



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

Appeal Number: IA/27340/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated**

Reasons

On 21st April 2015

On 15th May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**SHJ
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Nasim, Counsel

For the Respondent: Mr Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Woolley issued on 5th December 2014, allowing under the Immigration Rules the appeal of the Appellant against the decision of the Respondent made on 28th May 2014 to refuse leave to remain as a Tier 1

(General) Migrant and to remove him from the United Kingdom by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

2. Permission to appeal was granted by First-tier Tribunal Judge Lambert on 28th January 2015. She said:

- “2. This application had been successfully appealed and remitted for reconsideration by the Respondent in 2012. The Judge found that the present refusal was based on exactly the same set of facts and for the same reasons as had been found by the previous Judge to be unsustainable – namely an Advanced Diploma Document that was said by the Respondent to be false. The ROP shows that the Home Office Presenting Officer accepted that this was so, made no submissions and agreed that the appeal should be allowed.

3. No further enquiries had been made by the Respondent since the previous remittal and it is clear that the Judge concluded that there had been a total failure to reconsider the Appellant’s case. Rather than remit again and although recording that ‘there still has been no lawful decision in relation to the application’, the Judge considered the case on the basis that Advanced Diploma Document before him was one on which he could rely.

4. The grounds argue material misdirection in law in that there was no jurisdiction to allow the appeal in the absence of a lawful decision by the Respondent. The application is, in the context of the long history of this case and the apparent total failure of the Respondent to engage with the previous findings and remittal by the Tribunal, hard to find any sympathy with. However the Respondent’s case is, as a matter of law, manifestly arguable.”

3. The position of the Respondent is that no lawful decision has been by the Secretary of State and the Judge should have remitted it back to her so that a lawful decision could be made.

4. There is in this case a previous determination of the First-tier Tribunal following a hearing before First-tier Tribunal Judge Morgan on 6th December 2012. He spoke of the “very unfortunate history” of the case which had at that point been remitted back to the First-tier Tribunal by the Upper Tribunal. He explained that the Appellant had first arrived in the UK in August 2003 with leave as a student. This leave was extended until December 2008 when the Appellant further extended his leave as a Tier 1 (Post-Study Work) Migrant until March 2011. On that date he applied for further leave as a Tier 1 (General) Migrant and this application was refused on the grounds that he had relied on a false document in the application. The Respondent had proclaimed herself satisfied that the Advanced Diploma in Management Studies from the London College of Management and IT was false because the college had never delivered the programme to which the award relates. The Appellant was removed pursuant to directions because he did not have an in-country right of appeal. Judge Morgan said that there was no evidence before him that would enable or justify a finding that the qualification relied upon was a false document.

The Presenting Officer had accepted that she was in some difficulties on this point. Indeed the Appellant had provided a printout from the UKBA points-based calculator which expressly contradicted the Respondent's assertion that the qualification was never offered by the college. There was further evidence in the form of an invoice and acceptance letter from the college and certainly no suggestion that in any previous grants of leave the authenticity of the qualification was questioned by the Respondent. The representatives accepted that if the allegation of deception was not made out then the denial of an in-country right of appeal and the certified removal would be unlawful. Judge Morgan went on to find that the decision and his subsequent removal were unlawful. He said that the Respondent had made the whole process unnecessarily complicated. The consequence of denying the Appellant an in-country right of appeal meant that the hearing before him was at least the fifth hearing in relation to the case, including two in the High Court. Judge Morgan found that the decision on the application remained outstanding before the Respondent and he invited the Respondent to take a flexible approach in considering the application. He suggested that if the application succeeded, entry clearance should be granted 'forthwith'. He allowed the appeal to the extent that the decision was not in accordance with the law.

5. When the case came before Judge Woolley, he too expressed surprise and displeasure at the history of the case. It was accepted by both parties that the application had been refused by the Secretary of State for exactly the same reasons as previously, namely the submission of a false diploma. No further enquiries had been made by the Respondent following the findings at the appeal hearing before Judge Morgan.
6. The conclusion of Judge Woolley as set out at paragraph 11 is as follows:

"On the other hand there has still been no lawful decision in relation to the application. I think I may consider the case on the basis that the Advanced Diploma Document before me is one upon which I may rely for the purposes of proving the Appellant's qualifications. This means that he was entitled to the 30 points required for qualifications under Appendix A and the 10 points necessary for the English language requirement under Appendix B. No other issues were in question. I find he meets the requirements of paragraph 245ZX(c) and (d)."
7. Mr Nasim submitted at the hearing before me that the decision of the Secretary of State was not unlawful. I agree with that submission. The fact that it was wrong and not in accordance with the evidence does not make it unlawful. Judge Morgan found that the decision to remove was unlawful and that the Respondent had not made out the allegation of deception. It seems to me that given these findings it may well have been open to him to simply allow the appeal at that point but he gave the Respondent the opportunity to issue a decision reflecting the true situation including presumably the fact that the Respondent's representative at the hearing had accepted that there was no evidence of deception. Despite this the refusal letter that was issued by the Secretary of State on 28th

May 2014 was in virtually identical terms to the previous one. Clearly the Secretary of State paid no attention to the previous correspondence. No account was taken of the number of previous hearings in this case or of the public expense. Judge Woolley had before him an appeal against a refusal to extend leave and to remove the Appellant from the UK. He found that all the documentation necessary in terms of the Immigration Rules to succeed in that application for further leave had been supplied to the Secretary of State with the application. It seems to me that he was entitled to do that and on that basis to allow the appeal. There was no need for the Respondent to have to issue 'a lawful decision'. Her decision was lawful. She had fully considered the evidence in the appeal in accordance with the applicable law for the second time and had misconstrued the facts of the case, in particular failing to take account of the fact that it had been conceded on her behalf that the document initially said to be false was not.

Notice of Decision

I find that there is no material error of law in the determination of Judge Woolley and that decision shall stand.

Signed

Date: 11th May 2015

N A Baird
Deputy Judge of the Upper Tribunal