



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10368/2015
HU/10362/2015

THE IMMIGRATION ACTS

Heard at Field House
On 23rd January 2018

Decision & Reasons Promulgated
On 18th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

MR. SHEIKH NABEEL RAZA
MRS. CHANDNI ZAHRA
(NO ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. J Bond, instructed by Rainbow Solicitors LLP
For the Respondent: Mr. C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of FtT Judge Mayall promulgated on 5th December 2016, in which he dismissed the appeals by the appellants against the respondent's decisions of 26th October 2015 to refuse indefinite leave to remain in the UK.

2. The appellants are nationals of Pakistan. The first appellant arrived in the UK with leave to enter as a student valid until 31st October 2005. He was granted successive leave to remain as a student until July 2009. In August 2009 he was granted leave to remain as a Tier 1 Post Study worker until 22nd August 2010. On 18th August 2010, he applied for leave to remain as a Tier 1 Migrant. That application was refused. The respondent noted that the appellant had relied upon a Post Graduate Diploma in Management Studies and a transcript mark sheet from the London College of Management and IT. The respondent was satisfied that the documents were false because upon contacting the London College of Management and IT, the respondent was informed that the appellant had never been registered as a student at that establishment. The respondent also awarded the applicant no points for previous earnings. The applicant had claimed £19,748.25 previous earnings from an employer HTL. Enquiries had been made with HTL via telephone and correspondence, but the respondent had been unable to establish if the documents in question were genuine.
3. The appellant appealed to the First-tier Tribunal (“FtT”), and at the hearing of his appeal before FtT Judge Kelsey, the appellant provided an exchange of correspondence between his solicitors and the college. The Judge was satisfied that the appellant was a genuine student at the college and had attained the qualifications that he claimed. FtT Judge Kelsey found that the respondent had not discharged the burden of proving that the documents were false. As to the first appellant’s previous earnings, FtT Judge Kelsey stated:

“22. ... So far as previous earnings are concerned, the appellant has provided evidence which validates his claim for 25 points. The only reason given by the respondent to deny him those points was that UKBA had been unable to get a response from the company HTL, for whom the appellant worked. The company has written a letter confirming the Appellant’s earnings from that source. The appellant therefore meets the burden of proof in showing that he earned more than £40,000 and is entitled to 25 points ...”
4. The appellant’s appeal was allowed and on 4th November 2011, the appellant was granted leave to remain until 10th April 2014.
5. By a Notice dated the same day (4th November 2011), the first appellant’s leave to remain was curtailed and the first appellant again appealed to the FtT. His appeal was heard

by FfT Judge Morgan who allowed the appeal for the reasons given in a decision promulgated on 2nd March 2012. FfT Judge Morgan noted that this is the second occasion on which the respondent had purported to question the veracity of the first appellant's qualification and that the evidence relied upon by the respondent was even less persuasive than that that was placed before FfT Judge Kelsey previously. He noted that the allegation made by the respondent is a serious one, but was not made out by the evidence provided. In light of that decision, the grant of leave to remain previously made to the appellant was reinstated so that the first appellant had leave to remain until 10th April 2014.

6. The second appellant arrived in the UK in July 2013 as the spouse of the first appellant. She was granted limited leave to remain until 10th April 2014. On 10th April 2014, the first appellant applied for leave to remain as a Tier 1 (General) Migrant. The second appellant was named as a dependent. They were both granted leave to remain until 14th May 2017.
7. On 20th April 2015, the first appellant applied for indefinite leave to remain in the United Kingdom on the grounds of long residence. On 26th October 2015, that application was refused and appellants leave to remain was curtailed. It was the refusal of that application and the curtailment of leave to remain, that was the subject of the appeal before FfT Judge Mayall.

The decision of FfT Judge Mayall

8. At paragraph [2] of his decision, the Judge sets out the reasons provided by the respondent in the decision of 26th October 2015 for refusing the first appellant's application, and to curtail the leave to remain granted to the appellants previously. At paragraph [5] of his decision, the Judge states:

“The appeal came before me on 14th October 2016. The respondent chose not to field a representative. Mr Balroop, at the outset of the hearing, confirmed that there was but one single issue in the appeal, i.e. whether his employment with HTL had been genuine or not. There had been submitted a large bundle of documents on behalf of the appellant. This included a witness statement of the appellant and his wife, documents relating to his earlier appeals

including a copy of the determination of Judge Kelsey dated 4th March 2011 and a copy of the respondent's bundle for that appeal."

9. At paragraphs [6] to [20] of his decision, the Judge sets out the evidence that he received. At paragraph [22], the Judge noted that the appeal before him was a human rights appeal. At paragraph [23], the Judge states:

"In practice, in this case it is accepted on behalf of the appellant that if I am satisfied to the requisite standard that he did use deception to procure his last leave, then it could not be said that these decisions amounted to an unlawful interference with his rights. The decisions would be entirely justified. Conversely, however, if I was not satisfied that he had employed deception to obtain the previous leave, then there would be no public interest in removing him and interfering with the private and family life that he has established in the UK."

