



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/28885/2015

THE IMMIGRATION ACTS

Heard at Field House
On 13 March 2018

Decision & Reasons Promulgated
On 27 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

AKM FARHAD HOSAIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Hosein of SEB Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Beach promulgated on 30 June 2017 dismissing the Appellant's appeal against a decision of the Respondent dated 20 April 2015 to refuse to vary leave to remain and to issue removal directions pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.
2. The Appellant is a national of Bangladesh, born on 16 November 1983. He entered the United Kingdom on 16 December 2009 with leave until 21 November 2012. On 25 September 2012 he was granted further leave to remain as a Tier 1 (Post-Study) Migrant until 25 September 2014. On 23 September 2014 he made an application for further leave to remain as a Tier 2 (General) Migrant.

3. The Appellant's application was supported by a Certificate of Sponsorship purportedly in respect of employment as a Business Development Manager for Baygold Resources Ltd (trading as Chilttern Hotel – *sic.* i.e. 'Chilttern' with two 't's). The Certificate of Sponsorship is a false document. The Appellant now acknowledges that to be the case, but protests that he was wholly unaware of this fact when it was submitted in support of his application.
4. The Respondent refused the Appellant's application on 23 June 2015 for reasons set out in a combined Notice of Immigration Decision and 'reasons for refusal' letter ('RFRL'), essentially on the basis that the Certificate of Sponsorship was false – the decision-maker consequently invoked paragraph 322(1A) of the Immigration Rules.
5. It is convenient to note at this juncture that paragraph 322(1A) is one of the grounds of mandatory refusal in respect of an application. It is in the following terms, so far as is relevant to this particular case.

"Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused;

...

(1A) where ... false documents ... have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), ..."

6. Paragraph 322(1A) is a distinct and different provision from paragraphs 320(7A) and (7B) which deal with the circumstances in which a person who has previously employed deception in support of an application may expect to be refused. Paragraph 320(7B) was referred to in the RFRL – but not as a basis of refusal, but as a notification in respect of *"any future applications for entry clearance or leave to enter"*. I mention this because it does indeed seem that the Appellant's primary concern in pursuing his appeal – both before the First-tier Tribunal and now before the Upper Tribunal – is not in respect of establishing that he was entitled to succeed under the Immigration Rules so much as in anticipation of a prospective refusal on some future application. In this regard – bearing in mind that the Appellant acknowledges that he did not have a valid Certificate of Sponsorship, and that he could not have succeeded on his application under the Rules – it is accepted that he could not have succeeded on his appeal under the Rules irrespective of the issue of personal culpability for the submission of the false document.
7. Indeed Mr Hosein on behalf of the Appellant acknowledged before me today that even if I were to find an error of law on the part of the First-tier Tribunal, the Appellant could not succeed on his appeal before me if I were to proceed to re-make the decision, and could not proceed in front of a different Immigration Judge if the matter were to be remitted to the First-tier Tribunal. Indeed he acknowledged as much before the First-tier Tribunal: *"... Mr Hosein said the best that the appellant could achieve was a finding that Paragraph 322(1A) was not engaged allowing the appellant to make a new application"* (paragraph 17 of Judge Beach's decision).

8. It seems to me that this is not a good use of the facility extended by way of the Tribunal to unsuccessful applicants to challenge decisions made by the Secretary of State. There is nothing to prevent an unsuccessful applicant aggrieved by the invocation of paragraph 322(1A) raising challenge in the context of a subsequent application that might consequently be vulnerable to invocation of 322(7A) or (7B), and if refused raising such arguments on appeal. Given that the Appellant acknowledged he could not achieve an overall successful outcome in this appeal, had I found there to be an error of law on the part of the First-tier Tribunal this may well have influenced very significantly any exercise of discretion pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 as to whether or not the decision of the First-tier Tribunal should be set aside.
9. Be that as it may, the Appellant appealed to the IAC against the Respondent's decision of 20 April 2015, as was his right. His appeal was dismissed for reasons set out in the Decision of Judge Beach. The Appellant applied for permission to appeal which was granted by First-tier Tribunal Hollingworth on 24 January 2018.
10. The matter that was explored in particular before the First-tier Tribunal, and forms much of the basis of the submissions before me, is the somewhat unusual claimed circumstances of the acquisition of the Certificate of Sponsorship.
11. As I have indicated the Appellant now acknowledges that the Certificate of Sponsorship was false. In this regard in his witness statement dated 7 December 2016 he refers to having contacted a Mr Ahmed Bakhtiar Mahadi of London Law Associate (an OISC firm) "*for suitable job after successfully completing my degree*", and states that Mr Mahadi had assured him that he would be able to manage to obtain him a suitable job. He also says that there was an agreement that he would pay Mr Mahadi £12,000 for the cost of his service. It is to be noted that this represents almost half of the annual income that the Appellant had claimed that he would be receiving in consequence of the job that had been secured for him - (albeit it turns out that there appears to have been no such job).
12. One cannot help but thinking that there is something awry when a graduate approaches an immigration adviser in respect of finding a suitable job rather than approaching, say for example, a job agency, or making applications directly to a number of prospective employers. Something more of this is hinted at in the matters recorded in the First-tier Tribunal's Decision with regard to the Appellant's evidence - although to some extent this is obscured by the fact that there appears to have been some concern as to the competency of the Appellant's English to the extent that resort was had to an interpreter. The Judge records "*The appellant said that he was a new graduate and was finding it hard to find work so he sought advice*" (paragraph 9). This would suggest that the immigration adviser was contacted because the Appellant could not himself find employment. To then be asked for a sum of £12,000 to find a job would, one would have thought, started alarm bells ringing in all but the most naïve of individuals with regard to whether or not there was a real and genuine job to be offered, or whether or not in fact something more sinister was at foot with regard to the production of documentation to support an application in respect of which there might otherwise have been no basis for making.

13. I also pause to note in this regard that there must be something at least a little concerning in that the Appellant was seemingly unable to make himself clearly understood in English by the First-tier Tribunal Judge notwithstanding that he has supposedly obtained a Masters degree from a university whilst in the United Kingdom.
14. Be that as it may, it is only fair to note that the representative for the Respondent before the First-tier Tribunal acknowledged that there was evidence in support of the Appellant's explanation that he was unaware that the Certificate of Sponsorship was false. Moreover the Judge in turn observed *"It seems to me that there is sufficient evidence before me to show that the appellant was not aware of the deception"* (paragraph 22). The evidence in this regard - over and above the Appellant's personal testimony - was by way of a document headed 'Exclusive Negotiation Agreement'.
15. The Appellant produced a document which on its face appeared to be a Consent Order in proceedings in the County Court at Clerkenwell and Shoreditch, Claim No. [.....] The Consent Order, which is dated 21 March 2017, is said to have been before Deputy District Judge Gount sitting at the County Court on that date, and approves a 'settlement agreement' between the parties - the parties being the Appellant and Mr Ahmed Bakhtiar Mahadi. The 'settlement agreement' - which in fact in the version that is before me is headed 'Exclusive Negotiation Agreement' - refers to the history of the Appellant's contact with Mr Mahadi, and Mr Mahadi obtaining for him the Certificate of Sponsorship. In this regard the narrative - as indeed it is in the Appellant's witness statement - is to the effect that some sort of job interview was arranged for the Appellant at a restaurant, and the Appellant was offered a job accordingly. The Certificate of Sponsorship was supposed to be in relation to that job. Reference is made to the exchange of monies. This narrative account appears to be accepted by Mr Mahadi, who agrees to pay back monies to the Appellant. The Consent Order itself is to the effect that the proceedings in the County Court are to be stayed upon the terms of the settlement agreement, and that either party may apply to the court to enforce the terms of the said agreement, or to claim for breach of it, without the need to commence new proceedings.
16. As I say, this seems to have been sufficiently persuasive to inform the approach adopted by the Respondent's representative, and in turn the First-tier Tribunal Judge, as indicative that the Appellant had no particular knowledge of the falsity of the Certificate of Sponsorship.
17. It is not for me to re-open those findings of facts in the current proceedings. However, I observe that if the circumstances surrounding the Certificate of Sponsorship were to require to be considered again at some future point, then - bearing in mind that false documentation has already been utilised in support of the Appellant's application (i.e the Certificate of Sponsorship) - it may be that some further scrutiny of the County Court documents would be appropriate. I say this at least in part mindful of the fact that Mr Mahadi in signing the 'negotiation agreement' in effect admitted to behaviour which is criminal; one wonders if it is likely that a defendant would be prepared to settle a civil action by admitting unlawful behaviour, the admission of which would also expose him to the risk of loss

of livelihood if referred to the OISC? It seems to me that some more careful consideration of these documents - perhaps with the benefit of the opportunity of cross-referral to the County Court - might be appropriate in due course.

18. Nonetheless, for present purposes it is to be noted that notwithstanding the Judge's conclusion that the Appellant was on the face of it not directly responsible for the production of the Certificate of Sponsorship, and was unaware of it being submitted on his behalf in support of his application, the Judge concluded that paragraph 322(1A) was still engaged because the Certificate was a false document.
19. In this regard the Judge had particular reference to the decision in AA (Nigeria) [2010] EWCA Civ 773, and set out the key passages. In particular I note the following: *"It is plain that a false document is one that tells a lie about itself"*. On that basis the Judge found that paragraph 322(1A) was engaged irrespective of the Appellant's knowledge of the deception. Indeed the wording of the Rule makes it clear that the knowledge of the applicant is not a prerequisite to the engagement of paragraph 322(1A). Of course knowledge would be a prerequisite in the context of paragraph 320(7B), but this is not a case that has been decided on that basis. As I have observed above, it seems to me that the focus of the Appellant's concerns are not on the instant case but on any prospective application that might be subject to refusal with reference to paragraph 320(7B). It seems that what the Appellant should properly have done is marshalled his arguments and evidence and presented them in support of any such future application - to argue that notwithstanding the use of a false document he himself was not guilty of deception. Such an argument could not avail him in the instant proceedings.
20. In my judgement the First-tier Tribunal Judge in applying and following the case of AA (Nigeria) made no error of law. Indeed it is to be noted that in the grounds of challenge it is not suggested that the Judge misapplied the case of AA (Nigeria), or that the case of AA (Nigeria) was not binding on the Judge. Rather it is argued that AA (Nigeria) is wrongly decided. I note that that does not form a sound basis for overturning the decision of the First-tier Tribunal. Far less do I find anything in the grounds to suggest that AA (Nigeria) is wrongly decided: Mr Hosein did not articulate or amplify any such submission before me. He did, however, seek to suggest that AA (Nigeria) might be distinguishable on the facts because the facts in AA (Nigeria) were different from the facts herein. Inevitably the facts are likely to be different to some extent from one case to another; however, I can see nothing in such differences that renders the principles referred to and explored by the Judge at paragraph 25 of her Decision in any way inapplicable to the facts and circumstances of the Appellant's case.
21. I note that in granting permission to appeal First-tier Tribunal Judge Hollingworth appears to have explored matters not directly raised in the grounds of appeal. He has raised a question with regard to 'agency' and whether or not AA (Nigeria) perhaps is not applicable to the instant case because of the curtailment of agency as between the Appellant and Mr Mahadi in that Mr Mahadi impliedly acted without due authority of the Appellant in submitting a false document. It seems to me that the wording of paragraph 322(1A) is a complete obstacle to any such argument: the

Rule applies in circumstances where falsity has been employed without the knowledge of the applicant - and therefore in my judgement including circumstances where there has been no express agency so to do.

22. Finally, with regard to Article 8 it is to be noted that the First-tier Tribunal Judge found against the Appellant at paragraph 29. In this regard there is a limited challenge in the grounds of appeal in respect of Article 8, but Mr Hosein has not sought to expand upon that before me. In my judgement there is nothing of substance in the Article 8 case as advanced either before the First-tier Tribunal or in the grounds of challenge. The entire focus has been on the evidential materials and the arguments have been in respect of the 'dishonesty' issue with an eye on future applications. There has been no real focus in evidence or submissions on establishing anything disproportionate in the decision of the Secretary of State. Nothing of substance has been filed with regard to the private life of the Appellant in the United Kingdom.
23. In all the circumstances I find that there is no material error of law in the Decision of the First-tier Tribunal and it stands.
24. As regards any perspective application, it is of course open to the Appellant to make any such application at any time as he sees fit. Insofar as he is concerned that the issue of the past submission of a false document may be raised against him he can file those materials that he has relied upon in these proceedings and seek to argue that they exonerate him - and in that regard he may find a degree of support from the observations of the representative for the Secretary of State before the First-tier Tribunal, and indeed the finding of the First-tier Tribunal Judge. The Respondent's decision-maker on any new application will no doubt wish to give due and proper consideration to all of the circumstances at that time: it will be a matter for the decision-maker as to what extent, if at all, any further enquiry and investigation should be undertaken with regard to the circumstances in which the County Court materials have come into being.

Notice of Decision

25. There is no material error of law in the decision of the First-tier Tribunal and it stands.
26. The Appellant's appeal is dismissed.
27. No anonymity direction is sought or made.

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

Signed:

Date: 26 April 2018

Deputy Upper Tribunal Judge I A Lewis