



IAC-FH-CK-V1

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

Appeal Numbers: IA/42960/2014
IA/42975/2014
IA/42994/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 February 2016**

**Decision & Reasons Promulgated
On 24 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**ALPESHKUMAR ASHOKBHAI MAKWANA
PAYALBEN MANHARBHAI PATEL
[K M]
(ANONYMITY ORDERS NOT MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Arayn of Farani Javid Taylor Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. These are linked appeals against the decisions of First-tier Tribunal Judge Ross promulgated on 1 June 2015.
2. The principal Appellant, upon whom the other appeals depend, is Mr Alpeshkumar Makwana, an Indian national born on 5 July 1983. (References herein to 'the Appellant' are references to the principal Appellant unless the contrary is indicated.)

It is unnecessary to rehearse in detail his immigration history, which is a matter of record on file.

3. However, it is germane to note that on 10 May 2014 he made an application for leave to remain as a Tier 4 (General) Student under the points-based system. That application was refused for reasons set out in a combined 'reasons for refusal' letter ('RFRL') and Notice of Immigration Decision dated 14 October 2014. The application was refused with reference to paragraphs 245ZX(d) in respect of maintenance, and also paragraph 245ZX(a) with reference to paragraph 322(1A) of the Immigration Rules. I shall return to the refusal in respect of maintenance in due course.
4. The invocation of paragraph 322(1A) was based upon an exchange between the Secretary of State for the Home Department and a course provider, International School of Business Studies ('ISBS'). The Appellant had submitted certificates purportedly from ISBS in support of his application, and on 2 June 2014 by way of email an enquiry was raised with ISBS by the Respondent as to the authenticity of those documents. The enquiry was essentially in these terms:

"Would it be possible please for you to confirm:

- 1) *Did the individual named on the certificate study at International School of Business Studies?*
- 2) *If so, does the subject taken by the above student match your records?*
- 3) *Does the reference number, date subject passed, university crest, authorised signatures and security features on the certificate match your records?"*

5. A response to that enquiry was sent by email on 6 June 2014 from the Director of Business Development at the school. The response, so far as it is material, is in the following terms:

"Thank you for your email below with the attachment asking us to confirm the documents attached as scanned. I can confirm that although the student was sponsored by us he was reported to UK Border Agency and our sponsorship was withdrawn in 2011. I can also confirm that both certificates presented by the named student are forged and a blatant abuse of our name for which we reserve our right to take legal action."

6. The Appellant's application having been refused, he appealed to the First-tier Tribunal. The appeal was listed for hearing on 28 May 2015 in accordance with the indication given by the Appellant in his Notice of Appeal that he wished to have an

oral hearing of his appeal. However, on 26 May 2015 representatives acting on behalf of the Appellant wrote to the Tribunal to indicate that the Appellant now no longer wished to pursue his appeal by way of an oral hearing and would like his appeal to be decided 'on the papers'.

7. On 27 May 2015 a further letter was sent to the Tribunal by facsimile transmission setting out submissions in respect of the Appellant's case, and also including a six page bundle. The bundle contained the Notice of Appeal, a short witness statement from the Appellant, excerpts from the Indian Department of Financial Services relevant to the financial institution from which the Appellant was claiming he was to be funded, and also an extract from the list of Tier 4 Sponsors. It appears that that communication of 27 May was not sent until very late in the day. The case had remained in the hearing list for 28 May, and it appears that it was on that date that the case was placed before First-tier Tribunal Judge Ross for the first time.
8. It is also apparent that Judge Ross, having observed the correspondence of 26 May - which he refers to in his decision at paragraph 2 - identified that the Appellant no longer wanted an oral hearing of his appeal, and although the matter was listed for an oral hearing the Judge decided to determine the case as a 'paper case'.
9. It is equally apparent that the materials sent in on 27 May were not before Judge Ross, who makes no reference to their existence anywhere in his 'Decision and Reasons'. It seems to me that this is almost inevitably a matter that arises by reason for the late delivery of the documents on 27 May, in circumstances where the Appellant and his representatives could not reasonably have expected those documents to reach the Tribunal file by the following morning. It is to be noted that Judge Ross has dated his decision 28 May 2015 and it was promulgated on the following Monday, on 1 June 2015.
10. Judge Ross dismissed the Appellant's appeal. The decision of Judge Ross in particular focuses upon the letter from the International School of Business Studies sent by email on 6 June 2014. Amongst other things the Judge also states at paragraph 7 of his decision: "*I have been unable to assess the Appellant's credibility by virtue of this being dealt with (at the Appellant's request) on the papers.*" In the circumstances the Judge dismissed the appeal under the Immigration Rules.
11. The Appellant has sought permission to appeal to the Upper Tribunal arguing that there was procedural unfairness and/or a material error of law in that his representations and supporting bundle were not given due consideration by the

Tribunal. Permission to appeal was granted in this regard on 14 December 2015 by Upper Tribunal Judge Chalkley.

