



IAC-FH-CK-V1

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

Appeal Number: IA/01188/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 29 January 2016**

**Decision &
Promulgated
On 15 March 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

**MR SOHEL AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Miah, Haque & Hausman Solicitors
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought by the Appellant against a decision of the First-tier Tribunal dated 20 July 2015 where Designated Judge of the First-tier Tribunal Shaerf dismissed the Appellant's appeal against the Respondent's decision of 11 December 2014 refusing to vary the Appellant's leave to

remain and making a decision under Section 47 of the Immigration, Asylum and Nationality Act 2006 to remove him from the United Kingdom.

2. The Appellant has had a number of periods of leave to remain as a student. On 24 January 2010 he was granted entry clearance valid to 31 March 2011. He entered the UK on 2 February 2010. On 14 June 2011 he was granted further leave to remain to 30 October 2013 to study computing at City of Sunderland College. Prior to the expiry of that leave to remain, on 6 February 2013, his leave was curtailed so as to end on 7 April 2013 on the basis that the college that he had been attending had ceased to sponsor him on the basis of his lack of progress on the course at that institution.
3. The Appellant applied for further leave to remain and was granted such leave on 25 November 2013 until 29 February 2016. That was to study a level 6 diploma in healthcare management at Swarthmore College. Prior to the expiry of that leave on 27 June 2014 his leave was curtailed to end on 31 August 2014 on the basis that the college's Sponsor licence had been revoked. It was that that caused the Appellant to make the application in August 2014 for further leave to remain. He applied to study an NVQ level 6 diploma in business management.
4. The Respondent decided to interview the Appellant, that interview taking place on 10 November 2014, to assess the genuineness of the Appellant's intention to study in the United Kingdom, it being a provision at paragraph 245ZX(o) that leave to remain may be refused if the Secretary of State is not satisfied that the applicant is genuinely intending to study on the course that they claim they wish to follow. In that interview the Appellant was asked about his various courses, why he had taken them and as to his views as to whether or not he was following a particular course of study and a career path. The Respondent was not satisfied with the Appellant's answers in that regard, recording in her decision letter dated 11 December 2014 that:

“The fact that you have studied courses in travel, tourism and hospitality, computing and healthcare management raises doubts as to your intentions in staying in the United Kingdom. This is because it would be expected that a genuine student would have a defined career path prior to undertaking their studies.

You now want to study for a CQF/NVQ level 6 in business management. When you were asked at interview ‘how does it relate to your previous courses?’ you stated ‘the previous courses were all related to business. The only difference is that the awarding body has changed’.

You have not explained clearly why your previous courses in travel, tourism and hospitality, computing and healthcare management are related to business management or why you chose to study those

courses when you state that when you finish your course your plans are 'to get a job or to start my own business in Bangladesh'."

5. Upon the Appellant's application being refused he filed notice of appeal, that appeal coming before the judge at Taylor House on 16 July 2015. The Appellant had provided a witness statement in support of that appeal. It is recorded within paragraph 13 of the judge's decision that the Appellant gave further evidence as to how he had come to be studying healthcare and management, being the last course which he had commenced prior to the present application.

6. The judge records the Appellant's evidence as follows:

"He had referred to an administrative error at Swarthmore College which had resulted in him effectively having to pursue against his wishes a course in healthcare and management although he had made no mention of this at interview and it was not raised until referred to at paragraph 5 of his statement of 8 July 2015 where he attributes this to Swarthmore College issuing a wrong CAS which the college was unable to cancel and re-issue for studies leading to a diploma in business management instead of a diploma in healthcare and management."

7. The judge had set out within the decision the issues that had been raised by the Secretary of State in her decision letter of 11 December 2014. The judge had also noted as follows at paragraph 12:

"He had then proceeded to study at JFC but after the Respondent had refused him further leave, he had not been able to continue his studies at the JFC because he had no current leave to remain. He had started at JFC in February or March 2015, following the issue of a CAS on 29 August 2014 of which he produced a copy in the course of the hearing. He was asked for documentary evidence of his studies at Swarthmore College and JFC but in any event was unable to produce any such evidence or any evidence of studies subsequent to the academic transcript of September 2013 from Guildhall College. The Appellant claimed to have left his lecture notebooks at home."

8. The judge concluded at paragraph 17 as follows:

"17. The essence of the Respondent's reasons for refusing the Appellant further leave to remain is that she is not satisfied he is a genuine student. The information about his studies in travel tourism is accurate in that the Appellant has produced evidence that he completed the course and acquired the relevant diploma. However, the fact is the Appellant has produced no evidence to show any studies subsequent to September 2013.

