



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

Appeal Number: IA/15274/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**Oral determination given following  
hearing  
On 11 May 2015**

**On 29 May 2015**

**Before**

**UPPER TRIBUNAL JUDGE CRAIG**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**CHOWDHURY ADNAN SHAHPUR**

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr S Hosain, Legal Representative, E1 Solicitors

**DETERMINATION AND REASONS**

1. This is the Secretary of State's appeal against a determination of First-tier Tribunal Judge Cresswell which was promulgated on 28 October 2013 following a hearing before him at Newport Columbus House on 24 October 2013. This is the second time that this appeal has been before the Upper Tribunal in circumstances which I will briefly summarise below. For ease of convenience I shall throughout this determination refer to Mr Shahpur who was the original appellant as "the claimant" and to the Secretary of State who was the original respondent as "the Secretary of State".

2. The claimant is a citizen of Bangladesh who was born on 25 February 1984 and he applied to vary his leave to remain as a student. In support of this application he submitted an academic transcript dated 30 October 2012 bearing the letterhead of Walthamstow Business College. The application was refused by the respondent on 25 April 2013 and the sole reason given within the refusal letter was that that transcript was a false document. Thus the application had to be refused under paragraph 322(1A) of the Immigration Rules. The reason why the Secretary of State considered that the transcript was a false document was because Walthamstow Business College was run, or so it appeared from its letterhead, by a limited company which had been dissolved on 28 February 2012 and so it was said that a genuine transcript could not have been issued on 30 October 2012 as claimed by the claimant within his application.
3. The claimant appealed against this decision on the basis that the document which he relied on had been properly issued or at the very least he was not aware that if it was not genuine this was the case. The claimant's case essentially was that whatever might have been the position with regard to the limited company which was stated on the letterhead to be the proprietor of the college, the college continued to operate after the time when the company was dissolved. His appeal as already noted was heard before Judge Cresswell sitting at Newport Columbus House on 24 October 2013 and in a determination promulgated four days later the judge allowed his appeal.
4. The basis on which the judge allowed the appeal was that the Secretary of State had not satisfied the burden of proof which was on her to show that the college had ceased to exist as an entity from the date when the limited company was dissolved. The relevant finding of fact is at paragraph 15(iii) of the judge's determination and is as follows:

"I must be satisfied in respect of Part 9 of the Rules on the balance of probabilities that the respondent has established the basis of refusal before the burden shifts to the appellant [that is the claimant]. I am not so satisfied. Although the respondent [that is the Secretary of State] has shown that Walthamstow Business College Limited was dissolved on 28 February 2012, she has not shown that Walthamstow Business College ceased to exist as an entity from that date. A limited company is a legal entity; there was no evidence before me to show that the limited company was the sole entity 'running' the college, or that it was essential to the running of the college."
5. The judge considered that it would have been open to the Secretary of State to adduce evidence to the effect that the college was not in fact running at the relevant time, but chose not to do so and that the Secretary of State "appears to have confused the limited company with the college because a letter from the [Secretary of State] of 28 May 2013 refers to the college being dissolved, when only limited companies can be dissolved" (at para 15(iv) of the determination).

6. This might well have been a generous decision on the part of the First-tier Tribunal and certainly when this appeal initially came before the Upper Tribunal (a differently constituted Tribunal) permission to appeal having been granted, the Upper Tribunal then considered that the First-tier Tribunal Judge had not given appropriate weight to the fact that the limited company said to have been running the college had been dissolved. The Upper Tribunal on that occasion set aside the determination of the First-tier Tribunal as containing an error of law and substituted its own decision dismissing the claimant's appeal. Subsequently, however, the claimant appealed against the decision of the Upper Tribunal to the Court of Appeal and the Court of Appeal in an agreed statement of facts after Sir Stephen Sedley had given permission to appeal concluded that the Upper Tribunal had itself made an error of law in finding an error of law on the part of the First-tier Tribunal.

7. At paragraph 7 of the Statement of Reasons which was the basis upon which the Court of Appeal allowed the appeal it was stated as follows:

“7. The respondent agrees with the appellant that it is arguable that there was a material error of law in the determination of [the Upper Tribunal Judge]. Consequently, it is expedient, and the parties agree, that the matter should be remitted to the Upper Tribunal (the Immigration and Asylum Chamber) for a fresh hearing.”

8. It is worth setting out the basis upon which permission to appeal against the first Upper Tribunal decision was granted. The reasons given by Sir Stephen Sedley were as follows.:

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1. The FTT's determination was straightforward. In short, the IJ found that the dissolution of the company associated with the college (there seems to have been no evidence of the specific nature of the association) did not necessarily mean that the college could not have continued to function. If, as seems to me strongly arguable, there was no error of law in this, the UT had no power to substitute its own views.

2. The UT's determination, by contrast, depends on a convoluted shifting of the burden of proof followed by a finding (para 27) which assumes the very thing that had to be proved, namely that the college could not have functioned once the company had been dissolved. From this an inference of fraud (para 28) is drawn.

3. Although therefore it is arguable that the UT's determination is itself flawed, the real point is that they had no power to embark upon it because the FTT's decision was legally tenable. Is this a second appeal point? The failure of colleges at which foreign nationals are studying is a recurrent problem, and the question at what point, and on what evidence, such failures

may implicate the student in fraud seems to me an important point both of principle and of practice. ...”

9. In other words, the point troubling Sir Stephen Sedley was not whether or not the Upper Tribunal had been entitled to overturn the First-tier Tribunal’s decision (which clearly he considered should not have been overturned) but whether or not the second appeal criteria had been satisfied.
10. In light both of Sir Stephen Sedley’s reasons, and also of the decision of the Court of Appeal, made on the basis of the Statement of Reasons which had been agreed between both parties, quite properly Mr Tufan on behalf of the Secretary of State did not seek to persuade me that I could properly now again overturn the decision of the First-tier Tribunal. Although, as I have already stated, I consider that the First-tier Tribunal’s decision was arguably generous to this claimant, nonetheless in light of the guidance already given in this case by the Court of Appeal I am unable to find that there was any material error of law in the First-tier Tribunal’s decision in this case. As Mr Tufan properly concedes, it is not for him to rewrite the reasons given for refusing the application. The only reason given in the refusal letter for refusing the application was that because the company supposedly running the college had been dissolved, it must follow that the transcript was not a genuine document, but Judge Creswell in the First-tier Tribunal rejected this argument for reasons which the Court of Appeal has considered were open to him. There is accordingly no proper basis upon which that decision can be overturned. It follows that the Secretary of State’s appeal against the decision of the First-tier Tribunal must be dismissed and I so find.

### **Decision**

11. **There being no material error of law in the decision of the First-tier Tribunal, the Secretary of State’s appeal against that decision is dismissed and the decision of the First-tier Tribunal, allowing the claimant’s appeal, is affirmed.**

Signed:

A handwritten signature in black ink, appearing to read "Ken Craig". The signature is written in a cursive style with a long, sweeping tail on the letter "g".

Upper Tribunal Judge Craig

Date: 26 May 2015