



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: IA/11030/2014**

Appeal

THE IMMIGRATION ACTS

**Heard at Field House
On 16 February 2015**

**Decision & Reasons
Promulgated
On 17 February 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**MR ALI RAZA
(Anonymity direction not made)**

Respondent

Representation

For the appellant: no appearance

For the respondent: Mr M Melvin, Senior Presenting Officer

DECISION AND REASONS

1. The appellant in this appeal is the Secretary of State. The respondent is a citizen of Pakistan born on 17 January 1991. However for the sake of convenience, I shall refer to Mr Ali as the appellant and the Secretary of State as the respondent which are the designations they had before the first-tier Tribunal.

2. The appellant appealed against the decision of the respondent dated 12 February 2014 refusing him further leave to remain in the United Kingdom as a Tier 4 (General) Student pursuant to paragraph 245 ZX (a) and paragraph 322 of the Immigration Rules HC 395 (as amended).
3. First-tier Tribunal Judge Majid allowed the appellant's appeal pursuant to the Immigration Rules. Permission to appeal was granted to the respondent by First-tier Tribunal Judge Pooler on 26 November 2014 stating that it is arguable that the Judge fell into material error by failing to consider the respondent's verification report when he concluded that there is no "clear and convincing evidence" of deception on the part of the appellant.
4. Thus the appeal came before me.

First-tier Tribunal's decision

5. The first-tier Tribunal Judge found that the respondent had not demonstrated that the appellant had deliberately practised deception as defined in paragraph 6 of the Immigration Rules and that he as opposed to someone acting without his or her knowledge has contrived in a significant way to frustrate the intentions of the Immigration Rules. The Judge concluded that he does not see any "clear and convincing evidence" of production of forgery or deception. He stated that he cannot accept data against the appellant which is not supported by admissible evidence and that "over suspicious evaluation of evidence cannot justify serious allegations of malfeasance against a human being". He found the appellant to be a *bona fide* student and the discontinuance of his education will be devastating for the appellant. The Judge noted that the appellant has spent a lot of money on his education and therefore it should not be allowed to go to waste. He stated that the appellant "should be helped and I am happy to allow the appeal". The remaining part of the Judge's decision is based on policy of the United Kingdom on students who come to this country to study and is of no relevance to the issues in the appeal.

Grounds of appeal

6. The grounds of appeal state the following which I summarise. The first ground is that "failing to take into account opinion on material matters". The Judge concluded that the respondent did not produce any admissible evidence regarding her assertion that the appellant had submitted a false document with this application. This is factually incorrect because the respondent in her appeal bundle provided and sought to rely as on as corroborative evidence, a Document Verification Report which the Judge failed to take into account. The Judge did not make findings on the merit of the document verification report but concluded that the respondent had failed to produce "clear and convincing evidence".

7. At the hearing Mr Melvin stated that the respondent does not seek to rely on the second ground of appeal other than to say that the appellant produced the same statement with a different date purportedly from the bank.

The hearing

8. At the hearing a letter from the appellant solicitors dated 14 February 2015 stated that they are now withdrawing their instructions to act on behalf of the appellant. The appellant did not attend the hearing and I confirmed that the hearing notice was issued to him on 20 January 2015 stating that the appeal will be heard on Monday, 16 February 2015. Having satisfied myself that the appellant was properly served, I continued with the hearing and heard submissions from Mr Melvin.
9. Mr Melvin submitted that the bank statement that the appellant provided was false. He said that the Home Office has spent a lot of public funds to create relationship with banks around the world in order to verify bank statements. He stated that the Judge's conclusion that the respondent did not provide any evidence that the document was false is without foundation. The bank emailed the respondent and stated that the account number given by the appellant does not exist and the document verification report states that that bank statement provided by the appellant is false. The appellant has not provided any evidence other than the same letter he provided earlier and changed the date. The Judge was approaching irrationality by accepting a letter provided by the appellant rather than given consideration to the document verification report or concluding why he did not or could not rely on it.

Findings as to whether there is an error of law

10. The Judge materially erred in law because he did not take into account all the documentary evidence provided including a document verification report provided by the respondent. The Judge stated that which has considered all the documentary evidence in the appeal but failed to make any findings on the document verification report which clearly stated that the bank statement provided by the appellant was false. Furthermore, the Judge relied on a letter dated 29 September 2014 provided at the hearing, which was the same letter provided dated 13 January 2014 from the same bank stating the same thing that the appellant has nearly Rs.2 million in his account. Mr Melvin said there therefore would have been no need for an adjournment at the previous hearing because it was clear that the same letter had been produced bearing different dates which were completely inconsistent with document verification report which stated that bank statement provided by the appellant was false. The judge did not take into account the case of **Tanveer Ahmed** when he found that the document provided by the appellant can be relied upon in light of the document verification report.

11. I therefore find that the Judge materially erred in law and I set aside the decision in its entirety and re-determine the appeal.

Findings of fact

12. I have considered all the evidence in this appeal including evidence to which I have not specifically referred. I have also considered the documents provided by the respondent and the appellant.

13. The burden of proof is on the appellant to demonstrate on a balance of probabilities that he meets all the requirements of the Immigration Rules relevant to his application. The burden of proof is on the respondent to show that the appellant's appeal stands to fail under paragraph 322 (1A) of the Immigration Rules. He who asserts must prove. As the respondent asserts that the bank statement that the appellant provided with his application for leave to remain, to demonstrate funds is false, it is for the respondent to prove this to a higher burden of proof.

