



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

Appeal Numbers: IA/28362/2014  
IA/28363/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 December 2014**

**Decision & Reasons  
Promulgated  
On 20 January 2015**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**KUNAL SONI  
SHEENU SONI**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr A Slatter, Counsel instructed by Silk Route Legal

For the Respondent: Ms C Johnstone, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The first appellant was born on 30 January 1983 and his wife, who is a dependant upon his claim, the second appellant, was born on 13 November 1984. Both are citizens of India.
2. The first appellant arrived in the United Kingdom on 7 August 2005 with leave to enter as a student until 5 March 2007. He was granted subsequent leave as a student until 30 June 2009.

3. A further application to vary his leave to remain as a Tier 1 (Post-Study Work) Migrant was refused on the basis that he had relied on a postgraduate diploma issued by the Cambridge College of Learning. It was considered by the respondent that such a course was not one that was offered and therefore that the claim to have attended such a course was false. The application was refused on 20 January 2009 on that basis. In March 2009 the appellant made a further application for leave to remain as a student. This application was granted until June 2010.
4. A further application to vary his leave as a student was made in June 2010. That was granted from the period 14 June 2010 to 30 January 2012 as a Tier 4 Student.
5. Thereafter the applicant made an out of country application for leave to remain as a Tier 1 (Post-Study Work) Migrant. He was granted leave from 9 May 2012 until 25 April 2014.
6. On 25 April 2014 the appellants made a combined application for leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant. That application was refused on 23 June 2014 on the basis that the appellant had agreed on the application that he had used deception in order to attempt to gain leave in the United Kingdom, namely the submission of the postgraduate diploma in business management from the Cambridge College of Learning.
7. In those circumstances the application was refused under paragraph 322(2) of the Immigration Rules. The second appellant's application was refused in line with that refusal.
8. It was against that decision that the appellants sought to appeal to the First-tier Tribunal, which appeal came before First-tier Tribunal Judge Turquet on 15 September 2014.
9. Although the first appellant has maintained throughout that he did not exercise deception and that he attended lawfully the Cambridge College Learning to obtain his postgraduate diploma in business management, that is a statement of fact which has been conclusively dismissed by the Tribunal on a number of occasions. A number of decisions of the Upper Tribunal and in particular that of **NA and Others (Cambridge College of Learning: Pakistan) [2009] UKAIT 00031** have conclusively found that the Cambridge College of Learning never ran a post graduate diploma in business management or a post graduate diploma in IT course. Thus for a person to rely upon a certificate or an award of that diploma amounted to a false representation. As I understand the matter the issue was further visited by the Upper Tribunal in the decision of **Veerathna (IA/02707/2009)** a determination promulgated in November 2014 which upheld the decision in **NA**. Whilst although the first appellant may claim

that he has not used deception, it is clear from the Tribunal decisions that he did.

10. The main plank, therefore, of his appeal was essentially that even if the respondent was entitled to have refused his application on 20 January 2009 because of the submission of the post graduate qualification from the Cambridge College of Learning, that situation should no longer apply in the decision of 23 June 2014. The reason for that being that since the first refusal on that basis there has been three periods of leave granted to the first appellant by the respondent choosing not to invoke 322(2) of the Immigration Rules.
11. In effect, therefore, it is contended that, having waived that refusal or potential refusal on three separate occasions, it is unreasonable and/or unlawful for the respondent now to seek to revisit that refusal.
12. It is the case as advanced on behalf of the first appellant before me, permission to do so having been granted, that the First-tier Tribunal Judge failed to deal with that issue satisfactorily or at all in her decision to dismiss the appeal.
13. Ms Johnstone, who represents the respondent, stated firstly that the First-tier Tribunal Judge had indeed considered the issue and found against the first appellant on that issue.
14. Secondly, in any event, the application was misconceived because the three applications made subsequent to the refusal in 2009 had not alerted the Secretary of State to the falsity that had been practised by the appellant. There had been no waiver of the application of 322(2) in any event.
15. I turn therefore to the first issue whether or not the First-tier Tribunal Judge had adequately dealt with the central challenge to the appeal before her. Clearly that matter is raised for her consideration as is set out in paragraph 10 of the determination when summarising the grounds of appeal. Ms Johnstone submits in paragraph 22 that the judge deals clearly with that issue. It is certainly correct that the Judge seems to deal with part of that matter. She notes that when the respondent refused the application of 23 October 2008 on 20 January 2009 such was under paragraph 322(1A), a mandatory ground of refusal. Thereafter, it is not clear what documents the appellant provided in respect of the later application in 2009 but seemingly he did not provide the Cambridge College documents. As a consequence he obtained leave to enter as a Tier 1 (Post graduate diploma in business management-Study Work) Migrant on 9 May 2012. It was noted that an application made on 15 November 2013 for leave to remain as a Tier 1 (Entrepreneur) Migrant was refused on 5 March 2014 on the basis that he had indicated in his application that he had never used deception in an attempt to gain leave in the United Kingdom. The reasons for refusal stated "as false

representations had been made in relation to your application, it is refused under paragraph 322(1A) of the Immigration Rules". In addition, as stated above, you made false representations for the purpose of obtaining a previous variation of leave. Those false representations had been made in respect of a previous application but it was refused under paragraph 322(2).

