



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

Appeal Numbers: IA/52956/2013
IA/52963/2013

THE IMMIGRATION ACTS

Heard at Field House

On 4 August 2014

Determination

Promulgated

On 17 September 2014

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

**MRS KARMIJIT KAUR DHALIWAL
MR PRABHDEEP SINGH**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Rahman, Solicitor

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants appeal with leave against the determination of First-tier Tribunal Judge Osborne dismissing the first appellant's appeal against refusal to grant her leave to remain as a Tier 4 (General) Student Migrant under paragraph 245ZX(c) with reference to paragraph 116(e) of Appendix A and paragraph 245ZX(d) of HC 395 (as amended) and under paragraph

322(1A). The second appellant was refused leave to remain as a dependant of the first appellant.

2. The first appellant is a citizen of India born on 25 December 1988. She arrived in the UK on 17 February 2011, in possession of a visa that conferred leave to enter until 30 September 2013. Her dependent husband also arrived in the UK with her on 17 February 2011 and also was granted leave to enter until 30 September 2013, both subject to a condition restricting employment and recourse to public funds prohibited.
3. The respondent raised three issues for rejecting the appellants' application. The first was that the respondent was not satisfied that the first appellant had a valid CAS because the Tier 4 Sponsor Register was checked on 28 November 2013 and Vista Business College was not listed as of that date. Secondly, the appellant had claimed ten points for maintenance (funds) under Appendix C but failed to provide a valid CAS in support of the application. Thirdly, the first appellant had provided a student progress report from College of Technology London dated 6 June 2013. College of Technology London was checked on the Companies House register. It was confirmed that the college ceased trading on 12 April 2013. The respondent was not satisfied that the progress report was issued by College of Technology London.
4. The first appellant in evidence confirmed that the date of the letter from College of Technology London was dated 6 June 2013. She conceded that the Companies House register revealed on 12 April 2013 that the college/company had ceased trading and that it had been wound up on that date.
5. She confirmed that the last time she attended the college was when she finished her last examination during the first week of April 2013. The college had told her that they would send her the exam results by post. She received nothing before the letter dated 6 June 2013 and has received nothing from the college after that letter.
6. She confirmed in cross-examination that her course was a Business Management Degree. When asked what grade she achieved she confirmed that she had passed. When Mr Johns, the Home Office Presenting Officer, asked her whether she knew what he meant by first class degree, second class or third class degree, the judge noted that it was manifestly the case that the first appellant had no understanding whatsoever of what was meant by that terminology. The first appellant asked Mr Johns whether he was referring to terms during the academic year. Mr Johns then put the original letter/student progress certificate which the appellant had submitted to the Home Office to her. He asked whether she accepted that the letter was on photocopied headed notepaper. She replied that, "It is a genuine letter. I don't know the admin officer".

7. The first appellant confirmed in evidence that she started the course in February 2011 and that her last exam was in the first week of April 2013. When asked by Mr Johns why the degree course took only two years and not the usual three years, the first appellant replied that that was what the college had said.
8. The judge said a fundamental issue in this appeal was the authenticity (or lack of it) of the letter dated 6 June 2013 which is entitled student progress. Mr Rahman, the appellants' solicitor, submitted that the lack of professionalism shown on the face of the document could well have been the reason why the college closed. He accepted that on its face there were a number of discrepancies both in terms of grammatical language used and format but submitted that the document did not have to be forged. The fact that the college ceased trading in April did not mean that the letter issued on 6 June 2013 lacked authenticity. Mr Rahman further submitted that the course embarked on by the first appellant was not a complete degree course but was a step along the way to a degree.
9. The judge noted that this was the first time that such an issue had been raised and she found that that did not reflect the evidence and was not what the certificate itself stated.
10. Additionally, the judge found that the first appellant confirmed that she had not had a graduation ceremony, had not received a graduation certificate, and had not asked anyone either at the college itself or at the University of Wales Trinity St David which institution worked in partnership with College of Technology London about the whereabouts of her degree certificate. The judge found that in itself was at the very least surprising.
11. The judge then considered the submissions made by Mr Johns and I quote:

“(xii) Mr Johns submitted that the document is not on genuine notepaper. It is on copied notepaper as can be seen from the bottom of the document which has a faded red stripe (which is not of equal quality to the red logo at the top of the document; the printing on the stripe is not properly centred and is partially cut off with the print quality having faded). The print quality of the BAC accredited logo is also inappropriately faded. The red stripe itself at the bottom of the document is not ‘square’ and is at an angle whereas a genuine document would have a straight stripe. Mr Johns further submitted that the date of 6 June 2013 is after the date of liquidation and winding up of the college which was completed in April. He further submitted that a two year degree course is unusual as degree courses are usually three years and need to be accredited. There are no grades which appear upon this document. The result in respect of each module is recorded as ‘passed’. It is unusual that there is no differentiation between any of the modules.

The English used in the narrative at the bottom of the form is ungrammatical and makes little sense. A genuine document produced by a college would show a higher standard of English grammar, particularly one responsible for pre-sessional academic English and BA (Hons) Business Management.

The document is signed 'Yours truly' which is not usual for a formal document and is signed by an 'Admin Officer' rather than an Administrative Officer, who is not named but who has added an indecipherable signature.

(xiii) There is merit in all of those submissions. The burden falls upon the Respondent to establish that the document lacks authenticity. The Respondent has to establish that lack of authenticity on the balance of probabilities. I confirm that having scrutinised the document, I am satisfied that it is not a genuine document and that it lacks authenticity for all the reasons submitted by Mr Johns on behalf of the Respondent. The points raised by him in respect of authenticity are well-made. Indeed, I find that one or two of those defects may have been sufficient to merit a finding that the document lacks authenticity. The fact that there are so many defects appearing on the face of this unsatisfactory document undermines its authenticity.

