



The Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: IA/29614/2014

THE IMMIGRATION ACTS

Heard at Manchester
On April 7, 2015

Decision & Reasons Promulgated
On April 15, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR ARIF HUSSAIN BHATTI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Miss Harris, Counsel, instructed by Farani Javid
Taylor Solicitors LLP

Respondent

Ms Johnstone (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan who entered the United Kingdom on April 6, 2006 as a student with leave until August 30, 2008. On June 30, 2008 his leave was extended as a participant of the International Graduate Scheme until June 30, 2009. On June 17, 2009 he was granted leave as a Tier 1 post study migrant until June 30, 2010 and on July 12, 2010 he was granted leave as a Tier 4 student until August 17, 2011. On August 16, 2011 he applied to extend his stay as a tier 4 student but the

respondent refused this application on June 18, 2014 under paragraph 322(1A) HC 395 and on the basis the Immigration Rules were not met. At the same time a decision was taken to remove him by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellant appealed that decision on July 18, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
3. The matter came before Judge of the First-tier Tribunal Fox on October 24, 2014 and in a decision promulgated on October 30, 2014 he refused the appellant's appeal finding he failed to satisfy the requirements of the Immigration Rules although he found the appellant had not acted dishonestly.
4. The appellant lodged grounds of appeal on November 18, 2014 submitting the FtTJ had erred by placing the burden of proof on the appellant and by finding the appellant's appeal failed due to deception.
5. On January 12, 2015 Judge of the First-tier Tribunal Cheales gave permission to appeal finding the FtTJ's conclusions were unclear and that he had not given clear reasons for his decision.
6. The matter came before me on the above date and the parties were represented as set out above. The appellant was in attendance.

ERROR OF LAW SUBMISSIONS

7. Miss Harris argued that the FtTJ erred because he should never have required the appellant to prove anything because the evidence of fraud was based on poor evidence. There was no evidence of dishonesty and the FtTJ should not have found the bank document was a forgery because there was nothing on the document that suggested it was a forgery. Miss Harris did accept that if the FtTJ's finding on the document was upheld there was no evidence that demonstrated the financial requirements were met.
8. Ms Johnstone adopted the Rule 24 letter dated January 19, 2015 and submitted Miss Harris's submissions had no merit. The appellant had accepted in his grounds of appeal, statement and oral evidence that the bank statement was false and the FtTJ was entitled to accept this concession because the appellant knew the documents were false. Whilst the FtTJ accepted the appellant had not acted dishonestly he had also found the appellant had not satisfied the Rules and as at today's date he had still not provided any evidence that he met the financial requirements at the date of his application.

DISCUSSION AND FINDINGS

9. I have reviewed the papers and in particular the grounds of appeal, the appellant's witness statement and the FtTJ's determination and asked Miss Harris why this argument was now being raised when it was clear from the above documents that

this was not something that had been raised prior to this hearing. Miss Harris submitted that the FtTJ should not have accepted the appellant's concession because the respondent had failed to provide adequate evidence to prove the statement was a forgery.

10. I referred Miss Harris to the original grounds of appeal and in particular paragraphs [10] and [11]. At paragraph [10] the appellant accepted he had been naïve and that a forged document had been submitted without his knowledge and at paragraph [11] the appellant claimed he had the funds in another bank account. Miss Harris had already conceded that there were no bank statements before the Tribunal that demonstrated the appellant met the financial requirements and she also had to accept that the appellant accepted he was aware a forged statement had been used.
11. I suggested to Miss Harris that if she was now seeking to argue that the respondent had not proved the statement was a forgery then this was an argument that should have been the cornerstone of the grounds of appeal, his statement and oral evidence. The bank statement concerned was a UK bank statement and it had been open to the appellant to bring the matter to the attention of the respondent and submit the correct statement.
12. The appellant's witness statement was a rehash of the grounds of appeal and the FtTJ recorded in his determination at paragraph [11] that the appellant accepted the agent had provided fraudulent documents.
13. Whilst the FtTJ never referred to the burden of proof on the respondent this was not material for two reasons:
 - a. The FtTJ accepted the respondent had not acted dishonestly.
 - b. The appellant had failed to provide the required bank statement and could not meet the Rules in any event.
14. Miss Harris argued that paragraph [14] of the determination did not make clear on what basis the appeal had been refused. I disagreed with her submission because the FtTJ made clear in this statement-

"I am satisfied that the agent acted entirely unilaterally and independently of the appellant and the bank statements submitted on behalf of the appellant by his agent were forged. This was out of his control... It would be wrong in my view for the respondent to hold an allegation of dishonestly against this appellant in light of the facts established in this case."
15. This statement makes clear that the appeal was not refused under paragraph 322(1A) HC 395. The FtTJ also made clear in paragraph [14] of his determination that the appellant had been free to make a fresh application with the correct documents and bank statements. The appellant did not and as has already been conceded there are no bank statements that demonstrate he met the Rules. Whilst the FtTJ did not make clear the basis of refusal I am satisfied this is not material because the appellant never demonstrated he could meet the Rules.

16. The respondent's delay in taking almost three years to deal with the application was a disgrace but it had been open to the appellant to rectify the problem and submit the correct documents with an explanation. He chose not to and is now left with the refusal and dismissal of his appeal on the grounds he failed to satisfy the financial requirements laid out in Appendix C of the Immigration Rules.
17. I dismiss the appellant's appeal.

DECISION

18. There was no material error. The original decision is upheld.
19. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to alter that order.

Signed:

Dated: **April 7, 2015**

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

As I have dismissed the appeal I make no fee award.

Signed:

Dated: **April 7, 2015**

Deputy Upper Tribunal Judge Alis