



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/19162/2014

THE IMMIGRATION ACTS

Heard at Field House
On 17 July 2015

Decision and Reasons Promulgated
On 27 July 2015

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL KAMARA
DEPUTY JUDGE OF THE UPPER TRIBUNAL NORTON-TAYLOR**

Between

**MR SAHAB QAMAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision, promulgated on 18 March 2015, of First-tier Tribunal Judge Hunter (hereinafter referred to as the FTTJ).

Background

2. The appellant was last granted leave to remain in the United Kingdom as a Tier 4 (General) migrant until 11 April 2014. His leave was subsequently curtailed until 17 November 2013. On 15 November 2013 the appellant sought further leave to remain in order to study for a CMI Level 8 diploma in Strategic Direction and Leadership at Bradford Regional College. That application was refused on 4 April 2014 as the appellant's bank statement was not accepted as evidence of funds because the respondent was of the view that it had been proven to be false. The application was refused under paragraph 245ZX(d) of the Immigration Rules because the respondent did not accept that the appellant was in possession of a total of £2,600 for his outstanding course fees and living costs and therefore no points were awarded. Additionally, the application was refused under paragraph 322(1A) of HC 395. The respondent asserted that the appellant had no right of appeal against that decision, however a duty FTTJ decided otherwise and the matter proceeded to an appeal hearing.
3. At the hearing before the FTTJ, the appellant appeared in person and gave evidence about his finances in Pakistan. The respondent produced an attachment to a document verification report on the appellant's financial documents on the day of the hearing. The FTTJ found that he was not satisfied that the appellant had provided a false document owing to a lack of detail and discrepancies in the bank letter attached to the document verification report. Nonetheless, he went on to conclude that the appellant did not meet the requirements of paragraph 245ZX(a) of the Rules because he found the appellant's documents to be unreliable, albeit not false. The appeal was dismissed under the Immigration Rules and also under Article 8 ECHR, both within and outside the Rules.
4. The grounds of application argue, that the decision of the FTTJ was irrational and that it was unfair of him to dismiss the appeal if he found that the appellant had not used deception. It was further argued that the appeal should either have been allowed or remitted to the respondent for a fresh decision.
5. Permission was granted on the above basis. The FTTJ granting permission remarked that it was arguable that the FTTJ's decision fell into irrationality and that he ought to have remitted the case to the respondent for a fresh decision under the Rules.
6. The Secretary of State lodged a Rule 24 response on 11 June 2015. Essentially, the respondent argued that the FTTJ directed himself appropriately; that the respondent failed to discharge the burden of proving the documents were false did not lead to a finding that the documents were genuine and that there was nothing incompatible, perverse or unreasonable in the FTTJ concluding that the appellant had failed to establish that the documents could be given sufficient weight to discharge the burden upon him.
7. At the hearing before us, the appellant was unrepresented. He reiterated that he had spoken to his bank in Pakistan and they had told him that the staff in the branch had made an error. He told us that the bank was unable to verify his account at the respondent's request but that this did not mean that his documents were false. He had been attempting to obtain confirmation in writing from the bank, however he was experiencing some difficulties in doing this from the United Kingdom. Ms Fijiwala showed the appellant her copies of the bank documents, which were before the FTTJ. These clearly showed a date of 30 October 2013.

8. We noted that the copies of the National Savings Centre documents, which were before the FTTJ had part of the year missing owing to poor photocopying in the respondent's bundle of evidence. The appellant told us that the issue of the date of these documents was not raised by the FTTJ during the hearing.
9. Ms Fijiwala relied on the Rule 24 response. She submitted that the FTTJ gave good reasons for finding that the appellant's bank documents were not reliable. She referred to paragraph 27 of the decision and reasons referred to inconsistent evidence given by the appellant. She argued that the FTTJ ought to have sent it back to the respondent for reconsideration. Ms Fijiwala confirmed that there was no cross appeal relating to the FTTJ's finding on the deception issue and that the funds shown in the National Savings Centre documents were more than enough to meet the maintenance requirements of the Rules.
10. After rising to consider the matter, we informed the parties that we had found a material error of law in the decision of the FTTJ, that being that his conclusions on the appellant's documents were bordering on the irrational. We therefore set aside his decision in relation to the reliability of the appellant's documents. There was no error in relation to his finding that the respondent had failed to discharge the burden of proof upon her to establish the use of deception in the appellant's application. Our reasons are as follows.
11. We noted the appellant's submission that his finances were strong and that he could provide a letter from the bank if necessary. Ms Fijiwala conceded that the date had been erroneously left off the appellant's documents and that the serial numbers of the certificates could be identified in the appellant's bank statement. She asked us to note what the FTTJ said regarding the appellant's account of his finances being "*a little confusing*," which she accepted was not a damning indictment. This was the only matter she could point us to.
12. There was only one issue before the FTTJ, that being whether the appellant had relied upon false documents in his application for further leave to remain. Having found that this had not been established, the FTTJ erred in dismissing the appeal on the basis that he could not rely upon the appellant's documents. We consider his findings to be irrational. We find that the FTTJ ought to have simply allowed the appeal after deciding the deception issue.
13. We also find that the reasons given by the FTTJ for finding the appellant's documents to be unreliable do not stand up to scrutiny. The first reason given was that the appellant had given "*contradictory evidence*." Yet, the FTTJ does not identify the contradictions and at paragraph 21 of the decision and reasons, he describes the appellant's oral evidence only as "*a little confusing*." We find that the FTTJ's confusion regarding when the appellant's bank account was opened, which according to paragraph 21, was resolved during the appellant's oral evidence, does not amount to "*inconsistencies*." As indicated above, Ms Fijiwala was unable to say much more about this part of the reasons.
14. The second reason provided by the FTTJ for finding the appellant's bank documents to be unreliable was that he had been unable to ascertain to whom the certificates were issued. As accepted by Ms Fijiwala, the serial numbers shown on the certificates were listed on the appellant's National Savings Centre bank statement and thus the information ascertainable on the certificates is consistent with the other bank documents.
15. The third and final reason given by the FTTJ is the lack of a complete date on the bank letter and statement. As indicated above, the copies the appellant provided with his application were complete; evidenced by the complete scanned copies printed off the respondent's database by Ms Fijiwala for the hearing before us.

16. The appellant was not at fault for the poorly copied documents before the FTTJ and it is unfair to criticise his documents for that reason. We heard no other submission as to why we should reject the appellant's National Savings Centre documentation and having examined the documents for ourselves, could see no reason to do so.
17. We could see no reason why we should not simply remake the decision and after inviting further submissions from the parties we did so.
18. We accordingly find that the appellant did not use deception in the application and that he provided reliable evidence of his funds. That evidence showed that the full date was provided on the documents, the certificates corresponded to the other bank documents and that there were no significant inconsistencies in the appellant's oral evidence.

Conclusions

- (1) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- (2) We set aside the decision.
- (3) We remake the decision by allowing the appeal under the Immigration Rules.

Signed:

Date: 19 July 2015

Deputy Upper Tribunal Judge Kamara