



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/28736/2012

THE IMMIGRATION ACTS

Heard at Field House
On 29 July 2013

Determination Promulgated
On 22 August 2013

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR SHAHID IQBAL KIANI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mehta, Legal Representative
For the Respondent: Ms H Horsley, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who was born on 15 September 1985, is a citizen of Pakistan. On 9 April 2010, he was given leave to remain in this country as a Tier 1 (General) Migrant, but on 8 December 2012, he was notified that his leave to remain was cancelled, because he had made false representations for the purpose of obtaining his Tier 1 (Post-Study Work) residence permit which had been issued on 2 October 2008.

He had submitted a postgraduate diploma in business management from the Cambridge College of Learning, but the respondent's records revealed that the qualification was not valid, because this subject had never been taught by the Cambridge College of Learning. It was for this reason that the appellant's continuing leave to remain in the United Kingdom was cancelled, and removal directions were issued.

2. The appellant appealed against this decision and his appeal was heard before First-tier Tribunal Judge Snape on 29 April 2013, at Sheldon Court, Birmingham, on the papers (at the appellant's request).
3. In a determination promulgated on 3 May 2013, Judge Snape dismissed the appellant's appeal, having been satisfied that the appellant had not addressed the issues raised in the refusal letter. The removal directions were also upheld.
4. The appellant appealed against this decision, and although permission to appeal was granted by First-tier Tribunal Judge Warren L Grant, it is quite clear from the reasons given by Judge Grant that he had intended to refuse the application. In setting out his reasons for "granting" the application, Judge Grant stated as follows:

"...2. The grounds of application disclose no arguable error of law but consist instead of a disagreement with the conclusions reached by the First-tier Tribunal Judge which were based upon well-reasoned findings which in turn were based entirely upon the evidence placed before her to which the appellant had been given every opportunity to respond."

5. In his grounds of appeal, which were settled without the assistance of legal advice, the appellant had claimed that he had been a genuine student who had attended his classes regularly, paid his tuition and course fees and "had not committed any deception". He continued as follows:

"Therefore, if any deception has been done by college for which I should not be penalised. Therefore I humbly request the Honourable Tribunal that permission for appeal may kindly be granted."

6. In a response submitted under Rule 24 on behalf of the respondent, it was submitted that "it is clear that the judge had granted permission in his case, intended to refuse permission" and that accordingly "the matter should be addressed administratively, without the need for a further hearing".
7. Subsequent to this response, it appears that the appellant's current solicitors, Malik & Malik were instructed, because on 29 July 2013, which was the date of the hearing, this firm wrote to the Tribunal stating that they had been instructed on 26 July 2013 and they wished to "submit additional grounds in support of" the appeal. In the additional grounds, it is asserted that an Article 8 assessment was not carried out, even though the appellant had been residing in this country for "nearly eight years" and that such assessment was "fundamentally flawed". It was also submitted that

the appellant had now married a European national who was exercising her treaty rights in the UK, although no evidence was submitted in support of this assertion.

8. Before me, on behalf of the respondent, Ms Horsley relied on the reply given by the respondent under Rule 24. It was submitted that it was plain that the “grant” of permission to appeal had been a typographical error, and that Judge Grant had intended to refuse permission to appeal. So far as the substance of the appeal was concerned, while it might not have been entirely clear that the cancellation of leave was made under paragraph 321A(2) of the Rules, and that the burden was on the respondent to establish that this was justified, this was not a material error of law. The appellant had not submitted cogent evidence to show that he had obtained a postgraduate diploma from the Cambridge College of Law. There had been a number of reported cases regarding this college, in particular *NA & Others [2009] UKAIT 00031* and *TR (CCOL cases) Pakistan [2011] UKUT 37*, from which it was apparent that the Cambridge College of Law **never** issued postgraduate diplomas in the subject which it was said this appellant had been granted a diploma. Although the burden was on the respondent in this case, the Tribunal, on the basis of these decisions, could only have found one way.
9. On behalf of the appellant, Mr Mehta submitted that the Tribunal in *NA* did not say that the Cambridge College of Law had never issued diplomas, they just said they did not teach the subject. The appellant said that he was doing a Master’s degree programme.
10. It is quite clear, in my judgment, that there is no proper basis upon which this appellant could properly argue that the decision of the First-tier Tribunal had contained a material error of law. The Cambridge College of Learning did not teach the course in respect of which this appellant had claimed to have had a diploma, and therefore he could not properly have obtained a diploma as he claimed. Following the Court of Appeal decision in *AA (Nigeria)* it is irrelevant whether or not the deception which was practised was with the knowledge of the appellant or not; it is abundantly clear that whoever completed the appellant’s application must have known that this appellant did not have a valid diploma and must have exercised deception. It follows that the First-tier Tribunal had no alternative other than to find that deception had been used in the submission of the application.
11. With regard to the assertion that the appellant has subsequently married a European national who is exercising her treaty rights in the UK, this is not relevant for the purpose of considering whether Judge Snape’s determination had contained an error of law, which I have found it did not.
12. It follows that this appeal must be dismissed, and I shall so order.

Decision

There being no material error of law in the decision of the First-tier Tribunal, the appellant's appeal is dismissed.

Signed:

Date: 20 August 2013

Upper Tribunal Judge Craig