



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

Appeal Number: IA/20087/2013

THE IMMIGRATION ACTS

Heard at Sheldon Court, Birmingham

On 14 July 2014

Determination

Promulgated

On 4 August 2014

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ROBERTSON

Between

**SYED ANJUM ALI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jafar, Counsel, instructed by the Lee Valley, solicitors.
For the Respondent: Mr D Mills, Senior Presenting Officer

DETERMINATION AND REASONS

Immigration History

1. The Appellant is a male citizen of Pakistan, whose date of birth is 8 March 1980. His appeal against the decision of the Respondent to refuse his application for leave to remain as the victim of domestic violence was refused by the Respondent under paragraphs 289 of HC 395, as amended (the Immigration Rules). A decision was also made to curtail his existing leave under paragraph 322(1A) and to remove him to Pakistan. His appeal against those decisions was dismissed by Designated First-tier Tribunal

Judge Coates (the Judge) in a determination promulgated on 27 February 2014.

2. Permission to appeal against that decision to the Upper Tribunal was granted on 18 March 2014 and the Appellant's appeal was heard by me on 21 May 2014. I reserved my decision. I decided that there were no material errors of law in the Judge's determination in relation to the refusal under paragraph 289 but that he had failed to make findings of fact in relation to the decision under paragraph 322(1A). My decision and reasons are set out in my determination, which was promulgated on 29 May 2014. I decided that the issues under paragraph 322(1A) would be argued before me at a resumed hearing and invited the parties to submit evidence in relation to those issues only, for the purposes of the resumed hearing. Both parties have received a copy of that determination and the directions issued pursuant to it and there is therefore no need for me to reiterate the contents of it or to append it to this decision.
3. The Respondent provided copies of the documentary evidence relied on to establish that the document obtained from Hunters Moor as to the treatment received by the Appellant for depression was a forged document. The Appellant provided no additional evidence.
4. The facts, briefly, are that the Appellant claimed to have suffered from depression as a result of domestic violence and to corroborate his account that he had received treatment for depression he provided to the Respondent a compliment slip from Hunters Moor Neurorehabilitation Centre for the West Midlands (Hunters Moor). On the face of the compliment slip, it is stated (inaccuracies as in the original):

"To whom it may concern

"Re (the Appellant)

"To inform that (the Appellant) attends sessions at our unit for his depression sessions. For any concerns, contact for enquiries.

"Thanks."

5. The Respondent contacted Hunters Moor, who responded in the following terms:

"...I can confirm that the compliment slip is official Hunters Moor documentation. However, if we had been requested to provide this type of information the reply would have been on letter headed paper and signed by the appropriate Medical Consultant.

"I can also confirm that (the Appellant) has never been a patient at Hunters Moor (we are a Specialist Centre for Neurological Rehabilitation) and has not been an employee of Hunters Moor.

"However, he has previously applied for a job as a Rehabilitation Assistant (he was alerted to the vacancy by one of our current staff members) but was not offered a position.

“Thank you for raising this with us” (Respondent’s bundle p G2).

6. It is the compliment slip which the Respondent states is a forged document and the Appellant states is not because he received counselling at Hunters Moor.

The Hearing

7. I had before me, by way of documentary evidence, the Respondent’s bundle (RB) filed for the purposes of the First-tier Tribunal hearing, and Appellant’s bundle (AB) filed for the purposes of the First-tier tribunal hearing sent under cover of a letter from the Appellant’s representatives dated 14 February 2014.
8. Mr Jafar stated that a witness statement was not provided for the Appellant’s witness, Ms Rohela Afzal, for the purposes of today’s hearing but she was present if evidence was required and she had brought with her details of her qualifications. However, he was perfectly aware that directions had been sent to the Appellant and his representatives and no evidence by way of witness statements or her qualifications had been filed, in breach of directions. Mr Mills objected to the late production of evidence.
9. No explanation had been provided as to why evidence had not been filed in accordance with directions, a witness statement was not provided and nor was evidence of Ms Afzal’s qualifications filed. Had evidence been filed in time, it would have given the Respondent time to make any enquiries in relation to it prior to the hearing. I therefore declined to admit it.
10. Mr Jafar stated that the Secretary of State had not discharged the burden of proof because evidence to the required standard had not been provided; cogent evidence was required. This was very different to the Judge’s conclusion that evidence could not to be relied.
11. Mr Mills submitted that:
 - a. The burden of proof was on the Secretary of State to establish that the compliment slip provided by the Appellant in support of his appeal from Hunters Moors was a forgery.
 - b. At G2 of the Respondent’s bundle (RB) was the email which confirmed that if a request had been made for the type of information which the compliment slip contained, the reply would have been on letter headed paper and signed by the appropriate Medical Consultant. The email confirmed that the Appellant had never been a patient at Hunters Moor. The Appellant did not, therefore, attend sessions there. Ms Afzal stated that she wrote it, accepting that it was not her role to do that and had done it as a friend to the Appellant.
 - c. To show forgery, the standard of proof is the balance of probabilities. The email confirms that he was never a patient at

