



Neutral Citation Number: [2024] EWHC 3185 (Admin)

Claim No: AC-2023-LON-003501

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9/12/2024

Before:

MATTHEW BUTT KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Between:

THE KING

on the application of
PRABHJOT KAUR

AMANDEEP KAUR

Claimants

-and-

BIRMINGHAM CITY UNIVERSITY

Defendant

OFFICE OF THE INDEPENDENT ADJUDICATOR
SECRETARY OF STATE FOR THE HOME DEPARTMENT

Interested
Parties

Zainul Jafferji and Jibreel Trambo (instructed by **MT UK Solicitors**) for the **Claimant**
Cecilia Ivimy (instructed by **JG Poole and Co**) for the **Defendant**

Hearing date: 28 November 2024

Approved Judgment.

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Matthew Butt KC:

I. INTRODUCTION

1. This is a renewed application for permission to bring a claim in judicial review. Permission was refused on the papers by Andrew Burns KC sitting as a Deputy Judge of the High Court on 12 February 2024. A renewal hearing took place before me on 28 November 2024.
2. The first Claimant is Ms Prabhjot Kaur and the second is Ms Amandeep Kaur. The Statements of facts and grounds for the two Claimants are materially identical. It is agreed that the issues in the two claims are the same. Both Claimants are Indian nationals and I am told that they are unrelated.
3. The Defendant is Birmingham City University. The first Interested Party is the Office of the Independent Adjudicator and the second Interested Party is the Secretary of State for the Home Department. The Defendant resists the claim but neither Interested Party has played an active role in the renewal hearing.
4. In 2023 the Claimants enrolled on courses at Birmingham City University before entering the UK on student visas. Both challenge a decision of the Defendant to withdraw sponsorship which was made on 21 September 2023. The Claimants' permission to enter the UK was cancelled by the second Interested Party shortly after sponsorship was withdrawn. The Claimants seek wide ranging declarations in relation to the Defendant and a quashing order in relation to the decision to withdraw sponsorship. The Claimants also request that the court "ask the SSHD to reinstate the Claimants' leave to remain."

II. THE FACTS

a. Prabhjot Kaur

5. On 21 March 2023, the first Claimant applied to the Defendant to enrol on an international MBA Course and for sponsorship as an overseas student. An email address prabhjot67kaur@outlook.com (the Outlook email address) was used throughout the application process. It is clear that whoever was operating that email address had access to information from the Claimant and a means of contacting her.
6. On 11 April, an offer to enrol on the course was made by the Defendant. The offer letter stated that the Defendant "may ask you to provide a bank statement or other financial documents in order to assess your compliance with UKVI [UK Visa and Immigration] financial regulations." The offer further informed the Claimant that as part of her visa application, she would be required to show that she could afford to pay her fees and UK living expenses and that students from certain countries need to show they have been screened for Tuberculosis.
7. On 22 June, the Claimant paid a deposit to enrol on the course.
8. Before the Claimant could travel to the UK to commence the course, the University as the proposed sponsor had to issue a confirmation of acceptance of studies (CAS) (see below).