18. The Appellant had instructed solicitors. He had said that he had left his lecture notes at home. The hearing took place on Thursday 16 July. The facts are that there is no further evidence about these and that the Appellant has not attempted subsequent to the hearing to file any further evidence such as his lecture notes and essays.
 19. In the circumstances I conclude that even taking into account the difficulties with the sponsorship licence of Swarthmore College and the expiry of his leave to remain while at JFC, the Respondent was entitled to find that the Appellant was not a genuine student and the Appellant has failed to produce any evidence to show he is, despite his protestations of attendance at both Swarthmore College and JFC.
 20. For these reasons his appeal under the Immigration Rules must fail.”
9. The grounds of appeal relied upon by the Appellant against that decision challenge the judge’s decision essentially on a procedural fairness basis. It is said that there was either procedural unfairness or the appearance of procedural unfairness in what the judge said at paragraph 18. It is said that upon seeing the decision, the Appellant may have been led to believe that he had had the opportunity after the close of hearing to submit further evidence, but that he was not advised of this by the judge at the hearing. It is said in the grounds of appeal that if the Appellant had been aware of any opportunity to file further evidence after the close of hearing he would have done so in the form of lecture notes and other evidence that supported his assertion that he was a genuine student and had been studying after September 2013.
 10. Permission to appeal has been granted on that basis by Designated First-tier Judge Zucker on 18 November 2015 on the basis that it may have given the impression of unfairness. He noted though that the materiality of the same will be a matter for the Upper Tribunal.
 11. I heard submissions from Mr Miah on behalf of the Appellant and from Ms Isherwood on behalf of the Respondent in the present appeal.
 12. I find that there is no material error of law in the judge’s decision for the following reasons. Mr Miah in submissions today confirms that the nature of the challenge is limited to the procedural unfairness or appearance of procedural unfairness that arises from paragraph 18. There is no other challenge to the findings of the Immigration Judge. I asked Mr Miah whether in the decision the judge had incorporated the reasons advanced by the Respondent in her decision letter of 11 December 2014 into his own reasons for dismissing the appeal. Mr Miah’s position was that it did not seem so. Rather, Mr Miah says, the only reason the judge dismissed the appeal was on the apparent basis that after the hearing the Appellant had

not submitted any further evidence in support of his appeal and that it had been unfair to proceed in that way because the judge had not alerted the Appellant to any opportunity for him to do so.

13. I find, however, that the judge did incorporate the Secretary of State's reasons for rejecting the application made by the Appellant at paragraph 19 of the decision on the basis that he confirmed that the Respondent was entitled to find that the Appellant was not a genuine student.
14. The judge also notes at paragraph 18 that the Appellant had instructed solicitors. As Ms Isherwood points out, this Appellant had been on notice that the genuineness of his studying in the United Kingdom was under scrutiny. He had been called for interview on 11 December 2014 to discuss that issue and had received a notice of decision on 11 December 2014 rejecting the Appellant's proposition that he was a genuine student. It is for each Appellant to advance their case supported by evidence before the First-tier, in the manner of their choosing. A represented Appellant is in a better position to identify evidence which would assist him to rely in support of their appeal.
15. I find that it would have been commonsense for the Appellant to have submitted in support of his appeal any evidence that he had available to him to demonstrate that he was a genuine student. This could have taken many forms but it could easily have taken the form of lecture notes which were in his possession. No such evidence was relied upon by the Appellant. I find that there was no procedural unfairness in the judge dismissing the appeal in the way that he did.
16. On the separate issue of whether there was any appearance of procedural unfairness arising from paragraph 18 it is not usually the case that a judge would invite of his own motion an Appellant to submit evidence after a date of hearing and indeed there is no evidence that the judge did so on this occasion. The first occasion that the Appellant had drawn to his attention the issue of whether he should or should not have submitted any further evidence after the date of hearing was upon receiving the decision of the judge. He had not been invited by the judge to submit any further evidence and it is my finding that the judge was not really expecting him to do so.
17. I find that the observations of the judge at paragraph 18 are comments in passing only. They are not intended to have represented a genuine opportunity for the Appellant to submit evidence postdating the appeal hearing and I find that although they are observations which are not usually contained within judge's decisions their presence in the present decision does not give the appearance of such procedural impropriety as would cause the objective observer to think that the Appellant had been treated unfairly.

18. The procedural fairness issue is the only ground of appeal that the Appellant relies upon in the present appeal. There is no other matter that the Appellant relies upon to challenge the outcome of the present appeal and I find that the procedural fairness issue is not made out. I therefore find that there is no material error of law in the judge's decision and I uphold the decision of the First-tier dismissing the Appellant's appeal.

Notice of Decision

The making of the decision by the First tier Tribunal did not involve the making of any material error of law.

I uphold the decision of the First tier Tribunal.

I dismiss the Appellant's appeal under the immigration rules.

No anonymity direction is made.

Signed

Date: 4.3.16

A handwritten signature in blue ink, appearing to read 'Ray O'Ryan', is written over the signature line.

Deputy Upper Tribunal Judge O'Ryan