent had failed as directed to provide a Rule 13 compliant bundle.

9. The Judge proceeded to take the view that the relevant provision was not as stated paragraph 320(7B) of HC 395 (as amended) but paragraph 321A(1) and (2).
10. Under subheading "Findings" the First-tier Judge at paragraph 17 acknowledged the claim made by the claimant at paragraph 10 of his witness statement that he was "forced by the Immigration Officer to admit that my document was false".
11. Having then set out the basis upon which the Respondent had cancelled the claimant's leave the Judge notably at paragraphs 21 and 22 of his determination had this to say:

"21. I had no evidence whatsoever from the Respondent. I had no interview record and no explanatory statement. The Notice of Decision is not evidence to support the claimed facts it recorded.

22. I therefore conclude **that there was no evidence at all before me to show that the Appellant had made false representations, had submitted false documents or had failed to disclose material facts in relation to his last application for leave to remain in the United Kingdom.** There had been no change in the Appellant's circumstances since he had been granted his leave to remain such that his leave should be cancelled (my emphasis)."

12. The Judge then proceeded in consequence to find that the Secretary of State's decision was not in accordance with the law and the Immigration Rules and to allow the claimant's appeal.

The Proceedings

13. Thus the appeal came before me on 7 October 2014 when my first task was to determine whether or not the determination of the First-tier Tribunal Judge disclosed an error or errors on a point of law such as may have materially affected the outcome of the appeal. In that regard I was aware at 12.30pm when this particular hearing commenced that there was no appearance by the claimant or by his recorded solicitors. My clerk made appropriate enquiries on the telephone and was informed that on 2 or 3 October 2014 the claimant's solicitors had written and informed the Tribunal that they were no longer acting. Such notification was, it was claimed, sent to the Tribunal by fax and the firm had in their possession a confirmed transmission receipt. They explained to my clerk that they had been unable to maintain contact with the claimant and thus were no longer in receipt of his instructions.
14. That fax is not on the court file but I understand that the firm have now been asked to file a further copy.

15. There was no appearance before me by the claimant. I was invited in such circumstances to proceed with the appeal under the provisions of Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In that regard I was satisfied as to service of notice of hearing. It was apparent that no application had been made by the claimant seeking an adjournment. In such circumstances I was persuaded that it was in the interests of justice to proceed with the hearing.
16. It would be as well at this stage were I to set out below the basis upon which the Secretary of State successfully sought permission to appeal the First-tier Tribunal's decision. The Secretary of State was clear that the Judge of the First-tier Tribunal had made a material error of law in his determination and it was put in this way:

"At paragraph 22 the Judge concludes that 'there was no evidence at all before me to show that the Appellant had made false representations, had submitted false documents or had failed to disclose material facts in relation to his last application for leave to remain in the United Kingdom'.

However the notice of decision contains the evidence of an Immigration Officer [see paragraph 19] of the determination. The evidence of the Immigration Officer sets out numerous admissions of fact said to be made by the Appellant as well as observations of an Immigration Officer:

1. That the Appellant admitted he did not complete the units on the course and so did not complete the studies detailed on the academic transcript.
2. That the Appellant admitted he was supplied with the same academic transcript (not having completed the studies detailed therein) to help him obtain entry into another college when Whitechapel College's Sponsor licence was revoked.
3. That the Appellant was unable to give details of study at Whitechapel College.

Therefore there was evidence before the Judge to establish, prima facie, grounds that the Appellant dishonestly used a false document (a document containing false information) in order to obtain leave (to study at Bradford Regional College).

The Judge has made a material error in law by failing to make any findings upon the evidence before him.

The Appellant does not dispute in his witness statement that an admission was made by him that *'my document was false'* (see paragraph 7) so there is an amount of consistency between the Notice of Decision and the Appellant's witness statement.

However the Appellant disputes the propriety of the account given by the Immigration Officer in the Notice of Decision. The Appellant contends that '*I*

was forced by the Immigration Officer to admit that my document was false' (see paragraph 7).