(xiv) The Appellant has had approximately one year since she received that document to obtain any supporting documentation from either College of Technology London or University of Wales Trinity St David. No additional documentation has been filed to either corroborate the First Appellant's progress or to corroborate the authenticity of the document itself. The Appellant and those representing her have known since the end of November 2013 that the authenticity of the document was an issue and was a point taken by the Respondent in the refusal of the Appellant's application. It is most surprising that no evidence has been adduced by the First Appellant to assist her appeal in this respect.

(xv) Were it not for the lack of authenticity of the document dated 6 June 2013, the Appellant should properly have been granted an additional 60 days' leave in which to obtain a new CAS. However, in the light of the lack of authenticity of the letter dated 6 June 2013 there is no merit in any additional leave being granted to the First Appellant for the obtaining of a new CAS. Additionally the appeal therefore fails on the merits."

12. The grounds upon which permission was granted argued that in dismissing the appeal the judge found that a key document in the appeal had "poor authenticity" and also that the burden fell upon the respondent to

establish this “on a balance of probabilities”. The grounds argue that the judge erred in not following the authority of **RP (Proof of forgery) Nigeria [2006] UKAIT 00086** and that this is an appeal where there is an absence of evidence to support the respondent’s claim that the appellant’s college letter was not genuine.

13. Mr Rahman relied on the grounds upon which permission was granted. He submitted that the respondent had failed to put forward any evidence in support of her claim that the college letter was not genuine. Although they accept that the college letter did contain some error and mistakes, however, this did not establish that the letter was not genuine. The grounds further argue that in the absence of expert evidence in relation to the document not being genuine, the respondent had failed to discharge the burden of proof upon her. Mr Rahman’s second argument was that the judge failed to make credibility findings in relation to the first appellant’s evidence.
14. He relied on the Tribunal’s decision in **VVT (LCPS: no post graduate diplomas) India [2011] UKUT 162 (IAC)** where the Tribunal held at paragraph 57:

*“Where there are general grounds for refusal under part 9 of the Immigration Rules - Rule 322(1A) in this appeal where leave to remain in the UK is to be refused if proven - the burden of proof falls on the respondent. As discussed at paragraphs 98-102 of **NA and Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031** having regard to **Re B (Children) [2008] UKHL 35** there is but a single civil standard of proof in appeals of this nature which is that of the balance of probabilities, but in the light of the possible serious consequences of refusal under part 9 the respondent needs:*

‘...to furnish evidence of sufficient strength and quality and he (and the Tribunal) would need to subject it to a ‘critical’, ‘anxious’ and ‘heightened’ scrutiny.’”

15. Mr Rahman submitted that the appellant had no control or authority over the document she received from the college. The respondent could have made further enquiries in order to verify the authenticity of the document but failed to do so. He accepted that the document was deficient in some ways but that did not make it a forgery. Even if the document was forged, there was no finding that the appellant knowingly used the document or was party to the fraud or was aware that it was a forged document.
16. I accept Mr Jarvis’ submissions that the judge had applied the right legal approach and accepted that the burden of proof was on the Secretary of State to prove on a balance of probabilities that the appellant’s document was a forgery. I also accept his submission that the appellant’s own evidence about the course was unreliable and there was no rebuttal

evidence from the appellant to establish that the document was not a forgery.

17. The judge records at paragraph 13(iii) that Mr Rahman and the first appellant appeared to be surprised by the position adopted by Mr Johns on behalf of the Secretary of State. The position was identified at paragraph 13(ii) in which Mr Johns had emphasised that the document dated 6 June 2013 submitted by the first appellant from College of Technology London was not an authentic document and that in those circumstances the respondent's refusal of the application was appropriate and the appeal should fail. The judge said she had noticed that the skeleton argument dealt only with the 60 days' extension in which to obtain a new CAS and failed to deal with the refusal under paragraph 322(1A) at all. In the context of this appeal she found that it amounted to something approaching an astonishing omission. I find that this would explain why the appellant did not submit evidence rebutting the respondent's decision that the document from College of Technology London was not an authentic document.
18. I accept that the judge applied the correct standard of proof as set out in paragraph 98 of **NA and Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031**. In that paragraph the Tribunal relied on **JC (Part 9 - HC 395 - burden of proof) China [2007] UKAIT 00027** where the Tribunal confirmed its view that in respect of the general grounds of refusal the burden of proof rests on the respondent. That was the standard of proof rests on the balance of probabilities, for matters of false representation and documents it is a higher balance of probabilities than normal.
19. I find on the evidence that the Secretary of State made out her case.
20. As to the argument that the judge made no findings about whether or not the appellant's evidence was credible and whether or not the documents were unreliable, I find that the judge's failure to make such a finding does not amount to a material. I rely on paragraph 67 of **AA (Nigeria) [2010] EWCA Civ 773** where the Court of Appeal held as follows:

"First, 'false representation' is aligned in the Rule with 'false document'. It is plain that a false document is one that tells a lie about itself. Of course it is possible for a person to make use of a false document (for instance a counterfeit currency note, but that example, used for its clarity, is rather distant from the context of this discussion) in total ignorance of its falsity and in perfect honesty. But the document itself is dishonest. 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 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'."

21. For these reasons I find that the judge did not err in law in her decision.
22. Mr Rahman said that he was not pursuing Article 8 of the ECHR.
23. The judge's decision dismissing the appeals of both appellants shall stand.

Signed

Date

Upper Tribunal Judge Eshun