



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

Appeal Number: IA/33305/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 9th January 2015**

**Determination Promulgated
On 16th January 2015**
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Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**MOHAMMAD SIRAJUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the determination of Judge of the First-tier Tribunal Rowlands promulgated on 23rd July 2014.
2. The Appellant is a male citizen of Bangladesh born 1st January 1982 who on 5th September 2013 was refused leave to enter the United Kingdom and his existing leave was cancelled.

3. It appears that the Appellant was returning to the United Kingdom on 5th September 2013 when he was questioned about documentation that he had used in order to have his leave extended. The Respondent noted that the Appellant had been granted leave to remain in order to follow a course at Westlink College and that he had submitted a Provisional Certificate and Consolidated Marks Memorandum dated 31st December 2012 issued by London College of Law and Management (LCLM) in order to enable him to study at Westlink College. The Respondent noted that LCLM's licence had been suspended in 2010, and revoked in March 2012. The Sponsor licensing unit of the Home Office had confirmed that the college was not teaching courses although the certificate was said to have been issued on 31st December 2012. The Respondent contended that the Appellant's claimed course dates at LCLM were 12th January 2012 - December 2012. The certificate contained numerous grammatical and syntax errors, was poorly indented, and the titles of three of the six modules were spelt incorrectly. A detailed examination of the document resulted in it being declared a forgery. The refusal notice also recorded that the Appellant's spoken English was so bad that he had to be interviewed in Bengali, and his knowledge of his previous course of study in the United Kingdom was described as being close to non-existent.
4. Because the Respondent believed the Provisional Certificate to be a forgery, paragraph 320(7A) of the Immigration Rules was relied upon by the Respondent in refusing leave to enter.
5. The Appellant appealed to the First-tier Tribunal contending that he is a genuine student and that the decision to cancel his visa was against the law and the Immigration Rules. There was also reference in the Grounds of Appeal to Articles 2 and 3 of the 1950 European Convention on Human Rights.
6. The Appellant initially requested an oral hearing of his appeal but subsequently notified the Tribunal that he did not wish to have an oral hearing, and wished his appeal to be determined on the papers.
7. The appeal was determined on the papers by Judge Rowlands (the judge) on 12th July 2014. The judge found that the certificate produced by the Appellant was false and had been used by the Appellant to enable him to study at Westlink College. The judge was satisfied that leave to enter had been properly refused under paragraph 320(7A). The judge found no substance in the Appellant's reliance upon Articles 2 and 3. The appeal was dismissed.
8. The Appellant applied for permission to appeal to the Upper Tribunal. In summary it was contended that the judge had erred in paragraph 7 when mistaking the date on which teaching at the college ended and the date on which the Appellant's course began. The Appellant's case was that he had completed all required modules by March 2012 and thus was entitled to the certificate, even though the certificate was not issued until 31st December 2012. It was not disputed that teaching at the college had

ended in March 2012. However the judge had mistakenly assumed, as was stated in the Respondent's refusal notice, that the Appellant's course had begun on 12th January 2012, whereas it had begun on 12th January 2010 and tuition had continued until March 2012 when the college licence was revoked.

9. It was further contended that the judge had erred in paragraph 7 in finding that the Appellant had obtained the certificate from LCLM authorities when those authorities were not in a position to confirm the contents thereof. It was submitted that the judge had erred by failing to state what evidence was relied on for reaching this conclusion, as the certificate was issued by the same college, which still held academic records on the Appellant.
10. Permission to appeal was granted by Judge of the First-tier Tribunal Simpson who stated in paragraph 3 of the grant;
 - “3. The Provisional Certificate from the London College clearly states that the course duration was from 12th January 2010 to December 2012; consequently, both the Immigration Officer and the judge were in error when they referred to the course duration being 12th January 2012 – December 2012. The Provisional Certificate contained numerous spelling mistakes, but that by itself is not sufficient evidence of forgery. Moreover, in [7] the judge makes an incorrect assumption that an assessment board had not been convened because ‘there was no teaching done in 2012’ and also refers to the Appellant having done all the necessary modules in that year i.e. 2012, which is not the case. In those circumstances it is arguable that the judge ought not to have been satisfied that the para.320(7A) refusal was made out.”
11. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 contending, in summary, that the judge had not erred in law and that the grounds contained within the application for permission to appeal amounted to a disagreement with the findings made by the judge. It was contended that the judge had given detailed consideration to the Provisional Certificate and had given reasons why the document was considered unreliable and counterfeit.
12. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal determination should be set aside.

The Upper Tribunal Hearing

13. There was no attendance by or on behalf of the Appellant. I considered rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008, and was satisfied that both the Appellant and his representative had been notified of the time, date and place of the hearing by notice issued on 5th December 2014. There was no explanation for the absence, nor any application for an adjournment.

14. As I was satisfied that the Appellant had been notified of the hearing, I decided that it was in the interests of justice to proceed in his absence.
15. Mr Kandola relied upon the rule 24 response and submitted that the findings made by the judge were sustainable and open to him on the evidence. I was asked to conclude that the determination disclosed no material error of law.

My Conclusions and Reasons

16. I find no material error of law in the determination of the First-tier Tribunal. I find that the judge took into account all the documents placed before him, including the Appellant's witness statement dated 14th February 2014. The judge dealt with the appeal on the papers at the specific request of the Appellant.
17. The judge demonstrated that he was aware of the correct burden and standard of proof, in that the burden on proving that paragraph 320(7A) is satisfied rests upon the Respondent, and the judge recorded that clear evidence was needed, and that a mere assertion by the Respondent was insufficient.
18. The judge was entitled to take into account the basic spelling mistakes in the Provisional Certificate and the other errors referred to in the Respondent's refusal notice. Although the judge may have erred in paragraph 7 in assuming that the Appellant had contended that he had done all the necessary modules in 2012, whereas the Appellant's case was that the course duration was between January 2010 and December 2012, that error is not material. The judge noted that the certificate referred to a recent assessment and that it was dated 31st December 2012. The Appellant's own account according to paragraph 3 of his witness statement was that he had completed all modules prior to April 2012, and that the college licence was revoked in March 2012. The judge was therefore entitled to conclude that there had been no recent assessment board as referred to in the certificate dated 31st December 2012.
19. The contention of the Respondent, contained in the refusal notice, that the college had not carried out any teaching after revocation of the licence was not disputed in the Appellant's witness statement.
20. The judge was also entitled to take into account that the Appellant had not contested in his witness statement the Respondent's conclusion in the refusal notice that the Appellant's spoken English was of such a poor standard, that he had to be interviewed in Bengali. The judge was entitled to find that if he had successfully gained the diploma in tourism and hospitality management, as stated in the Provisional Certificate, then he should have been able to speak English and be interviewed in English.
21. Overall, I conclude that the judge was entitled to find that the document was false, and that he gave adequate and sustainable reasons for his

findings, and the grounds submitted on behalf of the Appellant for permission to appeal, do not disclose a material error of law, but amount to a disagreement with findings made by the judge.

Notice of Decision

The determination of the First-tier Tribunal does not disclose a material error of law.

I do not set aside the decision. The appeal is dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity, and the Upper Tribunal makes no anonymity order.

Signed

Date 12th January 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed. There is no fee award.

Signed

Date 12th January 2015

Deputy Upper Tribunal Judge M A Hall