



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

Appeal Number: IA/15367/2014

THE IMMIGRATION ACTS

**Heard at: Columbus House,
Newport
On: 19 October 2015**

**Determination Promulgated
On: 21 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

RIZWANA NAZNIN

(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr F A Chowdhury

For the Respondent: Mr N Diwnych, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Fowell in which he dismissed the appeal of the Appellant, a citizen of Bangladesh, against the Secretary of State's decision to refuse to vary leave to remain as a Tier 4 (General) Student Migrant.
2. The application under appeal was made on 28 January 2014 and was refused by reference to paragraphs 245ZX(a) and 322(1A) of the

Immigration Rules (HC395) on 13 March 2014. The Appellant exercised her right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Fowell on 16 April 2015 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by Upper Tribunal Judge Deans on 23 June 2015 in the following terms

“... The judge found that the appellant had submitted a false document with her application purporting to be from her bank in Bangladesh.

The application for permission to appeal, which was made in time, refers to a second letter the appellant obtained from her bank in an attempt to show the first letter was genuine. The application challenges the reasons given by the judge for not placing reliance upon this second letter. It is pointed out that the burden of proof was on the respondent to show the first letter was false.

The judge nowhere acknowledges that the burden of proof was on the respondent to show the first letter from the bank was false. This might not be material if the judge had fully set out reasons for accepting both that the original letter was false and that the further letter was not to be relied upon. Arguably, however, the judge’s reasoning on these points is not entirely adequate.”

3. At the hearing before me Mr Diwnych represented the Secretary of State and Mr Chowdhury appeared on behalf of the Appellant. No additional documents were submitted.

Background

4. The history of this appeal is detailed above. The facts, not challenged, are that the Appellant was born in Bangladesh on 15 December 1987. She first came to the United Kingdom with leave to enter as a student on 20 October 2007. The Appellant was granted successive extensions of leave to remain as a Tier 4 student until 30 January 2014. Her application for a further extension of leave to remain made on 28 January 2014 was refused because the Respondent considered, on the basis of a document verification report, that a bank statement and solvency letter purportedly from First Security Islami Bank Limited submitted in support of the application was false.
5. At the appeal hearing on 16 April 2015 the Appellant was not represented. After hearing evidence from the Appellant the Judge found both that the documents from the bank submitted with the application and a further letter submitted in support of her appeal were false. The appeal was accordingly dismissed.
6. In her grounds of appeal to the Upper Tribunal the Appellant asserts that the Judge erred in law firstly by not recognising that the burden of proof was upon the Respondent to show that the bank statement and solvency letter was false, secondly by placing too high a burden upon the Appellant to prove her case and thirdly by incorrectly concluding that there was an

inconsistency between the Appellant's oral evidence and the contents of the letter submitted in support of the appeal.

Submissions

7. For the Appellant Mr Chowdhury said that there was no mention of the appropriate burden of proof in the Judge's decision. Both parties' evidence should have been dealt with in the same manner. The burden of proving that the documents submitted in support of the application were false lies upon the Respondent to the higher end of the balance of probabilities. The contents of the document verification report do not meet this standard.
8. On behalf the Secretary of State Mr Richards said that there is plenty of detail in the document verification report. It clearly identifies that the visa assistant at the British High Commission made contact with the bank by telephone and ascertained that the account existed but that the bank statement and solvency letter did not reflect the correct state of the account and were forged. The Judge goes on to give reasons why the letter, purporting to come from the bank, submitted in support of the appeal to rebut the document verification report evidence was also false.
9. In response Mr Chowdhury said that he had looked at the Oxford English dictionary definition of "correspondence" and accepted that this referred only to written communication nevertheless in his submission it could also include "verbal correspondence". Mr Chowdhury emphasised that nowhere in the decision is it acknowledged that the burden of proof is upon the Respondent.