9. On 12 July, documents including financial documents were uploaded to an online service used by the Defendant for the CAS application. These included three bank statements from ICICI bank which certify that the Claimant had a balance of 2.5 million rupees (around £24,000) in a fixed deposit account. Also uploaded were academic documents, a Tuberculosis screening certificate and the Claimant's passport. No other financial documents were uploaded.
10. A pre CAS interview was recorded with the Claimant on 25 July 2023 when she was asked a number of questions including about how she would support herself if she were to live in the UK to complete the MBA.
11. On 11 August, the Defendant assigned a CAS letter to the Claimant via the Outlook email address. The Claimant then obtained a student visa on 07 September. The Claimant says that genuine financial documents were provided to the Home Office and that these were not the same as the ICICI statements.
12. Shortly after issuing the CAS, the Defendant became aware that a number of ICICI bank statements it had been provided with were false. The evidence for this includes not only the striking similarities between these documents but also the following:
 - i. 31 applications (including both of the Claimants') were all from the same agent and all used ICICI bank accounts;
 - ii. There were clear similarities between the statements which suggested fraud;
 - iii. On 06 September, ICICI told the Defendant that eight of the bank statements were false;
 - iv. On 13 September, ICICI told the Defendant that more of the bank statements were false;
 - v. On 18 September, ICICI sent a number of messages to the Defendant via WhatsApp stating that all of the statements were false.
13. On 08 September, the Defendant informed the Claimant via the Outlook email address that additional verification checks were being made and that the University would not be able to proceed further with her application whilst these were underway. The Claimant was advised not to travel to the UK. She was told to contact the Home Office to ask for her visa to be withdrawn and that the Defendant would inform the Home office that sponsorship was being withdrawn.
14. On 15 September, the Defendant informed UKVI that fraudulent documents had been provided in the Claimant's case and that the Defendant was withdrawing sponsorship.
15. On 17 September, the Claimant travelled to the UK and on 20 September, she attended the Defendant's campus where she was shown the false bank statements. She said she had not seen these before. The Defendant claims that the Claimant initially said she had not used an agent for the application and that her brother made the application. She is then said to have claimed that her brother used an agent. At a further meeting on 21 September the Claimant said she had sent different financial documents to UKVI and

showed the Defendant a copy of a loan certificate from the Punjab bank which she had on her phone.

16. The decision under challenge in this claim was sent by email to the Outlook email address on 21 September 2023. In that email the Defendant set out that as the ICICI bank statements provided were not genuine documents, the Claimant's sponsorship was withdrawn.
17. On 14 October, the Claimant's permission to enter was cancelled with immediate effect.

(b) AMANDEEP KAUR

18. The material facts are to the same effect in the second Claimant's case.
19. On 05 April 2023, the second Claimant applied to enrol on an undergraduate business management course and for sponsorship as an overseas student. An email address amandeep99@outlook.com (the Outlook address) was used throughout the application process. It is clear that whoever was operating that email address had access to information from the second Claimant and a means of contacting her.
20. The second Claimant received an offer to enrol on the Defendant's course on 02 May in the same terms as the first Claimant.
21. On 13 June, the second Claimant paid a deposit to enrol on the course.
22. On 05 July and again on 27 July, documents including financial documents were uploaded to an online service used by the Defendant for the CAS application. These included three bank statements from ICICI which certify that the second Claimant had a balance of 2.5 million rupees (£24,000 Sterling) in a fixed deposit account. Also uploaded were academic documents, a tuberculosis certificate and the second Claimant's passport. No other financial documents were uploaded.
23. On 24 July, a pre CAS interview was recorded. The report from this interview contains the following:

The student demonstrates a clear understanding of the UKVI financial requirements and has taken steps to ensure that they meet these requirements. They mention having 20 to 22 lakh funds available for their studies and a plan to consult with their parents if any financial problems arise. However, the response could have been more detailed and better structured.

24. On 04 August, the Defendant assigned a CAS letter to the second Claimant via the Outlook email address and she obtained a student visa on 01 September. The second Claimant says that genuine financial documents were provided to the Home Office and that these were not the same as the ICICI statements.
25. Shortly after this, the Defendant learned that the three bank statements were false as set out above.

26. On 08 September, the Defendant informed the second Claimant of additional verification checks and advised her not to travel to the UK in the same terms as described in relation to the first Claimant.
27. On 10 September, the second Claimant travelled to the UK and on 11, 13 and 20 September 2023 she attended the Defendant's campus.
28. On 15 September, the Defendant made a report to UKVI in the same terms as described in relation to the first Claimant.
29. The second Claimant was told on 21 September that her sponsorship was cancelled in the same terms as described in relation to the first Claimant. This was sent to the amandeehp99@outlook.com email address.
30. On 12 October 2023, the second Claimant's permission to enter the UK was cancelled with immediate effect.