12. It clearly is the case that the materials that the Appellant would have liked to have relied upon in the context of his appeal were not before Judge Ross. No criticism is to be made of Judge Ross in this regard. It seems to be entirely a matter beyond his control. I acknowledge that a decision made in the absence of materials that have been submitted to the Tribunal - even if those materials are submitted late - may potentially result in an error of law, and it seems to me that what is really germane in this case is the issue of materiality.
13. This is not in any way to suggest that the conduct of the Appellant and his representatives in submitting the materials very late in the day is to be exonerated; but it is often the case that materials arrive late and in such circumstances the Tribunal then at the very least has to give some consideration to whether such late materials should be admitted into evidence, and if so then due consideration has to be given to them. In the strictest sense the cut-off date is the promulgation date, because up until that point there is always the possibility of re-evaluation of a paper case in light of documents received after the date set for serving and filing by Directions. Where documents received prior to promulgation do not reach the Judge - perhaps because of an administrative error - then even though there is no error or fault in the approach taken by the Judge to the materials before him, there is scope for contending that the Judge proceeded on the basis of a material misconception of fact amounting to an error of law.
14. The particular issue that Judge Ross relied upon in his decision is in respect of the allegation that the Appellant had submitted false documents in support of his application. The Appellant's witness statement that was included in the materials sent to the Tribunal on 27 May 2015 says very little on this particular subject. Indeed, apart from asserting at paragraph 6 that he was a genuine student who wishes to continue to study, the only particular engagement in the witness statement with the allegation of the use of false documents is to be found at paragraph 5. That paragraph in its entirety is in these terms:

"The second reason for refusal is that it is asserted that my educational documents are false. The certificate was awarded to me by the college, after this, the college had no further correspondence with me and I was not informed by anyone whether it was closed or not, something which I subsequently discovered myself. As a result of this I did not receive any letters nor emails about my visa expiring."
15. With the best will in the world, it seems to me that that goes no way at all to addressing the substance of the allegation raised against the Appellant and

supported by the evidence to which I have already referred by way of the correspondence with ISBS. Nothing further is provided by the Appellant by way of corroborative evidence of his attendance at the college: no course work is provided and nothing is provided by way of confirmatory statements from any of his tutors or fellow students. The witness statement provides no more than a denial of the allegations.

16. My attention nonetheless is drawn to the written submissions that accompany the Appellants' bundle. After reciting certain case law in respect of allegations of forgery and use of false documents, and also seeking to address issues in respect of maintenance, essentially three points are raised in respect of the Secretary of State's case with regard to the supposedly false documents submitted with the application.
17. The three points in summary are these:
 - (i) ISBS was no longer an accepted Tier 4 Sponsor, and in those circumstances it was argued that little or no weight should be given to any communication from that particular institution.
 - (ii) It was suggested that it was not clear why it was the Director of Business Development who was responding to the query raised by the Respondent.
 - (iii) It was submitted that the Director of Business Development had not adequately answered the specific questions raised by the Secretary of State in her enquiry dated 2 June 2015.
18. In my judgment there is no substance to any of those three matters. The fact that the International School of Business Studies was no longer considered to be an acceptable Tier 4 Sponsor could have arisen for any number of reasons unrelated specifically to a lack of honesty. It seems to me that the circumstantial evidence of the school having come off the Tier 4 register is not in and of itself an adequate reason to suggest that the information that would have been provided to the Secretary of State would have been false in any material degree, particularly when that information is in response to a simple and straightforward enquiry.
19. Further, in my judgment it is neither here nor there that it is the Director of Business Development that has responded to the enquiry.