10. The Judge's assessment of the evidence is to be found at paragraphs [26] to [32] of his decision. The Judge did not find the appellant to be an honest or credible witness. For the reasons set out at paragraphs [27] to [32] of the decision, the Judge was satisfied that the first appellant did use deception to obtain his previous leave to remain.

11. At paragraph [33] of his decision, FfT Judge Mayall states:

"The fact remains that Immigration Judge Kelsey relied upon the letter of 2nd February 2011 in the previous determination. Under normal **Devalseeelan** principles that must be my starting point, i.e. that there was no suggestion that that was not a genuine document. I note, however, that at the hearing before Immigration Judge Kelsey, it was not the respondent's case that that document was not genuine. Their case on the earnings was that they had simply not been able to get them verified. The appellant then put in that further letter purportedly from HTL which satisfied the judge that the earnings had been verified. There was not, however, an issue as to the genuineness of that or the other documents. I have no doubt whatsoever that had Judge Kelsey been presented with the evidence that was before me, and heard the same evidence about this issue as the appellant gave before me, he would have come to exactly the same conclusion. The fact is that the evidence before him was very different from the evidence before me. Accordingly, I do not regard the earlier decision as being binding upon me on this issue, i.e. As to whether the documents were genuine. As stated, on the evidence before me, I am entirely satisfied that they were not."

The appeal before me

12. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Jackson on 23rd October 2017. Although the appellant advanced a number of grounds

of appeal, permission to appeal was limited to the first and fourth grounds. First, the FfT Judge erred in departing from the findings previously made by FfT Judge Kelsey as to the appellant's employment with HTL. Second, although the appeal was an appeal on Article 8 grounds, the decision of the FfT does not contain any proper analysis of the Article 8 claim. The matter comes before me to determine whether the decision of the FfT contains a material error of law, and if so, to remake the decision.

13. There are two strands to the first ground of appeal. First, FfT Judge Mayall erred in reconsidering the issue as to the appellant's employment with HTL, and second, if it was open to the Judge to look again at that issue, the Judge should have adopted the approach set out by the Upper Tribunal in Mabu and others (immigration appeals – res judicata) [2012] UKUT 00398 and the Court of Appeal in TB (Jamaica) -v- SSHD [2008] EWCA Civ 977. That is, the failure of the respondent to provide the evidence now relied upon regarding the first appellant's employment with HTL before FfT Judge Kelsey is such that the determination of FfT Judge Kelsey should be treated as settling the issue of the first appellant's employment with HTL.
14. Ms Bond submits that in his appeal before FfT Judge Kelsey, to verify his earnings and in particular the claimed earnings of £19,748.25 from HTL, the appellant had provided a letter dated 14th February 2011 from Mr Girish Chadda of HTL. A copy of that letter was at page [140] of the appellant's bundle and is the letter that was referred to by FfT Judge Kelsey at paragraph [22] of his decision. She submits that the respondent did not seek to appeal that decision and the evidence that is now relied upon by the respondent, ought to have been, or could have been with reasonable diligence, made available to FfT Judge Kelsey. She submits that applying the principles set out in the decision in Mabu and others, FfT Judge Mayall erred in going behind the previous decisions of FfT Kelsey and FfT Judge Morgan.
15. There can be no doubt that the respondent is required to carry out the judgments of the Tribunal and that it is not open to the respondent to circumvent a decision of the Tribunal by making a new administrative decision. Here, the respondent gave effect to the decision of FfT Judge Kelsey by granting the first appellant leave to remain until 10th April 2014. The attempt by the respondent, by a Notice dated 4th November 2011

to curtail the first appellant's leave to remain, was, rejected by FfT Judge Morgan who allowed the appeal for the reasons given in a decision promulgated on 2nd March 2012. The fresh evidence relied upon by the respondent at that time to support the decision to curtail the first appellant's leave to remain in the UK was directed to the first appellant's qualifications. The fresh evidence was described by FfT Judge Morgan in the following way:

"8. ... the fresh evidence, if it can be called that, can be found at I1 of the respondent's bundle. This consisted of email correspondence between the respondent and the institution (see above) ... The email asks if the appellant studied at the college but makes no reference to either the appellant's student number or the appellant's surname, which can be found on the qualification ... This is the second occasion on which the respondent has purported to question the veracity of the qualification and the evidence produced is even less persuasive than that that was placed before the previous judge. Whilst I have some sympathy for the respondent, the institution in question does not appear to have co-operated with the respondent's enquiries, nevertheless the allegations made by the respondent are serious, and in my judgement not made out by the evidence provided ..."