Error of law

10. In my judgement the decision of the First-tier Tribunal does not disclose a material error of law. This case revolves around a straightforward issue and it is dealt with extremely succinctly by the First-tier Tribunal Judge. He could perhaps be criticised for dealing with the matter almost too succinctly but that does not of itself disclose any error of law.
11. The issue in question is whether documents lodged by the Appellant in support of her application and her appeal were false. The application was refused because the Respondent considered that a bank statement and solvency letter submitted in support of the application were not genuine. In this respect the Respondent relied upon a document verification report. This document verification report is very clear. The author of the report confirms the time and date when he contacted the First Security Islami bank and under the heading "contact history" he records
"The bank representative confirmed that the bank records demonstrate that this account does exist. However the bank

statement and solvency letter is forged and was not issued by the said branch. Both are fabricated. The information held by the bank differs from what is detailed in the information/documents that were provided in support of the application form."

12. So far as the burden of proof is concerned it is indeed correct that the First-tier Tribunal Judge does not mention the applicable standard of proof and that the burden fall upon the Respondent. It could perhaps be said that there is an implicit reference in his conclusion "*it is for the appellant to satisfy me on the balance of probabilities ... (but) given the evidence as to the original documents being false ...*" although this is not a clear reference. Nevertheless it is in my judgement clear from this succinct conclusion that the Judge has first looked at the evidence of the original documents being false before going on to look at the document submitted with the appeal in rebuttal. There can be no doubt that this is the correct order and that in following this order the Judge is putting the Respondent to proof in the first instance.
13. Returning to the document verification report it is clear in my judgement that this is evidence produced by the Respondent that satisfies the burden of proof that is upon the Respondent. The First-tier Tribunal Judge could not fail to be satisfied on the balance of probabilities and subject to any rebuttal evidence that the documents submitted in support of the application were false. So far as this standard of proof is concerned the question of whether there is a 'higher' balance of probabilities test has been aired before this Tribunal on many previous occasions with the conclusion that the leading authority on the civil standard of proof is Re B (Children) [2008] UKHL 35 in which Lord Hoffmann stated, in [15]:

"There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities."

This echoed the oft cited statement of Lord Nicholls in Re H and Others (Minors) [1996] AC 563, at page 586:

"The balance of probabilities standard means that a court is satisfied an event occurred if the Court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the Court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the Court concludes that the allegation is established on the balance of probability. Fraud is less likely than negligence ??

Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation ?..

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred."

The conclusion of the First-tier Tribunal Judge that the document verification report was sufficiently strong evidence to support the serious allegation of forgery cannot in my judgement be impugned.

14. The burden upon the Respondent having been satisfied it reverted to the Appellant to show on the balance of probabilities by way of rebuttal evidence that the documents were genuine. The Appellant produced a letter dated 30 March 2015 purportedly from First Security Islami bank and gave oral evidence. The letter whilst purporting to confirm that the documents submitted with the application were genuine makes no mention of the document verification report or its contents. Rather it says

"We have received correspondence from the above account holder ..."

15. The Appellant's oral evidence records that the Appellant said that she did not write to the bank but that she called the bank manager. There was no correspondence. The Judge draws a distinction between the Appellant's evidence of a telephone call and the letter referring as it does to correspondence. This inconsistency causes the Judge to conclude that the letter of 30 March 2015 is false and as such that it cannot rebut the evidence of the document verification report.
16. In the grounds of appeal to the Upper Tribunal it is submitted that the telephone call amounted to "*verbal correspondence*" and therefore that there is no inconsistency. In his submissions Mr Chowdhury maintained this approach despite accepting that the Oxford English dictionary definition of "*correspondence*" involved only written communication. Of course "*verbal*" includes both written and oral but it is in my judgement beyond peradventure that "*correspondence*" can only refer to written communication. As such the First-tier Tribunal judge did not fall into error in finding inconsistency and concluding as a result that the letter was false.
17. My conclusion from all of the above is that the decision of the First-tier Tribunal contains no error of law material to the decision to dismiss the appeal. This appeal is therefore dismissed.

Summary

18. The decision of the First-tier Tribunal did not involve the making of a material error of law. The decision of the First-tier Tribunal stands and I dismiss the Appellant's appeal.

Signed:

Date:

**J F W Phillips
Deputy Judge of the Upper Tribunal**