16. Thereafter, however, the judge proceeds to consider in some detail the nature of the falsity, namely the post graduate diploma in business management and considers in paragraphs 23 to 27 of the determination. The Judge concludes that the respondent has discharged the burden of proof to demonstrate that the first appellant had used deception in providing false documents in the past also that the respondent was entitled to have refused the application on that basis. It seems to me, however, and I so find, that there is merit in the contention made on behalf of the first appellant that the judge has not fully engaged with the argument which was being advanced. There is no question that the respondent was entitled to refuse an application under paragraph 322(2). The issue was whether, having granted three successive periods of leave, it was reasonable, proper or fair or lawful for the respondent to have, in effect, resurrected the issue to refuse subsequently.
17. As to the application made in 2009 there is no copy in the respondent's file at present although a copy of the application could be obtained.
18. There was however a copy of the application dated 31 May 2010 which resulted in the second grant of leave. Although no reliance had been placed upon the Cambridge documents in that application, it is to be noted that in the course of the application the appellant had ticked the box "no" to using deception to stay or remain. As Ms Johnstone submits, there was nothing to alert the Secretary of State to any deception having been used.
19. As to the application made on 9 May 2012 out of country, which was also successful, a copy of that document is in the papers. That document makes no reference to the Cambridge documents or indicates in any way that deception had previously been used.
20. The first appellant however submits that whatever is written on the applications the respondent would have known his immigration history and would have known the reason why an application had been refused on 20 January 2009.
21. Indeed some support for his contention is found within the comments of the Judge in paragraph 22 of the determination. Following three successful applications a further application was made on 15 November 2013 for leave to remain as a Tier 1 (Entrepreneur) Migrant and that had been refused on 5 March 2014. That had been an application which had not relied upon the Cambridge documents, the first appellant had indicated in that application by ticking the requisite box that he never

used deception in an attempt to gain leave in the United Kingdom. He ticked a similar box to the previous applications but on this occasion clearly the matter had been noted by the respondent who refused that application. It was refused firstly on the basis that the appellant had made a false application in that application by not declaring his previous false representation and also because of the false representation that had been previously made.

22. Thus it was that the appellant made his further application on 25 April 2014, this time ticking the box to indicate that deception had been used previously by him. That resulted in the same effect seemingly in a decision of 23 June 2014 refusing his application because he had used deception, namely the use of the Cambridge documents.
23. It is submitted on behalf of the first appellant that, in refusing the application on 5 March 2014, the respondent had clearly been aware of the immigration history of the appellant and would have been so aware on the previous three occasions. It was therefore simply not good enough for the respondent through Ms Johnstone to argue that the three previous applications had not alerted the Secretary of State to the reality of the situation.
24. A further potential ground of appeal arises, given the length of time that has elapsed since the deception and given the grants of leave subsequently with the appellant running a successful business in the United Kingdom with his own funds, whether or not it would be appropriate in any event for the prohibition under paragraph 322(2) to be maintained.
25. The Judge, having failed as I have so found to deal with the central plank of the appeal, I find that that is an error of law.
26. Whether or not there are any merits in the original appeal as advanced is not a matter that can be easily resolved at this stage without hearing further argument and considering in detail all the applications that were made.
27. In the circumstances, therefore, I shall set aside the decision to be remade in the light of arguments to be presented. Given the need for further evidence that re-hearing shall be before the First-tier Tribunal in accordance with the Senior President's Practice Direction.
28. It will be necessary for the respondent to supply, within 28 days of the notification of this decision, copies of all relevant applications that were made and particularly the three applications which were approved.
29. A live issue is whether or not the respondent was placed on notice by such applications or ought to have known of the reality of the situation from past records.

30. Clearly, if any reliance is to be placed upon arguments based upon Article 8 and private and family life in the United Kingdom, full particulars of such matters should be supplied no later than 14 days before the scheduled hearing.
31. As I indicated to Mr Slatter, who represented the appellant, if investigations are sought as to the procedures adopted by the Respondent in considering the three applications which were successful and why it was that the falsity was not picked up, then that perhaps is a matter for further clarification raised as between the parties. It is not something that I feel should be the subject of formal direction unless a further application is made. Clearly an issue in the case is why it was that the respondent did not appreciate in granting the applications that they were made by a person to whom refusal had been made before.
32. The appeal before the Upper Tribunal is allowed to the extent that the decision of the First tier is set aside to be remade.

Signed

Date **23 December 2014**

Upper Tribunal Judge King TD