16. The decisions that were the subject of the appeal before FfT Judge Mayall were the respondent's decisions of 26th October 2015 to refuse the first appellant's application for indefinite leave to remain in the United Kingdom on the grounds of long residence, and to curtail the appellants leave to remain. The respondent was not represented at the hearing of the appeal before FfT Judge Mayall. Counsel for the appellant noted, as the Judge recorded at paragraph [5] of his decision that there was a single issue in the appeal as to whether the appellant's employment with HTL was genuine or not. The question raised in the appeal before me is whether FfT Judge Mayall, was entitled to go behind the finding previously made by FfT Judge Kelsey as to the appellant's employment with HTL.
17. I reject the submission that the determination of FfT Judge Kelsey should be treated as settling the issue of the first appellant's employment with HTL. I accept that it is not open to the respondent to circumvent a decision of the Tribunal by making a new administrative decision. In SSHD v TB (Jamaica) [2008] EWCA Civ 977, the issue that arose was the status of an earlier decision of an Immigration Judge in a person's case, when considering a subsequent application. The relevant paragraphs of Stanley

Burnton LJ's judgment, which were adopted and applied by this Tribunal in the case of Chomanga (Binding effect of unappealed decisions) Zimbabwe [2011] UKUT 00312 (IAC) were as follows:

"32. As a matter of principle, it cannot be right for the Home Secretary to be able to circumvent the decision of the IAT by administrative decision. If she could do so, the statutory appeal system would be undermined; indeed, in a case such as the present, the decision of the Immigration Judge on the application of the Refugee Convention would be made irrelevant. That would be inconsistent with the statutory scheme.

33. The principle that the decision of the Tribunal is binding on the parties, and in particular on the Home Secretary, has been consistently upheld by the Courts. In *R (Mersin) v Home Secretary* [2000] EWHC Admin 348, Elias J said:

"In my opinion there is a clear duty on the Secretary of State to give effect to the Special Adjudicator's decision. Even if he can refuse to do so in the event of changed circumstances or because there is another country to which the applicant can be sent, there is still a duty unless and until that situation arises. It would wholly undermine the rule of law if he could simply ignore the ruling of the Special Adjudicator without appealing it, and indeed Mr. Catchpole [counsel for the Home Secretary] does not suggest that he can. Nor in my opinion could he deliberately delay giving effect to the ruling in the hope that something might turn up to justify not implementing it. In my judgment, once the adjudicator had determined the application in the applicant's favour, the applicant had a right to be granted refugee status, at least unless and until there was a change in the position."

34. In *R (Boafo) v Home Secretary* [2002] EWCA Civ, [2002] 1 WLR 44, Auld LJ said at [26] in a judgment with which the other members of the Court of Appeal agreed, '... an unappealed decision of an adjudicator is binding on the parties.' In *R (Saribal) v Home Secretary* [2002] EWHC 1542 (Admin), [2002] INLR 596, Moses J said:

"17. The decision in *ex parte* Boafo demonstrates an important principle at the heart of these proceedings. The Secretary of State is not entitled to disregard the determination of the IAT and refuse a claimant's right to indefinite leave to remain as a refugee unless he can set aside that determination by appropriate procedure founded on appropriate evidence."

35. Of course, different considerations may apply where there is relevant fresh evidence that was not available at the date of the hearing, or a change in the law, and the principle has no application where there is a change in circumstances or there are new events after the date of the decision: see Auld LJ in *Boafo* at [28]. But this is not such a case."

18. Procedurally, the respondent did not simply make a new administrative decision, but was responding to the first appellant's application, made on 20th April 2015, for

indefinite leave to remain in the United Kingdom on the grounds of long residence. That was a further immigration decision carrying a right of appeal. In TB (Jamaica), the Secretary of State had sought to go behind the decision of the Tribunal and refused to implement the decision of the Tribunal. Here, the respondent duly complied with the decision of FfT Judge Kelsey by granting the respondent leave to remain. The question of whether the appellant was entitled to indefinite leave to remain on Article 8 grounds was not before FfT Judge Kelsey.