14. From 29 February 2008 paragraph 322(1A) of the Immigration Rules states that an applicant must be refused entry clearance where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application.

15. The features of the general grounds for refusal in Part 9 of the Immigration Rules were considered by the Asylum and Immigration Tribunal in **JC (Part 9 HC395 - burden of proof) China [2007] UKAIT 00027 ('JC')**. Part 9 of the Immigration Rules contains 'general grounds' for the refusal of entry clearance or leave to enter. The applicant is not showing why he qualifies; rather the decision-maker is seeking to show why the applicant is, or should normally be, *disqualified*. (See **JC**, paras. 8, 10 and 14.)

16. I have taken into account the case of **AA (Nigeria) [2011] 1W.L.R. 564** submitted by the appellant where, the Court of Appeal considered the interpretation of paragraph 322 (1A) in the case of a Nigerian man who had not disclose previous convictions in an application for leave to remain. The court heard that "false" within the meaning of those paragraphs required dishonesty or deception and could not simply mean "incorrect".

17. Each of the general grounds depends for its application on the decision-maker being able to establish a precedent fact or facts, and in relation to all of the general grounds the burden of proof is on the decision-maker to establish the facts relied upon (**JC**, para. 10). The reason why the burden rests on the decision-maker is that each of these grounds alleges in one way or another failing or a wrongdoing on the part of an applicant (**JC**, paras. 11-12). The standard of proof is at the higher end of the spectrum of balance of probability, but the standard is flexible in its application, and the more serious the allegation or the more serious the consequences if the allegation is

proven, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities (**JC**, para. 13). However, once the decision-maker establishes the underlying facts, the burden shifts to the appellant, stating why the refusal was not properly refused.

18. In respect of paragraph 320 (1A), the precedent fact on which the application of this provision depends is that the appellant provided a bank statement from the Bank of Alfalah (hereinafter the Bank) which is false, and the burden of establishing this fact lies on the respondent (**JC**, paras. 16-17). The respondent produced a document verification report which after contacting the bank after verifying with the bank on 4 February 2014, found that the bank statement provided, by the appellant to prove finances was false. I find that the precedent fact of the appellant having produced false documents has been established by the respondent on the higher spectrum of the balance of probabilities. The burden of proof now shifts to the appellant to demonstrate on a balance of probabilities that he did not submit a false document by deception.
19. The appellant states in his witness statement that the bank statement is genuine and that the respondent has been mistaken and had she has not made a proper enquiry from the bank regarding the bank statements. He argues that the refusal letter is completely silent about the mode and accuracy of the verification made by the respondent. He stated that paragraph 322 (1A) does not require knowledge on the part of the appellant of the deception as the wording of paragraph 6 of the Immigration Rules requires knowledge of the deception on the part of the applicant. Therefore deception or false representations must have been made knowingly by the appellant which the respondent has not proved.
20. The document verification report clearly states that the document is false. There is no reason that the appellant has given for me to find otherwise. His alternative argument is that even if they are false, it was not to his knowledge. He however does not suggest to whose knowledge the document is false and why the document is not false to his knowledge, given that it was him who provided it with his application as proof of his finances. The Bank stated that there was no such account at their Bank and that the document was false as stated in the document verification report on which I rely.
21. The appellant has not provided any documentary evidence from the Bank other than the letter dated 29 September 2014 stating "to whom it may concern" that the appellant has a bank account at the Bank "which he is maintaining to our entire satisfaction" and the closing balance is about rupees 1,974,450. The letter does not say that the document verification report is erroneous. I therefore place no reliance on this document to show that the appellant's bank statement is genuine.
22. I find that paragraph 322(1A) of the Immigration Rules requires that an applicant's application must be refused if false documents are produced whether or not to the applicant's knowledge and in this case I have found that

it is to the appellant's knowledge. I therefore find that in light of this the appellant's application must be denied under this section 322 (1A) of the Immigration Rules.

23. Having considered all of the evidence in the case as a whole in the round, the appellant's application has been irretrievably compromised by him producing a false document. I find that he has not demonstrated on a balance of probabilities that he has the necessary funds to meet the requirements of the Immigration Rules in the category that he seeks to remain.
24. The appellant seeks to rely on Article 8 of the European Convention on human rights in respect of his private life. I have considered all the evidence in this appeal in respect of his private life and I find that the appellant came to this country as a student and could not have had an expectation that he could live in this country permanently unless he fulfilled the requirements of the Immigration Rules for further leave to remain.
25. The appellant provided a false document with his application in order to prove that he had adequate finances to continue to study in this country. I find that the respondent's decision does not infringe the appellant's Article 8 rights in any manner whatsoever. The appellant has not been able to fulfil the Immigration Rules and there are no circumstances in his case for me to consider which is not already covered by the Immigration Rule which are Article 8 compliant.
26. I have taken into account the statutory rights of the respondent for a fair and transparent immigration control and I find that this dishonest appellant's circumstances do not trump those of the respondent.

Conclusions

27. I find that the appellant's appeal is properly denied under paragraph 322(1A) of the Immigration Rules. I also find that as a consequence, the appellant has not satisfied the Immigration Rules. In the circumstances the appeal is therefore refused.

DECISION

Appeal **dismissed** pursuant to the Immigration Rules.

Appeal **dismissed** pursuant to Article 8 of the European Convention on Human Rights

February 2015

Dated this 17th day of

Signed by

A Deputy Judge of the Upper tribunal
Mrs S Chana