Hunters Moor and that they did not issue the compliment slip. The Judge did not accept the rebuttal evidence presented. He did not believe Ms Afzal. At [39 - 40] he expressly considers her evidence, agrees that the proper way for an organisation to confirm someone is a patient is to provide a formal reply on headed notepaper. Her rebuttal evidence was inadequate because the Judge did not accept that she had the necessary qualifications or expertise to provide professional counselling for people suffering from depression. There is therefore cogent evidence from Hunters Moor and Ms Afzal's evidence was not credible or reliable.

12. Mr Jafar submitted that:

- a. Hunters Moor had confirmed that the compliment slip is genuine. Whether the content of the compliment slip reflected the truth depended on the perception of truth. **Tanveer Ahmed (Ahmed (Documents unreliable and forged) Pakistan * [2002] UKIAT 00439)** confirmed that only rarely would there be there be a need to make an allegation of forgery and strong evidence is required to support it. The evidence established that Ms Afzal was employed by Hunters Moor at [38]. She stated that there had been a change of management at Hunters Moor which is why there were no records. A clear explanation was provided which was not rejected by the Judge; he did not say that Ms Afzal was not a credible witness. The Judge was ambiguous about the credibility of Ms Afzal as a witness at [39 - 40]. He only states that the proper way to establish that someone is a patient is to provide the details within a letter. The compliment slip was not a formal reply; it was not for the NHS or the courts; it was to enable the Appellant to take time off work. To say it is not the proper way to provide information is not the same as to say that it is a forgery. Furthermore, the email may confirm that no formal treatment had been received but there was nothing to establish that informal treatment had not been provided by Ms Afzal.
- b. The findings at [39-40] do not necessarily establish that the Respondent has shifted the burden of proof, bearing in mind the seriousness of the consequences of finding that a document is a forgery. Hunters Moor confirmed that the compliment slip was genuine; it was not as if someone replicated an original document, for example a forged bank note or letter. The Respondent had not approached Hunters Moor to find out if there had been a change of management and whether they would retain records after the change. These questions should have been asked to discharge the burden of proof.
- c. Pursuant to **RP (Proof of Forgery) Nigeria [2006] UKAIT 00086** cogent evidence was required to establish forgery and the burden of proof is on the Respondent under paragraph 322(1A) pursuant to **JC (Part 9 HC395- burden of proof) China [2007] UKAIT 00027** as no clear findings of fact were made at [38 - 40], Mr Jafar submitted that forgery had not been proved and if the Judge had carried out a more structured approach, he would have

found that the allegation of forgery had not been proved. He further submitted that, despite my findings in my error of law determination, the lack of a structured approach could have affected the Judge's findings of fact.

13. In reply, Mr Mills submitted that because Hunters Moor confirmed that the compliment slip was genuine, did not mean that the document was not a forgery when it was purporting to confirm information that was not from Hunters Moor. In the circumstances, the Appellant put forward an argument to explain the contents of it. It was then not for the Respondent to return to the organisation to seek details regarding the change of management. Mr Mills submitted that Ms Afzal in fact had no status in the UK and following the investigation as to what happened with the Appellant's documents a decision was taken to remove her from the UK in October 2013. She had made no applications for leave to remain since 2008. Mr Jafar stated that Ms Afzal had been in the UK for over 20 years and was stateless to which Mr Mills responded that she may have said she was stateless but she had not been recognised as stateless.
14. I informed both representatives that I would make my findings on the evidence before me, bearing in mind that evidence had been presented to the Judge as to Ms Afzal's status and findings had been made by him. Mr Jafar stated that there was no finding that Ms Afzal's evidence was incredible or that as an overstayer she was not allowed to work. He submitted that in the absence of clear findings, a person is credible. He also submitted that they were not aware that findings were to be made on her status or evidence would have been called.
15. Following submissions I reserved my decision.