19. In deciding the subsequent application for indefinite leave to remain, the respondent noted in her decision of 26th October 2015 that the letters relied upon by the appellant from HTL dated 12th August 2010 and 1st September 2010 gave an address of '4-6 Old Montague Road, London, E1 5NG'. A search of the Royal Mail postcode finder revealed that the postcode relates to the address; '4-6 Old Montague Street, London.'. Furthermore an attempt was made by UKBA on 25 August 2010 to contact HTL at the 'Old Montague Road' address but the correspondence had been returned by the Post Office marked 'address incomplete'. Those enquiries obviously pre-date the hearing of the appeal before FfT Judge Kelsey, at which the respondent was not represented. In my judgment, if the respondent fails to put her case properly before the FfT, then she suffers the consequences. Here, the consequence was that FfT Judge Kelsey was satisfied that the appellant had provided evidence which validated his claim for 25 points in respect of previous earnings.
20. FfT Judge Kelsey did not find that the documents relied upon by the appellant regarding his previous earnings were genuine. In reaching his decision as to the appellant's earnings, FfT Judge Kelsey noted, at paragraph [22] of his decision, that the only reason given by the respondent to deny the appellant 25 points for previous earnings, was that UKBA had been unable to get a response from the company HTL. The Judge noted that the company had written a letter confirming the appellant's earnings from that source. That letter from HTL is dated 14th February 2011. The appeal was heard by FfT Judge Kelsey on 16th February 2011. It is not clear when a copy of that letter was provided to the respondent but there appears to have been no

opportunity afforded to the respondent to confirm the veracity of the letter that was fundamental to the first appellant's case, and the outcome of his appeal.

21. In Mabu and Others, the hearing of the appeal before the FfT Judge had been adjourned on two occasions (*11th April 2008 and 3rd June 2008*) to allow time for the respondent to make further enquiries in relation to documents that were being relied upon by the appellant. By the date of the hearing on 25th June 2008, the respondent had not provided any further evidence and neither did she seek an adjournment. The Judge of the FfT proceeded to allow the appeal.
22. In reaching her subsequent decision of 26th October 2015, the respondent relied upon further enquiries undertaken in September 2015 in respect of the address, '4-6 Old Montague Street, London', to establish whether a business known as HTL had operated from those premises. In my judgement one of the exceptions identified in paragraph [35] of TB (Jamaica) applies. Here, there was relevant fresh evidence in the form of enquiries carried out by the respondent of the occupants of the premises from which it was claimed that HTL operated, that was not available at the date of the hearing before FfT Judge Kelsey. Furthermore, the letter that had been relied upon by the appellant from HTL dated 14th February 2011, two days before the hearing of the appeal before FfT Judge Kelsey, bore the VAT Registration number '939 720 77'. At the hearing before FfT Judge Mayall, it was accepted that that was not a valid VAT Registration number because it did not have the required number of digits.
23. FfT Judge Mayall correctly identifies the guidance that is set out in Devaseelan [2002] UKIAT 00702 and properly notes that the starting point for the purposes of the appeal before him, is the previous decision of FfT Judge Kelsey. FfT Judge Mayall noted that the evidence before FfT Judge Kelsey was very different to the evidence before him, and he did not therefore regard the earlier decision as to the issue of the first appellant's employment with HTL, as binding upon him. In my judgement, that decision of FfT Judge Mayall is not infected by any error of law.
24. In the circumstances I can deal with the second ground on which the appellant has been granted permission to appeal, in short form. Ms Bond submits that the Judge's

disposal of the Article 8 claim in one short paragraph, [35], was insufficient and required more explanation.

25. As Brooke LJ observed in the course of his decision in **R (Iran) v The Secretary of State for the Home Department [2005] EWCA Civ 982**, “unjustified complaints” as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded.
26. Although it is right to note that the Judge finally addresses the appellant’s Article 8 claim in one short paragraph, in my judgement he did so by reference to all the evidence before him and the findings that he made. The decision must be read as a whole. The Judge notes at paragraph [35] that he was not given any meaningful details as to the private and family of the appellants in the UK. It was conceded before FfT Judge Mayall, that if the Tribunal was satisfied that the first appellant had used deception to procure his leave to remain, it could not be said that the decision to refuse his application for indefinite leave to remain, or to curtail the appellants leave to remain, could amount to unlawful interference with their Article 8 rights.
27. It is clear that FfT Judge Mayall proceeded on the basis that the appeal before him was a human rights appeal. The appellants did not advance a wider Article 8 claim based upon particular factors upon which they relied to support a claim that the refusal of the application for indefinite leave to remain and or curtailment of leave, would be disproportionate to the legitimate aim of immigration control. It is now well established that although there is a legal duty to give a brief explanation of the conclusions on the central issue on which the appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the Judge. Here, FfT Judge Mayall found the first appellant not to be an

honest or credible witness, and found that he used deception to obtain his previous leave to remain. It was accepted on his behalf that if the Judge was satisfied that he did use deception to procure his last leave to remain, it could not be said that the decisions amounted to an unlawful interference with the appellants Article 8 rights. In my judgement it was open to the Judge to dismiss the appeal on human rights grounds for the reasons given.

Notice of Decision

28. The appeal is dismissed.
29. The decision of First-tier Tribunal Mayall stands.

Signed _____ Date 30th March 2018

Deputy Upper Tribunal Judge Mandalia

FEE AWARD

As I have dismissed the appeal I make no fee award.

Signed _____ Date 30th March 2018

Deputy Upper Tribunal Judge Mandalia