



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

Appeal Number: IA/01607/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8 September 2017**

**Decision & Reasons
Promulgated
On 14 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ANISH KAMLESHKUMAR SHAH
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: None

For the Respondent: Mr L Tarlow of the Specialist Appeals Team

DECISION AND REASONS

The Respondent

1. The Respondent Anish Kamleshkumar Shah to whom I shall refer as the "Applicant" is a citizen of India born on 12 August 1990. On 20 January 2012 he arrived with leave to enter as a Tier 4 (General) Student which expired on 6 June 2014. On that day, he applied for further leave to remain as a student.

SSHD's Decision

2. On 8 March 2016 the Appellant (SSHD) refused the application. The SSHD considered the Applicant had submitted fraudulently obtained evidence of his facility in the English Language, having obtained certificates issued by ETS after the Applicant had used the services of a proxy test taker.
3. The Respondent also refused the application because at date of his application the Applicant had not been assigned an Acceptance for Studies (CAS). The application was made on 6 June 2014 to study at the London School of Advanced Studies. The Respondent confirmed at that time the School had a Sponsor Licence but the licence had been revoked on 8 December 2014, some five months after the Applicant had made his application.

The Original Grounds of Appeal

4. On 22 March 2016 the Applicant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended. The grounds are formulaic and generic. They refer to the revocation of the College's Sponsor Licence, the Appellant's private life protected by Article 8 of the European Convention and the right to complete his education protected by at Protocol 2 Article 1 of the European Convention.

The First-tier Tribunal Hearing

5. In the Notice of Appeal the Applicant stated that he did not want an oral hearing. Nevertheless, the Tribunal listed the appeal for hearing. On the day set for the First-tier Tribunal hearing there was no representative for the Applicant or for the SSHD in attendance and Judge of the First-tier Tribunal Beach dealt with the appeal on the papers in the Tribunal file. She considered the Applicant had not been refused on the basis of fraudulently obtained documentation, that is the evidence of his facility in English. She found the College's Sponsor's licence had been revoked and that the Applicant could not be considered to be part of the reason for revocation licence. She referred to the SSHD's policy to grant a further 60 days' leave to enable a prospective student to find an alternative college. The Judge considered the Appellant should have been given such short-term leave and allowed the appeal on that ground alone.
6. The SSHD sought permission to appeal on the basis that the policy to grant a further 60 days' leave was not relevant to the Applicant because his original application had been bound to fail. The SSHD's reasoning was that the College's Sponsor's Licence remained in force at the date of the application at which moment the Applicant had failed to submit a CAS.
7. On 19 July 2017 permission to appeal on that ground was granted by Judge of the First-tier Tribunal J M Holmes.

The Upper Tribunal Proceedings

8. The hearing of the appeal had been set on 10am on 8 September 2017 at Field House. I was satisfied that notice of the time, date and place of the hearing had been given to the Applicant and his then solicitors and that such notice had been given in accordance with the Tribunal Procedure (Upper Tribunal) Rules 2008. The solicitors had confirmed to the Tribunal they were without instructions from the Appellant. Having considered the papers in the Tribunal file and any issues likely to be raised by the application, I was satisfied that it was just to proceed in the absence of the Applicant or any representative for him.
9. Mr Tarlow relied on the SSHD's application for permission to appeal and the issue identified in the grant of the permission. The Appellant had never become entitled to the benefit of the SSHD's policy of granting 60 days' leave. His application was doomed to failure because it was not accompanied by a CAS at a time when the College's Sponsor's Licence was still in being.
10. He did not seek to pursue any allegation of fraud the Appellant may have used to obtain the English Language certificates.

Findings and Consideration

11. I find for the reasons identified in the SSHD's permission application that the decision of the First-tier Tribunal contains a material error of law such that it cannot stand and is set aside.

Re-Making of the Decision

12. I remake the decision and dismiss the appeal under Part 6A (Points-Based System) of the Immigration Rules for the reason already given.
13. For the avoidance of doubt, I have considered the issue of the SSHD's fraud allegation. The SSHD's original bundle includes at pages E1-E5 the transcript of an interview of the Appellant entitled "Border Force Credibility Interview Template (ETS)". At the end of the interview record the interviewing officer recorded a number of findings. The officer found the Applicant was able to answer questions based in English in a fluent manner, suggestive of the fact that he had not been coached in providing specific answers and that there were no points in the interview where the Applicant appeared to lack credibility. The officer concluded that the Applicant was credible.
14. Further evidence submitted by the SSHD evidence included a computer search entitled "ETS SELT Source Data Sheet" showing that four certificates issued in the name of the Applicant were invalid. Looking at this evidence in the round, I am not satisfied the Respondent has submitted sufficient evidence to shift the burden of proof back to the Applicant to supply a plausible explanation to show that he did not use a proxy test taker. The SSHD's original decision was ambiguous whether the

fraud allegations were being pursued. If they were, I allow the appeal in respect of the alleged fraud under paragraph 322 of the Immigration Rules.

15. Although the Applicant made a claim relying the right to respect for his private life, there was no evidence before the Judge or before the Upper Tribunal. He was granted leave to enter as a student and subsequently sought an extension for that leave. I do not find the Applicant has shown he has any private or family life such that any interference with it consequent upon the SSHD's decision is sufficiently grave to engage the State's obligations under Article 8 of the European Convention. The Applicant referred to the right to education acknowledged in Protocol to, Article 1 of the European Convention. His claim does not engage this right which is limited to primary education. Consequently, his appeal on human rights grounds is dismissed.

Anonymity

16. There was no request for an anonymity direction and having considered the appeal find there is no need for one.

Comment on any future applications from abroad

17. If the Applicant makes any future application for entry clearance and can show that he voluntarily left the United Kingdom during any period when he was permitted to remain, then the findings in this decision should not be held against him.

NOTICE OF DECISION

The First-tier Tribunal's decision contained an error of law and is set aside. The following decision is substituted: -

The appeal is dismissed on immigration grounds (Part 6A Points-Based System).

The appeal is dismissed on human rights grounds.

Anonymity direction not made.

Signed/Official Crest

Date 13. ix. 2017

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed/Official Crest

Date 13. ix. 2017

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal