Upper Tribunal
(Immigration and Asylum Chamber)

Rana (s. 85A; Educational Loans Scheme) [2019] UKUT 00396 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decisions & Reasons sent out on**
On 15 October 2019	.....

Before

MR C. M. G. OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE BLUNDELL

Between

MD MASUD RANA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Gilbert, instructed by JKR Solicitors.
For the Respondent: Mr N. Bramble, Senior Home Office Presenting Officer.

1. *There was nothing in s 85A of the 2002 Act preventing the Secretary of State from adducing evidence.*

2. *The requirement to show that a loan was "part of an Academic or Educational Loan Scheme" for the purposes of paragraph 1B(d)(7) of Appendix C is not met merely by showing that the loan was for educational purposes. Such a scheme will have some element of government or official involvement, will be of advantage to students in comparison with ordinary commercial loans, and will be concerned with the loans as a group as well as individually.*

DETERMINATION AND REASONS

1. This appeal has a considerable history. The appellant is a national of Bangladesh who came to the United Kingdom as a student and applied as long ago as 2014 for further leave to remain as a student. That application was refused by the Secretary of State in a decision which carried a right of appeal, and the appellant appealed, but the Secretary of State then withdrew the decision. The Secretary of State then made a further decision, again refusing the application. That decision is dated 1 September 2015 and is the decision against which the appeal is now brought.

2. To continue the procedural history, the appeal to the First-tier Tribunal was dismissed by Judge Miller in a determination sent out on 27 September 2016. Permission to appeal was refused by the First-tier Tribunal and by the Upper Tribunal. There were then judicial review proceedings on a Cart basis. The grounds upon which permission was in the end granted in the High Court are wholly obscure and it is far from clear that any of them had been subsequently raised in the proceedings thus reinstated. I granted permission to appeal in the light of the High Court's decision and the matter then came before Judge Blundell and myself on 16 July 2019 when a number of matters were raised. We determined on that date that Judge Miller's decision contained an error of law material to its conclusion; we set his decision aside and directed matters to proceed before us to decide whether the appellant's appeal should be allowed or dismissed.

3. The principal difficulty in this case for the appellant is that in order to succeed in his application he needed to meet all the requirements of the rules in force at the time he made that application. The requirements of proof of funding and other matters applicable to students are notoriously complex but for the purposes of the present appeal only paragraph 1B(d)(7) of appendix C is in issue. That requires an applicant, as well as any other matters which apply to him, to demonstrate that if he relies on a loan "the loan is provided by the National Government, the State or Regional Government or a Government Sponsored Student Loan Company or as part of an Academic or Educational Loan Scheme".

4. The refusal by the Secretary of State was, as it turns out, on a slightly different basis. As the Secretary of State's decision indicates, the Secretary of State was of the view that the requirement was as follows:

> "(7) … the loan is provided by the National Government, the State or Regional Government or a Government Sponsored Student Loan Scheme or is part of a Government Sponsored Academic or Educational Loan Scheme."

Mr Bramble has emphasised to us and indeed it appears that his colleague who had appeared before Judge Miller also indicated that the insertion of the words "Government Sponsored" in the reasons for refusal were

unjustified and were a mistake. Judge Miller did not deal in his judgment with any aspect of that mistake or that wording; he had dismissed the appeal for other reasons. Nevertheless, it is clear that that was a mistake by the Secretary of State, that of itself would, we think, have given good grounds for the appellant to suppose that he had a viable appeal. We, of course, apply the rules as they are, not what the Secretary of State, in the decision letter, thought they were and we therefore need to consider whether the facility of which the appellant produced evidence is one which falls within paragraph (7).

5. Before we turn to consider that issue we should say a number of other things about the procedural history of this case and about the history of the appellant himself.

6. The first is this: s 85A of the Nationality, Immigration and Asylum Act 2002 as it applies for the purposes of this appeal, which is one which is not governed by the amendments made by the Immigration Act 2014, prohibits the appellant in a points-based appeal from relying on evidence which was not available to the decision-maker. Before the judge, the Secretary of State produced evidence which was not available to the decision-maker; and one of the grounds of appeal raised following Judge Miller's decision is that the provisions of s 85A prevented the judge in general from taking account of post-decision evidence. But we are satisfied that that is wrong and indeed Mr Gilbert now does not pursue the point. The prohibition in s 85A is clearly a prohibition on the appellant alone. That may seem rather unfair, but of course it is moderated by two factors. One is that it is for the appellant to make his case upon the material that he produces to the decision-maker and the decision-maker's provision of other materials subsequently does not affect the appellant's duty or the applicant's duty to produce everything on the basis of which he wishes the decision to be taken. Secondly, if the Secretary of State does produce post-decision material, then in every case it will be the obligation of any judge dealing with that material to ensure that an appellant faced with it has an opportunity to deal with it, by adjournment if necessary. The material produced in this case, which has been of importance both to the judge and to us, is material which related to a process of obtaining loans for educational purposes operated by the Prime Bank in Bangladesh.

7. The second procedural issue is this: considering the material before him, Judge Miller took the view that in relation to the letter upon which the appellant relied, to establish that he had a loan of any sort, the judge said that "other material including that to which we have referred produced by the Secretary of State, leads me to doubt whether the letter was genuine". That, as we indicated in our decision on the error of law was a view on which the judge was not entitled in the circumstances to reach. But it is now accepted by all parties that on the basis of the material before us in remaking the decision, we are entitled to regard some evidence as more or less reliable than others, and make our findings accordingly.

8. Thirdly, in the time between our making our first decision and the hearing today the appellant, but not the respondent, has produced further material

that technically requires permission to adduce it, which we give under s 85A(4)(c).

9. Finally, before settling in to the question of interpretation which lies at the heart of this case, we put on record two related matters of the greatest importance. Shortly after the proposed start of the new course which the appellant proposed to pursue at BPP University, he became seriously ill; his symptoms at that stage had become so serious that he needed medical advice, their development caused him to have to fail to attend his course; as a result of that the CAS from BPP was withdrawn on a date which was not precisely identified on the papers but we think some time in December or January 2015; after the date of the decision in this case. The appellant's condition has continued to worsen and to have a variety of diagnoses including both then and more recently that of a brain tumour, which has other apparently unrelated symptoms as well. Clearly the appellant deserves the greatest sympathy for that, which must have been at the front of his mind, rather than anything to do with studies or running an appeal, in all the time that it has affected him. It is perfectly understandable in the circumstances that he was unable to attend the course, although it does mean that it is not easy for him to say that either at the time the CAS letter was withdrawn or at any subsequent time he is genuinely intending to take part in a further course of education.

10. Having said that, we also add that as we have already said, the course in question was a course at a wholly respectable institution and that the appellant's failure to be able to follow it appears to be a result of what are wholly understandable factors. Nevertheless, the appellant can only succeed in his appeal if he can show that on the date of the decision he met the requirements of the Immigration Rules in the terms which we have already set out.

11. The appellant produced evidence of a loan. The evidence is contained on pages 47 and 48 of the bundle produced for the First-tier Tribunal. It indicates that a loan is being released and "is part of an Educational Loan Scheme"; those are the crucial parts of a letter from the Prime Bank Limited in its Subidbazar branch in Sylhet. The amount of the loan is about to be Tk.1,200,000 (Twelve Lac) and the agreement such as it appears to be for three months beginning on 8 April 2014. There is an interest rate of 16%; the account holder's profession is given as Student. The formal notice of the loan indicates that the nature of the credit facility is what is described as "SOD (FO) Limit [for study purpose]". The rate of interest is set out again, it is also made clear that the loan is to expire on 15 July 2014, not the same date as was given on the other letter which shows an expiry date of 8 July 2014. It is renewable provided the interest is paid. Security is also set out. Those are the documents upon which the appellant relied to demonstrate that he had a loan within the requirements of paragraph (7). The loan, as we have said, is made by the Prime Bank Limited and the appellant's position is that that the loan is "part of an Academic or Educational Loan Scheme" because it is clear that there is no other part of paragraph (7) within which this particular loan could fall.

12. The document produced by the Secretary of State to which we have had reference derives from the Secretary of State's researches on the internet and is headed "Prime Bank Ltd Education Loan". That sets out a process by which a person may obtain from the Prime Bank a loan for the purposes of education. No other document has been produced at any stage by either party which might suggest any academic or educational loan scheme to which the loan relied upon by the appellant is attributable. The document, although copyrighted in 2011 appears to have been accessed on 24 August 2016 and so was presumably in force at the time of the date of the decision. It sets out the principle that:

> "In our bank we provide our optimum importance on building up an educated nation, hence we are providing education loans at easy terms and rates to the potential students."

13. It then sets out the circumstances in which such a loan will be available. Unfortunately for the appellant almost nothing that is known about the loan on which he relied to meet the requirements of the Rules falls into the provisions of the Prime Bank Limited's educational loans. For example, the first provision sets out the types of customer to which such a loan could be available. There is no provision for a loan to be made available to an existing student. The only provision which comes anywhere near what the appellant claims to be or to have been is "Businessman" and Mr Gilbert was forced to adopt that as a category under which the appellant made his application on the basis that he was studying business studies in the United Kingdom. But even so, there is a difficulty under a heading "Customer Eligibility", because there the requirement for a businessman is "minimum one year experience in the same line of business" and finally "minimum gross salary income" provides that for businessmen there should be 35,000 Bangladesh Tk. as the minimum gross salary. Further in the provisions is that the maximum loan amount will be Tk. 10.00 lac. The maximum loan period is five years and so far as the conditions of the loan are concerned the requirement is two personal guarantees and it is specifically said that there will a "competitive interest rate". There are further documents required, particularly from businessmen which are set out, none of which as we apprehend the appellant could have produced. The position before the First-tier Tribunal Judge was that that document demonstrated that whatever the loan being relied upon by the appellant was, it was not a loan within the terms of the Prime Bank Limited's Educational Loan process. The judge looking at the documents as a whole reached the view, which we have set out, that the document confirming the loan was not genuine. We do not think that there is any basis to suppose that, and indeed we have seen more recent statements showing that the loan was passed through the specific overdraft account into the appellant's personal account on the day expected and that the latter account was on that date debited with a number of administrative expenses including the administration fee of 0.5% and an amount for Stamp Duty.

14. Whether or not the loan is genuine and that the appellant was genuinely able to call upon the sum of Tk. 12.00 Lac for his studies is a matter separate from whether the loan met the requirements of the Rules. The

only provisions before the First-tier Tribunal Judge relating to that issue are the matters to which we have referred: the statement on the confirmation loan acceptance that this loan is part of an Educational Loan Scheme and the documents relating to Prime Bank Limited Educational Loan. There is now also a letter from the Prime Bank in the Subidbazar Branch at Sylhet dated 21 August 2019. That again sets out the terms of the loan and the account numbers; it indicates that at the time of the writing of that letter the loan status is "fully adjusted and closed" in other words, as we understand it, from what was paid out has now been repaid. Underneath the details is this sentence:

> "Though as per our policy we have a maximum ceiling for educational loan is Tk. 10.00 lac, but we sanctioned the said loan of Tk. 12.00 Lac under SOD FO (Secured Overdraft Financial Obligation) facility for a purpose of study abroad as per customer declaration."

15. We have already indicated that the terms of the loan actually offered to the appellant do not seem to match the published terms of Educational Loans by Prime Bank. That letter, in our judgment, does nothing to help the appellant's case. It does not indicate that the loan was treated as an Educational Loan, being over the ceiling. On the contrary it indicates that it was over the ceiling and was so treated under a different basis: on a wholly secured basis. That letter matches the evidence previously given about the loan that was actually made.

16. Looking at the evidence, therefore, we find as a fact that at the date of the decision the appellant had available to him Tk. 12.00 Lac in the form of a loan arranged and paid to his account by the Prime Bank Limited but not by reference to their process for Education Loans.

17. Is that loan capable for falling within the requirements of paragraph (7) of Appendix C, paragraph 1(d)? Can it be said that it is part of an Academic or Educational Loan Scheme? Mr Gilbert's position is that that phrase is wholly vague and that all that is required is that it is for educational purposes; in fact, in his submissions to us he specifically rejected any sui genesis process of interpretation of those words and said instead that paragraph (7) as a whole meant no more than that "the loan is for educational purposes" and that the reference "Government or Regional Government and Government Sponsored Student Loan Companies" were in other words mere surplusage.

18. We cannot accept that. It seems to us that the following considerations need to be applied to the interpretation of paragraph (7). The first is that all the possibilities other than the last do have some reference to government sponsoring, the National Government, the State or Regional Government or a Government Sponsored Student Loan Company. That suggests to us that an Academic or Educational Loan Scheme has to have a flavour of some sort of government involvement or at least official involvement of some sort. Secondly, the last word of the paragraph, "scheme", is, in our judgment, of importance. To our mind, an "Academic or Educational Loan Scheme" says something more than would be expressed by the words "an Academic or Educational Loan". An Academic

or Educational Loan Scheme must, in our judgment, be a process which takes account, not merely of there being individual loans but to an extent, the relationship between them: there will be a sum of money, actual or notional which will be available for these purposes and will be distributed in such a way as to be advantageous to students in comparison with ordinary commercial loans, presumably by low interest rates and long repayment periods, underwritten by government or otherwise. But the crucial part, so far as we are concerned, is that a scheme looks at more than one loan.

19. All that the appellant has been able to show is that Prime Bank Limited had a system of arrangements for Educational Loans which did not incorporate his loan and that he has a loan from the Prime Bank which is said to be for educational purposes. That, as it seems to us, does not show that his loan is part of an Academic or Educational Loan Scheme. It follows that on the true construction of the actual words of sub-paragraph (7) the decision of the Secretary of State was the correct one. This appeal, therefore, falls to be dismissed and we dismiss it.

20. We add two further matters. The first is that if we had been minded to allow this appeal (that is to say if, contrary to what we have said, the loan fell within the requirements of paragraph (7)), this would have been a case where although the appeal would have been allowed for failure to comply with the immigration rules, it would have been quite inappropriate to direct a grant of leave to the appellant. First, he is, as we understand it, in no position to say that he is ready to commence studies. He could not have student leave because he has no current CAS. Mr Gilbert suggested that he should be granted a short period of leave in order to make enquiries, but it appears that in the time available to the appellant (and even bearing in mind what we have said about the difficulties that he has with his health), no such enquiries have been made so far and we would not have been willing to make a direction in those terms.

21. The second is that the appellant was advised by BPP University in January 2016 that the way forward for him might well be to make a proper application on the basis of his private life and his health, and if the health matters which we have made reference and which are the subject of evidence before us are what they appear to be, we trust that those advising him will not cause any further delay in the appropriate application being made.

22. For the reasons we have given, having set aside the judge's determination for error of law, we substitute a determination dismissing this appeal.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
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