20. As regards the third point, in my judgment it is clear that in substance each and every one of the enquiries raised by the Secretary of State has been adequately answered.
21. Accordingly I can see nothing of substance in the matters raised in the written submissions sent to the First-tier Tribunal, and nothing of substance in the Appellant's statement on the issue.
22. Even if it were otherwise and it might be said that those matters would require some further engagement or thought, the real difficulty here is the matter clearly and precisely identified by Judge Ross in his Decision to the effect that the Appellant's election not to attend an oral hearing made it not possible for the Judge to assess his credibility. Ultimately, irrespective of the written submissions, those submissions were going to have to be considered in the overall context of the materials submitted by the Secretary of State and the Appellant's evidential response to those materials.
23. As I have observed, evidentially the Appellant makes no sort of response to the Secretary of State's materials at all.
24. In all of the circumstances it seems to me that the absence of the bundle sent by fax on 27 May 2015 from the consideration of Judge Ross could not in any way have affected the outcome in respect of the issue relating to the academic documents submitted by the Appellant in support of his application.
25. In any event, even if I am wrong in that regard it seems to me that the Appellant could not possibly have succeeded on his appeal under the Immigration Rules because of significant shortfalls in respect of the requirements with regard to maintenance.
26. I should preface these comments with the following two observations. The Respondent appears to have been in error in the RFRL in considering the supporting evidence in respect of maintenance by way of a bank letter in respect of a loan in the context of 'financial sponsorship' from an institution. It seems to me that there was no suggestion that the Appellant was being sponsored by the Indian Overseas Bank in the same way that some students might be sponsored by a government, or the British Council, or some other international organisation. This was evidence that was being produced by the Appellant in order to demonstrate that maintenance funds were available to him, and not to show that he was being sponsored by an institution.

27. The second matter that I should say by way of prefacing what is to follow is that Judge Ross himself did not engage with the issue of the maintenance in this case at all. (Of course, having found against the Appellant on 322(1A) grounds it was unnecessary for him to do so.)
28. Be that as it may, I have had the opportunity of exploring this issue with the representatives today. Mr Arayn acknowledges that the Appellant was in effect trying to demonstrate the availability of funds by way of a loan being available to him rather than by way of sponsorship. He also acknowledges the requirement as specified in the RFRL - that the Appellant would need to have demonstrated that he had available £1,600 for a consecutive 28 day period up to the date of his application. In this context, again it is acknowledged that because of this being a points-based system appeal the jurisprudence of the Tribunal to consider evidence, as it were, after the event in respect of maintenance is extremely limited.
29. I turn then to a brief consideration of the supporting evidence in respect of maintenance. The letter that is on file from the Indian Overseas Bank is dated 31 May 2014, although erroneously it is referred to as being a letter dated 10 May 2014 in the Respondent's decision letter. The dating of this letter is in itself a curiosity given that the application was made on 10 May 2014 and so the letter in support of the application appears to post-date the application.
30. Be that as it may, it is clear that the first part of the letter is simply indicating the sanctioning of a loan to the Appellant's father - albeit the letter on its face acknowledges the context of the loan being the Appellant's wish to study in the United Kingdom.
31. Under the section of the letter headed 'Disbursement' it is indicated that the loan will be disbursed at some unspecified point in the future: *"We will disburse this loan when applicant requirement [sic]. Loan will be proceeds credit in to [and then a bank account number is given] in name of Mr Ronakkumar Divyakant Desai & Mr Divyakant Bhikhabhai Desai."*
32. In the first instance it seems to me that this is a contingent loan arrangement and does not in itself demonstrate that the Appellant held the necessary funds for a consecutive 28 day period prior to the date of his application. Moreover it is again curious that the letter refers to the payment of the loan being to two individuals, both Mr Desai. The letter itself is addressed to the Appellant's father, Mr Ashokbhai Bhailalbhair Makwana, and Mr Aran was unable to assist me as to who the Mr Desais

were or how they fitted into the scheme of things. The Appellant himself has not attended this hearing and so he is not in a position to assist his representative any further in this matter.

33. So there it is. The bank letter has a couple of curious features in that it is dated at a date after the application and also identifies individuals who are not obviously related in any way to the Appellant or his schemes in respect of study in the United Kingdom. In any event the bank letter does not meet the requirements of the Immigration Rules in that it does not demonstrate that the relevant funds were held by the Appellant for the specified period, or at all.
34. That means that even if I am completely wrong in respect of the issue in respect of the authenticity of the Appellant's academic certificate from the International School of Business Studies he could not have succeeded in his appeal under the Rules because he could not have demonstrated that he met the maintenance requirements. Again, essentially this means that the error, if there were an error, in Judge Ross proceeding without the Appellants' bundle could not have affected the outcome.
35. In all of the circumstances I decline to set aside the decision in the appeals and they will stand.

Notice of Decisions

36. The decisions of the First-tier Tribunal contained no material errors of law and they stand.
37. Each of the appeals is dismissed.
38. No anonymity orders are sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **8 March 2016**

Deputy Upper Tribunal Judge I A Lewis