(c) Agents and Sub-Agents

31. The Defendant accepts that it has commercial arrangements with agents including in India whose job it is to find students to enrol on its courses. The Defendant will pay a commission to the agent if a student successfully enrolls. An agent was involved in both Claimants' applications. The Defendant believes that there was delegation from its agent to sub-agent(s) and in light of the events which gave rise to this case, the Defendant no longer uses the agent in question.
32. All parties identify the principal agent as Global Coalliance and the Defendant and first Claimant also name the sub-agent as Tarun Abrol. It is the Claimants' case that the sub-agent forwarded all of the documents to the principal agent who uploaded them. The Claimants state that they were directed by the agent / sub-agent at all times. They deny any connection to the false documents and deny knowledge of the Outlook email addresses.

III. RELEVANT LAW AND GUIDANCE

33. The student immigration route (formerly known as Tier 4) is a route by which prospective students can enter the UK to study including within the Higher Education sector. A sponsor is required who is licensed by the Home Office.
34. The requirements for entry to the UK via the student route are set out in the Immigration Rules: Appendix Student. The financial requirement for an applicant in the Claimants' position is to show sufficient funds to pay any outstanding course fees as stated on the CAS and living costs of £1023 for each month of the course up to a maximum of 9 months.
35. Sponsors who are licensed by the Home Office will issue eligible students with a CAS. This is an electronic document with a unique reference number issued by a student sponsor to a person it has agreed to sponsor. Students from overseas require a CAS to apply for entry to the UK through the student route. The CAS will be an important part of UKVI's consideration when asking whether to grant permission to enter the UK.

36. Both parties have referred to government guidance issued to educational institutions. This is primarily contained within *Student Sponsor Guidance, Document 2 Sponsorship Duties* (the guidance).
37. Between [2.1] and [2.13] of the guidance are set out various duties of sponsors. The guidance provides that sponsors are expected to ensure that the immigration system is not abused and that they must comply with all aspects of the immigration rules and sponsor guidance.
38. The guidance further provides at [5.5] that a sponsor must only assign a CAS to a student who will meet the [UKVI] requirements and at [5.126] that the Home Office can cancel a CAS that has been assigned if for example it was assigned through misrepresentation or fraud.
39. The courts have on a number of occasions emphasised the heavy duties imposed upon a sponsor and the high degree of trust in sponsors who are granted licences: see the summary of legal principles set out in *London St Andrews College v SSHD* [2018] EWCA Civ 2496 at [29] and the approval of the first instance judgment postscript at [69]:
- “it must be understood that the grant of [sponsor] status is a fragile gift, constant vigilance about compliance is a minimum standard required for such sponsors. The burden of playing an active role in the support of immigration control is a heavy one. The SSHD is entitled to review purported compliance with a cynical level of supervision.”
40. The Immigration Rules provide at 9.7.1 that:
- “an application for...permission to enter or permission to stay may be refused where false documents are provided to the Secretary of State or a third party in support of the application whether or not to the applicant’s knowledge.”
41. Cancellation is mandatory where it can be proved that the applicant was complicit in the deception.
42. In *Adedoyin v Home Secretary* [2011] 1 WLR 564 [2010] EWCA Civ 773 the Court of Appeal said at [67] of a (now repealed) provision which required mandatory refusal where fraudulent documents had been used:
- “It is highly likely therefore that where an applicant uses in all innocence a false document for the purpose of obtaining entry clearance, or leave to enter or to remain, it is because some other party, it might be a parent, or sponsor, or agent, has dishonestly promoted the use of that document. The response of a requirement of mandatory refusal is entirely understandable in such a situation. The mere fact that a dishonest document has been used for such an important application is understandably a sufficient reason for a mandatory refusal. That is why the rule expressly emphasises that it applies whether or not to the applicant’s knowledge.”

