



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/44749/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 11 March 2014**

**Determination Promulgated
On 3 April 2014**

Before

**THE HONOURABLE MR JUSTICE PARKER
SITTING AS A DEPUTY JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE CRAIG**

Between

MD IMTIUS KABIR CHOWDHURY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Chowdhury, Legal Representative
For the Respondent: Mr P Deller, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the determination of the First-tier Tribunal, Judge Carroll, promulgated on 14 January 2014. The appellant, Mr Chowdhury, born on 5 July 1982 is a national of Bangladesh. He appealed before the First-tier Tribunal against the respondent's decision of 10 October 2013 which refused an application for leave to

remain as a Tier 4 (General) Student Migrant on the basis of paragraph 322(1A) of HC 395.

2. It is submitted on behalf of the appellant, Mr Chowdhury, that the Tribunal made an error or errors of law in the determination. Permission to appeal was granted by Judge Chambers of the First-tier Tribunal. He referred to the grounds and said, among other things, that Article 8 and common law fairness were raised in the written grounds before the judge but were not dealt with in the determination. That constituted an arguable error of law. He noted also that at the date of the hearing the statutory provision that the respondent relied on was in force, rendering the removal decision lawful. Therefore, the respondent's grounds on the cross appeal were also arguable.
3. Turning to the appellant's submission that there was an error or errors of law, it is first submitted that the judge was wrong in law in refusing the application to adjourn the hearing before the First-tier Tribunal. The First-tier Tribunal dealt at length with that matter in paragraphs 2 to 7 of the determination, reciting in particular the history of the proceedings and previous attempts to have the hearing of the appeal adjourned.
4. In paragraph 7 the First-tier Tribunal said that it had had regard to all the evidence bearing on the adjournment. It said, however, that there was no evidence before the First-tier Tribunal to show that the appellant's caseworker was ill with a chest infection as had been claimed. Also the appellant had been refused an adjournment twice before. The First-tier Tribunal went on to say that he may have been certified as unfit to work but that did not of itself make him unfit to attend the hearing of the appeal. It also noted that he may have been given a request by his GP for referral to a hospital on 6 January 2014. Mr Chowdhury however said that he was suffering from severe back pain and chest pain. The GP's request however refers to abdominal pain and gallstones and there was no credible evidence before the First-tier Tribunal to show that the appellant had, as claimed, actually attended hospital for any X-ray or ultrasound on 6 January. It was therefore on that basis that the application was refused.
5. In our judgment, there is no error of law. It is quite plain that the Tribunal had regard to all relevant matters bearing on the issue of adjournment and was not satisfied, particularly on the medical evidence that had been provided, that the interests of justice required an adjournment. The Tribunal said, in effect, that it had sufficient material before it on the papers and that it would proceed to determine the appeal on the documents that it had before it. We see no intrinsic unfairness in that procedure. The Tribunal was in a position, as is apparent from the determination, to proceed to deal with the central issue without any further assistance beyond the documentation.
6. As to the second alleged error of law, this arises in the following way. As already noted, the application made by the appellant was refused on the basis of paragraph 322(1A) of HC 395. The refusal was predicated upon the position that a document

had been provided that was a false document. This was a statement of account from the Mutual Trust Bank Limited in Dhaka Bangladesh. On that issue, the evidence before the Tribunal included a Document Verification Report in respect of the very document that had been submitted by the appellant. In that report the bank representative had confirmed that the bank records indicated that the account did exist but the bank statement was not issued by the bank. The information held by the bank differed from what was detailed in the information or documents that were provided in support of the application form. The decision maker then went on to say that he was satisfied that the bank statement for the indicated account was not genuine.