Decision and reasons

16. I make clear that in reaching my conclusions, I have had no regard to the comments of Mr Jafar or Mr Mills as to the statelessness or otherwise of Ms Afzal. The Judge made a finding of fact that she had no leave [25] and no evidence was produced today to the contrary. The Judge also found as fact that she had been employed by Hunters Moor [38]. These findings are my starting point and no evidence was provided to undermine these findings.
17. It is not in dispute that the burden of proof for a refusal under paragraph 322(1A) is on the Respondent. The burden of proof is the ordinary civil standard of the balance of probabilities, although cogent evidence is required to establish an allegation of forgery and the evidence must be subjected to anxious scrutiny due to the consequences of a finding of forgery.
18. The submission of Mr Mills was in essence that cogent evidence had been presented and this had not been adequately rebutted by the Appellant. Mr Jafar's position was that the document was confirmed as genuine, it was not the same as a bank note or a forged letter, and that the evidence presented in relation to it by Ms Afzal on behalf of the Appellant was not rejected by the Judge as incredible, and that given Ms Afzal's explanation,

the Respondent needed to make further enquiries to establish if Hunters Moor had undergone a change of management.

19. I have carefully examined the submissions made and the evidence before me and I find:

- a. There is no merit in Mr Jafar's submission that because the compliment slip has been confirmed as genuine, the document cannot be said to be forged. As recognised by the Tribunal in **Tanveer Ahmed**, some documents are:

“... false in that they are not made by whoever purports to be the author and the information they contain is wholly or partially untrue. Some are "genuine" to the extent that they emanate from a proper source, in the proper form, on the proper paper, with the proper seals, but the information they contain is wholly or partially untrue. Examples are birth, death and marriage certificates from certain countries, which can be obtained from the proper source for a "fee", but contain information which is wholly or partially untrue. The permutations of truth, untruth, validity and "genuineness" are enormous. At its simplest we need to differentiate between form and content; that is whether a document is properly issued by the purported author and whether the contents are true. They are separate questions. It is a dangerous oversimplification merely to ask whether a document is "forged" or even "not genuine"”

- b. As to the Hunters Moor compliment slip, it is established by the email at G2 of RB that it is genuine but the contents of it do not tally with their records; it is positively confirmed that the Appellant was not a patient at Hunters Moor. Not only that, but there is specific confirmation that the release of any such information as is stated on the face of the compliment slip would be on headed note paper signed by the appropriate medical consultant. There was no evidence before the Judge that Ms Afzal was a medical consultant. The Judge did not accept Ms Afzal's evidence that she had provided the Appellant with counselling and he gave his reasons for so finding at [39 - 40]. It cannot be seriously argued that it cannot be inferred from these findings that he did not find her evidence to be credible. If he had found it to be credible, on the balance of probabilities, he would not have rejected it.
- c. Mr Jafar submits that a reasonable explanation was offered as to why Hunters Moor would not have a record of the Appellant being a patient; there had been a change of management and old records had not been kept. However, this was rejected by the Judge at [39 - 40]. I would add that such an explanation does not in fact explain why they would have a record of the Appellant having applied for employment there and had not been offered a position but not have any record of him being a patient there if no records are retained due to a change in management. Whilst it would be arguable that current employees' records would be retained, there

is no explanation as to why there would be any record of a past application. Ms Afzal's evidence as to the Appellant in fact being a patient at Hunters Moor and why they did not confirm it when contacted by the Respondent was soundly rejected by the Judge with good reason.

- d. Mr Jafar sought to argue that the compliment slip was not provided by Ms Afzal for the NHS or the court; it was simply for the purposes of enabling the Appellant to take time off work. However, this in itself would not make the contents of the compliment slip less false or the document itself less of a forgery if he did not in fact receive treatment at Hunters Moor. Nor does it help the Appellant's case to argue that the item was not intended for the use to which the representative is seeking to put it.

20. Bearing in mind that the Judge found that Ms Afzal did not have the necessary qualifications or expertise to provide professional counselling services for people suffering from depression, on the evidence in the round, on the balance of probabilities, I find that the compliment slip from Hunters Moor purported to confirm details within it which were not in fact true and was not signed by a medical consultant who had the authority to release such information. It is therefore a forged document, in the sense that that it contains information which is not true, with the intent to deceive and ultimately or use to seek leave to remain under false pretences. I find that the Respondent has discharged the burden of proof.

Decision

21. The decision of Designated Judge Coates contains a material error of law in that he did not deal with the Respondent's refusal of the Appellant's application under paragraph 322(1A).
22. I dismiss the Appellant's appeal under paragraph 322(1A) of the Immigration Rules.

Anonymity

23. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No request has been made for an anonymity order and pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I find no reason to make an order.

Signed

Date

M Robertson
Sitting as Deputy Judge of the Upper Tribunal

TO THE RESPONDENT

FEE AWARD

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). As the appeal has been dismissed, no fee award is made.

Signed

Date

M Robertson
Sitting as Deputy Judge of the Upper Tribunal