IV. THE GROUNDS OF CLAIM

43. The Claimants both advance five grounds which are pleaded in near identical terms between the two claim forms.

(1) Fraud

44. Ground 1 is an argument that it was unlawful to withdraw sponsorship on the grounds of fraud. Familiar authorities are cited as to the need to fully prove the elements of fraud and that this is not to be equated with negligence. The need to prove fraud and in particular dishonesty where this properly arises is not in dispute.

45. It is unclear from the Claimants' Statements of Facts and Grounds whether they accept that the ICICI documents which were uploaded are false. After some pressing, Mr Jafferji who represents both Claimants broadly accepted this proposition. I am wholly satisfied that they were false instruments and that the Defendant was entitled to draw this conclusion. Not only was the Defendant told this orally and via WhatsApp by a member of staff from ICICI but the statements shows an identical balance of 26,05,448.72 Rupees as of 10 January 2024 for both Claimants and have other common features which give rise to strong grounds to suspect they are false.

46. The first Claimant in pre-action correspondence on 17 October 2023 produced a letter from the Punjab National Bank dated 03 August 2023 claiming this to be her source of funds. She says that she provided this document to UKVI and disavows the authenticity of the ICICI documents. The Second Claimant in pre-action correspondence dated 13 October 2023 accepts that she holds a fixed deposit account with ICICI bank but claims that her father has further funds (also with the Punjab National bank). Some documentation from these banks was produced in the pre-action correspondence which the second Claimant says she sent to UKVI for her visa application. Neither disputed the falsity of the ICICI statements provided in July 2023.

47. There is, however, no finding of fraud against the Claimants in this case nor would this be necessary for sponsorship to be withdrawn (see below). I asked Mr Jafferji to take me to any allegation or finding of fraud against his clients and nothing he identified made good this suggestion. This ground was ultimately abandoned.

(2) Bad Faith / Improper Motive

48. Ground 2 alleges bad faith and/or "improper motive". It is well established that any allegation of bad faith must only be pleaded where there is a proper basis so to do and must be clearly articulated.

49. As I understand this ground, the Claimant suggests that as the Defendant has a commercial relationship with the principal agent, it is acting in bad faith / on improper motive to protect its own privileged status as a sponsor. It is suggested that the Defendant has improperly chosen to blame the Claimants in an attempt to cover up its own complicity or negligence in its dealing with overseas agent(s). The Claimant submits that the manner in which the Defendant informed UKVI of the fraudulent documents on 15 September 2024 is evidence of this, as the wording used impliedly

suggests that the Claimants were complicit in the fraud and does not mention the role of the agent / sub-agent(s).

50. There is no arguable basis to suggest that the university was complicit or negligent in a manner which bears upon the production of the fraudulent documents or gives rise to an arguable case of bad faith and/or improper motive.
51. It was the Defendant who reported the fraudulent activity to UKVI as the Claimants accept it was obliged to. The manner of the report to UKVI was factual. It did not assert that the Claimants were complicit in the provision of fraudulent documents. There is no basis to allege bad faith or improper motive. This ground is not arguable.
52. This leads on to the Claimants' submissions in relation to an alleged breach of the Defendant's duty of candour. The Claimants allege that the Defendant has breached its duty by failing to serve a witness statement detailing the basis of its defence and by failing to disclose (a) files relating to other students in whose case false ICICI bank statements were submitted and (b) material relating to the Defendant's arrangements with the agent in this case. I do not consider that there is any arguable breach of the duty of candour. I agree with the Defendant that all of these requests are speculative. Mr Jafferji could provide no clear explanation of what he might reasonably expect to discover from such disclosure.

(3) Irrationality

53. Ground 3 alleges that the decision of the Defendant was unreasonable. This ground as pleaded repeats the principal arguments in relation to ground 2 and goes on to recite a number of legal principles before asserting that the Defendant "could not reasonably have arrived at the decision in light of the facts" that it "failed to justify the decision" and "relied on little evidence".
54. By way of their skeleton argument, the Claimants seek to widen this ground to also challenge the decision of the Secretary of State to cancel permission to enter the UK. This was not properly pleaded within the grounds and is in any event unarguable. The Immigration Rules provide at 9.7.1 that an application for entry clearance or permission to stay may be refused where the applicant or a third party provide false documents whether or not to the applicant's knowledge. In a case in which sponsorship had been withdrawn due to the provision of fraudulent documents to the sponsor, the Secretary of State was entitled to cancel permission to enter.
55. It is agreed that the Defendant is subject to stringent duties as a sponsor. The Defendant must be vigilant, report and, if necessary expel students who have failed to meet the requirements even if part way through a period of study. The Defendant was obliged to play an active role in support of immigration control.
56. At the renewal hearing the Claimants submitted that if counter to their case on ground 1, there was no finding or allegation of fraud in which the Claimants were complicit then it is arguably unreasonable to withdraw sponsorship. I disagree.
57. Sponsorship was withdrawn because fraudulent documents had been provided in support of the application. The Defendant was entitled to do so. The decision was

reasonable and in line with the rules and guidance. There was no arguable public law error.

(4) Procedural Fairness

58. Ground 4 (procedural fairness) is again pleaded on the basis that the Defendant has found fraud against the Claimants. That is not correct.
59. The Claimants were told on 08 September that their applications were undergoing verification checks and advised in clear terms not to travel to the UK. They both chose to travel notwithstanding this. Both Claimants were also given an opportunity to explain their position in person when they visited the Defendant's campus before the decisions under challenge were made on 21 September.
60. In my judgement, and for the reasons I have already explained, it is highly likely that the outcome would not have been substantially different had the Claimants been given a further or better opportunity to make representations. Any explanation could not have altered the fact that fraudulent documents had been provided in support of both applications. I would therefore have refused permission for this reason were the grounds otherwise arguable.

(5) Article 8

61. Ground 5 alleges a breach of Article 8. No proper basis for this was set out in the claim form nor was one advanced at the hearing. I do not consider the Article 8 ground to be arguable. Neither Claimant has family in the UK and both travelled in September 2023 having been advised not to do so.

V. DUTY OF CANDOUR (CLAIMANTS)

62. The Claimants have not complied with their duty of candour. It is clear that they must have provided documents to the agent or sub-agents who used the Outlook addresses. Aside from the limited information set out in the first Claimant's witness statement, however, the nature of that connection is unclear. No communication between the Claimants and any agent or sub-agent has been disclosed.
63. The first Claimant has provided a copy of the 08 September email sent by the Defendant to the prabhjot67kaur@outlook.com email address but this has been altered and/or redacted in some way so the recipient's address is obscured and the address (if any) that it was forwarded to removed. The date on the email also appears to have been removed or modified as the only date displayed is *Fri 9/8/2023 5 03 PM* (sic) which is not the date that this email was sent by the Defendant (agreed to be 08 September 2023). No explanation has been provided for this document.
64. Similarly the Claimants have provided copies of the 21 September emails which are the decisions under challenge. In relation to the first Claimant, this appears to have been forwarded possibly by the prabhjot67kaur@outlook.com address but the document does not disclose what address it was sent to.

65. The second Claimant has also provided a version of the email sent to the amandeep99@outlook.com email but this does not appear to have been forwarded or if it was then the details have been removed or obscured.
66. It is therefore unclear how the Claimants received these and other emails sent to this address such as the CAS message. Both Claimants state that they *deny and disown* the Outlook.com email addresses and in a pre-action letter dated 17 October the first Claimant denies having knowledge of the prabhjot67@outlook.com address.
67. Counsel for the Claimants acknowledged that there were questions for the Claimants to answer in relation to these matters. He said that he did not know the answers himself but suggested that if permission were granted then these questions would be answered in due course. That is not an acceptable answer to the point. The Claimants have failed properly to explain their own link to the person or persons responsible for the provision of fraudulent documents and the production of the emails is a feature of the case which requires an explanation. This is of some importance to the merits of the claim overall. Had there been an arguable ground, it is likely that permission would have been refused in light of this breach.
68. Permission to bring a claim in judicial review is therefore refused.