7. That issue had been brought to the attention of the appellant on 13 October 2013. The appeal was not heard until 6 January 2014 and therefore the appellant had had a period of several months in which to challenge the contention of the respondent that the document was false and that, for some reason or other, the verification report itself was either unreliable or was not complete because it could be shown from other material that the account did exist in the form that was being put forward.
8. In connection with the appeal, the appellant did rely upon two further bank statements. The First-tier Tribunal dealt with that at paragraph 10 of the determination. The First-tier Tribunal recorded that the pages of those accounts were in different typeface and a different format from the document which was the subject of the Document Verification Report giving rise to the decision under appeal.
9. Just pausing there, the presentation of such further documents would be of great concern to any court or Tribunal because not only was the verification report not being directly challenged but now two further bank statements were being presented instead. There appears to have been no explanation as to how the two further statements originated and as to why they were in a different form as explained by the Tribunal. The Tribunal then went on to say that the first statement of account included three deposit entries on 2 May 2013 and the second item shown in the balance was a figure of 541,000 and the second statement of account relied upon by the appellant was for the period from 2 May to 3 June 2013. The Tribunal, however, noted that the second entry shown under the balance column for 2 May differed from the figure set out in the preceding sentence of the determination and showed a figure of 540,100 and the Tribunal also noted that there was no explanation as to why a statement of account for the same account number should show two different balances on the same day of 2 May 2013. It noted that the figure of 541,000 was shown on the statement of account which was the subject of the Document Verification Report.
10. Again, pausing at that point, it would be fair to summarise the position as follows. The appellant had not taken the opportunity to obtain documentation from the bank that explained that there had been some mistake or incomplete understanding of the position when the verification report was made. Furthermore, there were no steps taken to obtain from the Mutual Trust Bank Limited documents that could be shown to be intrinsically valid, something along the lines of a letter from the bank in

question that was beyond challenge as authentic, showing that indeed the accounts existed in the form claimed.

11. Far from producing credible material of that kind, and, out of an abundance of caution, having documents of that kind transmitted through an impeccable source such as the High Commission, the appellant had done no more than produce two further accounts that were internally inconsistent and difficult to reconcile, both in form and content, with the earlier document that had been produced and rejected on a sound basis. However, before us today, Mr Hussain submitted, that even if the Tribunal on the basis of this material came to a conclusion that was inescapable, namely that the documentation had not been shown to be authentic, nonetheless the Tribunal had committed an error of law by not referring expressly to the balance of proof. It is indisputable that the respondent, having raised the authenticity of the document had to show on balance of probabilities that the document was indeed false. It has now been held on high authority that, even if an allegation of falsity raises issues of possible fraud on the part of a party, the burden in a civil case is simply the balance of probability and there is no explicit sliding scale that should be applied in response to the specific allegation that is under examination.
12. It is plain in our judgment that the Tribunal approach this issue in the correct manner. It looked at the allegation, namely that the document was false, and it had regard to the evidence that was produced by the respondent to support its claim. That evidence on the face of it was powerful. It was a statement from the bank itself, admittedly obtained through another source, being technically hearsay, but not seriously questionable, that the document relied on was not one that had been issued by the bank. That evidence, as we have stated, was powerful to support the position that the respondent had taken. The Tribunal then considered the evidence that was put forward by the appellant to respond to that. As we have shown, that evidence on its face simply made the matter worse from the appellant's point of view and did no more than reinforce the evidence that the respondent itself had produced to show that the document was false.
13. In a case of this kind, there was simply no need for the First-tier Tribunal to rehearse the burden of proof because on any view that burden had been amply discharged on the material that was before the Tribunal and the incantation of the burden of proof would have taken the matter further.
14. That disposes of the appellant's appeal. We find that there was no error of law by the Tribunal, firstly in refusing the adjournment for the reasons that it gave, and secondly for reaching the conclusion that the substantive decision was on the material before it correct and unchallengeable.
15. Before leaving the appellant's appeal, we should record that the appeal under the grounds of Article 8 has not been pursued before us and we simply note that in our judgment that was an understandable and proper course to take.

16. Turning to the appeal of the Secretary of State, it appears to us that there was a plain error of law. The Tribunal referred to Section 47 and held that the removal direction could not be given at the same time as the substantive decision. The legislation has now been amended, as recorded by the judge granting permission, and there is no question about the lawfulness of the removal directions. For those reasons, we uphold the appeal of the respondent.

Signed

Date

Mr Justice Parker sitting as a Deputy Judge of the Upper Tribunal