



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

Appeal Number: IA/32771/2014

THE IMMIGRATION ACTS

Heard at: Field House

Decision and Reasons

Promulgated

On: 9th June 2015

On: 11th November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary Of State For The Home Department

Appellant

and

**Mahmud Rahat Khan
(no anonymity direction made)**

Respondent

Representation:

For the Appellant: Ms Isherwood, Senior Home Office Presenting Officer

For the Respondent: Mr Hossain, Counsel instructed by Hossain Associates

DETERMINATION AND REASONS

1. The Respondent is a national of Bangladesh date of birth 30th November 1982. On the 12th December 2014 the First-tier Tribunal (Judge S Iqbal) allowed his appeal against a decision to refuse to vary his leave and to remove him from the United Kingdom pursuant to s47 of the Immigration Asylum and Nationality Act 2006. The Secretary of State now has permission¹ to appeal against that decision.

¹ Permission granted by First-tier Tribunal JM Holmes on the 27th January 2015.

2. The Respondent was in the UK with valid leave to remain as a Tier 4 (General) Student Migrant when he applied to vary that leave so as to extend it. The Secretary of State refused further leave. In a notice of decision dated 29th July 2014 it is alleged that a NCC bank statement submitted in support of the application (account ending 3395) “has been proven to be false”. The Secretary of State relied on a Document Verification Report dated 25th February 2014. This stated that on that date an officer based in the UK had contacted the Anderkilla Branch of the NCC bank. She used a number obtained from her office directory. The officer has recorded that the account name and number provided do not exist. She concludes:

“The bank representative confirmed that the bank records demonstrate that this account does not exist. So the bank certificate and bank statement are not issued by the said branch. Both are forged.

The information held by the bank differs from what is detailed in the information/documents that were provided in support of the application...”

The application was therefore refused with reference to paragraph 322(1A) of the Rules.

3. An appeal was brought to the First-tier Tribunal. The Respondent was not legally represented. He attended in person and gave evidence before Judge Iqbal. He averred that the letter and statement from the bank were genuine and that they related to an account held by his father. He had obtained two further letters from the bank since the DVR had been obtained. The bank had informed his father that no enquiry had ever been received. He was a genuine student who had no adverse immigration history since his arrival in 2006, and he had no cause to try and deceive the Secretary of State. The First-tier Tribunal considered that evidence, examined the impugned bank letter and statement, the two further letters purportedly from the bank, and the DVR. Having reminded herself that the burden of proof lay on the Secretary of State she made the following findings:

- i) The DVR is not fully detailed;
- ii) The number that the officer called has been redacted, as has the name of the official who supplied the information. It has not therefore been possible for the Respondent to check whether the enquiry was actually made, or whether it was made to the right branch;
- iii) The further letters confirm all of the details contained in the original statement/letter

It is also noted that the DVR names the account holder as ‘Abdul’ when in fact his name is ‘Abul’. The Judge was not satisfied that the Secretary of State had discharged the burden of proof upon her. The alleged forgery being the only matter in issue, she allowed the appeal.

4. The Secretary of State now has permission to appeal to the Upper Tribunal on the grounds that the reasons advanced in the determination do not actually explain why the weight to be attached to the DVR should be diminished. The rebuttal letters produced 'by the bank' were, by the Judge's own assessment "generalised" and contained grammatical errors. There are sound public policy reasons why names are redacted. The Judge has applied too high a standard of proof to the question of forgery: "it is entirely unclear why the Judge considers a DVR stating that a bank official has confirmed the bank account does not exist is inadequate to meet the standard, especially given the weak rebuttal evidence". In her submissions Ms Isherwood amplified these grounds by inviting me to find that the reasoning in the determination was perverse: an accusation of fraud could not rationally be rebutted by further fraudulent letters from the same source.
5. In response Mr Hossein agreed that the standard of proof was the civil standard of 'balance of probabilities', but relied on the same authority² that he had before the First-tier Tribunal, to submit that an accusation of deception must be proven with reference to cogent evidence. It was therefore right that the determination subject the DVR to scrutiny, and having found it lacking, the First-tier Tribunal had been entitled to reject it.

My Findings

6. Although the grounds are couched in terms of a general complaint about the First-tier Tribunal's findings, Ms Isherwood managed to distil from this three alleged errors of law.
7. The first is that the First-tier Tribunal applied too high a standard of proof to the allegation of forgery. I can find no evidence that this was the case. The reasoning indicates that the Tribunal considered the evidence before it and reached a decision, on balance. If any criticism can be levelled at the determination in this respect it is that paragraphs 10 and 13 make no mention of where this particular burden lies, simply noting that it is for the appellant to prove that he meets the requirements of the rules. Paragraph 19 does however make clear that the Judge understood that it is for the Secretary of State to prove that a document is false, and the appropriate standard to be applied: "the Respondent has failed to demonstrate that a false document has been submitted and therefore the Appellant is able to claim the required points". This ground is not made out.
8. The second ground is a reasons challenge: "the Judge has given no explanation as to why these issues reduce the weight to be attached to the DVR". This is not then, a submission that no reasons are given: it is plain from the face of the determination that reasons are advanced. Rather it is that the reasons are not logically capable of leading to the conclusion reached by the Judge. This is then Ms Isherwood's third error of law: perversity. She accepts that this is a high test: is this decision so

² Re B [2008] UKHL 35

unreasonable that no reasonable authority could ever have come to it³? At paragraph 16 the determination sets out a long list of criticisms made of the DVR. At paragraph 19 the Tribunal acknowledges that “a few of these do hold weight” and focusses on those points that the Judge considered to be particularly compelling. Chief amongst these is the fact that the name and telephone number of the branch are redacted, and that “this leaves room for error”. The point was that it is not possible to tell whether the officer in question contacted the right branch. Whilst this is not a reason that many Judges might adopt, it cannot be said that it was *irrational* for this Judge to do so. That is particularly so where it was one of a number of factors that the Judge took into account. This is not the decision that many Tribunals would have reached, but that does not mean that it was one that no reasonable decision-maker could have made.

Decisions

9. The determination contains no error of law and it is upheld.
10. I was not asked to make an order for anonymity and on the facts I see no reason to do so.

Deputy Upper Tribunal Judge Bruce
12th June 2015

³ Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, HL