The Appellant's contention in his witness statement that he was forced to admit that a document was false by an Immigration Officer raises issues of plausibility, particularly when compared to the numerous connected admissions of fact as recorded in the notice of decision.

The Appellant does not add plausibility by failing to explain why he made an admission that he now claims was not accurate or how he alleges he was forced into an admission.

By failing to make any finding or expressing any view upon evidence within the two conflicting written accounts before him and the plausibility of the Appellant's account the Judge makes a material error of law.

The Judge has made a material error of law by failing to have due regard to guidance within case law if he was in doubt about the Appellant's (or Respondent's) story. See Shen (Paper appeals; proving dishonesty) [2014] UKUT 236 (IAC) at paragraph 27.

It is requested that the matter be remitted and reheard and appropriate findings be made in accordance with the guidance within Shen."

17. Mr Bramble not surprisingly relied upon the grounds of challenge (above).

Assessment

18. I am entirely satisfied that the clear error of law in this case was to disregard relevant evidence.
19. At paragraph 21 of his determination the First-tier Judge concluded that there was no evidence whatsoever from the Respondent. In that he was clearly mistaken. There was a signed notice of refusal that asserted that the admissions of the Appellant (above) in the Appellant's witness statement he admitted to the same. Thus the Secretary of State had in my view overcome the evidential hurdle, in that evidence existed to support her contention that the claimant had admitted to an Immigration Officer that he did not complete the units on the course at Whitechapel College; did not complete the study as detailed on the academic transcript; that he was supplied with the same academic transcript to help him obtain entry into another college when Whitechapel College's Sponsor licence was revoked.
20. All such evidence was there before the Judge prima facie to be determined.
21. It follows that the Judge materially erred in law by failing to make any findings upon this evidence.

22. It was the claimant's account that he was forced to admit that the document was false by the Immigration Officer but as the grounds of challenge rightly state that raised issues of plausibility "particularly when compared to the numerous connected admissions of fact as recorded in the Notice of Decision".
23. As the grounds state at that point, the First-tier Judge should have proceeded to consider and deal with the plausibility/credibility of the claimant's claim that he was forced to make that admission, but he failed to do so.
24. As was recently held in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) it is necessary for Judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons so that the parties can understand why they have won or lost. I find that in the present case and for the above reasons that the First-tier Judge simply failed to identify and resolve what was arguably the key conflict in the evidence and thus failed to explain or reason his conclusions in that regard. Having failed to do so the Secretary of State was entitled to challenge his determination on the basis that it had not been satisfactorily explained to her as to why she lost.

Conclusions

25. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
26. I set aside the decision.
27. That of course is not the end of the matter because the Secretary of State's grounds reaffirmed by Mr Bramble before me, were that the interests of justice required that the matter be remitted to be reheard and appropriate findings made.
28. Despite the regrettable absence of the claimant at the hearing before me, I agreed with Mr Bramble's request having regard to the errors of law found that there were highly compelling reasons falling within paragraph 7.2(b) of the Senior President's Practice Statement as to why the fresh decision should not be remade by the Upper Tribunal. I was satisfied that it was clearly in the interests of justice that the appeal of the claimant be heard afresh in the First-tier Tribunal.
29. For the reasons I have given above and in agreement with the Secretary of State I conclude therefore that the appeal should be remitted to a First-tier Judge other than First-tier Tribunal Judge Malone to determine the appeal afresh at Hatton Cross hearing centre on the first available date. There is no indication before me that for this purpose an interpreter would be required. The suggested time estimate should be one and a half hours. It

follows that none of the findings of First-tier Judge Malone are to be preserved.

Decision

30. I remit the making of the appeal to the First-tier Tribunal at Hatton Cross before a First-tier Tribunal Judge other than First-tier Tribunal Judge Malone.

Signed

Date 20 October 2014

Upper Tribunal Judge Goldstein