



IAC-FH-AR-V1

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

Appeal Numbers: IA/37528/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd September 2015**

**Decision & Reasons Promulgated
On 21st October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**JASPREET SINGH GILL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms M. Chagger, Counsel instructed by French & Company
For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

The Appeal

1. This is an appeal against the decision promulgated on 5th January 2015 of First-tier Tribunal Judge Baldwin who refused the Appellant's appeal against the decision of the Respondent dated 3rd September 2014 to refuse the appellant's application for leave to remain on Article 8 grounds.
2. Judge Baldwin dismissed the appeal on the basis that, although Judge Baldwin was not satisfied that the Respondent had proved that the Appellant's English language Certificate was not genuine, Judge Baldwin

found that the Cambridge Regional college and ICICI Bank letter and bank statement had been shown to not be genuine. Judge Baldwin went on to find that 'there were no exceptional circumstances in this case and under Article 8 outside the Rules'.

3. Permission to appeal on error of law grounds was granted by Deputy Upper Tribunal Judge Chapman on 20th May 2015. This was on the basis that it was arguable that for the reasons set out in the grounds of appeal the Judge erred materially in law. The grounds of appeal are in essence: 1. That the Judge erred in relation to the issue of the false documentation; having found that the respondent had failed to prove that the English test certificate submitted with the application was not genuine, the judge was incorrect in his application of the forged Cambridge Regional College and ICICI bank documents to this application as the Suitability requirements indicate including at S-LTR.2.2:

'Whether to the applicant's knowledge-

(a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application), or

(b) there has been a failure to disclose material facts in relation to the application.'

4. It was the Appellant's case that as the Cambridge Regional College and ICICI Bank documents were not submitted in relation to this application (but to a previous Tier 4 application and thus did not fall foul of S-LTR2.2, the Judge should have disregarded this aspect of the Respondent's refusal.
5. Ground 2 asserted that the Appellant can meet the financial aspect of the Immigration Rules and the First-tier Tribunal failed to have regard to this aspect of Appendix FM (considering only the exception EX.1) and therefore erred in law.

Ground 2

6. Mr Clarke conceded that if the Appellant succeeded under Ground 1, then Ground 2 falls away. In addition Ground 2 also falls away if the appeal does not succeed on Ground 1 as Ground 2, in relation to the lack of consideration of the financial requirements of Appendix FM, can only be considered if the Appellant is found to meet all of the suitability criteria.

Ground 1

7. In relation to Ground 1 Ms Chagger submitted that having found that the burden of proof was not discharged by the Respondent in relation to the English language test certificate, it was clearly incorrect of the Judge to take into account the other forged documents as they did not relate to this application. Therefore she submitted that the Appellant met all the suitability requirements.

8. Mr Clarke referred me to the discretion exercised under S-LTR.2.2. Mr Clarke relied on the Judge's findings at paragraph 23 where he found that the documents submitted with the previous application were found to be not genuine and this has not been disputed by the Appellant. Mr Clarke referred me to the Respondent's bundle before the First-tier judge and in particular the application form completed by the Appellant (at Q33 of the bundle). Question 10.10 of the application form asks:

'10.10 Have you or any dependants who are applying with you ever engaged in any other activities which might indicate that you may not be considered to be persons of good character?'
9. The Appellant answered 'No' to this question. It was Mr Clarke's case that this goes to the question of materiality. The judge had also clearly found the Appellant's claim to have not been aware that these two documents were not genuine to be 'not credible'. The judge went on to find at paragraph 23 that:

'The deception he has been proved to have employed reflects badly on his credibility generally and causes me to find it unlikely that his claim, to have been unaware of his July 2013 Refusal of Student leave until September 2014, is genuine.'
10. Although therefore the judge makes no specific reference to question 10.10 of the application in his determination it is clear that he was aware that the Appellant had engaged in activities which 'might indicate that you may not be considered to be persons of good character'. It was Mr Clarke's case that it was open to the judge to exercise the discretion, in relation to the applicability of the suitability criteria at S-LTR.2.2 of Appendix FM, in relation to the Appellant's failure at question 10.10 of the application form to disclose the issue of the forged documents in respect of the previous application.
11. Ms Chagger was of the view that it is unclear at question 10.10 what the Secretary of State is looking for and speculated that it might be a criminal conviction. However that is incorrect as Question 10.1 of the application form specifically asks whether the application or any dependants have been convicted of any criminal offence in the UK or any other country and question 10.5 deals with any charges for criminal offences not yet tried. The questions asked at section 10 of the application form are sufficiently wide-ranging for Question 10.10 to encompass the Appellant's activity in relying on forged documents in a previous application.
12. It was Mr Clarke's submission in the alternative if there was an error of law in the judge's consideration of this issue, then he submitted that any remaking should involve an exercise of that discretion and a dismissal of the Appellant's appeal on the grounds of suitability due to his withholding of the information in relation to the previous forgeries in his application form.
13. Although the judge did, in my findings, make clear findings in relation to the forged documentation (submitted with the previous application) and

the Appellant's lack of credibility, it cannot be said that the judge took this into consideration specifically in relation to the suitability requirements of Appendix FM as the judge relied on the respondent's bundle including the refusal letter which relied only on the English language test in considering suitability. I am satisfied that in so far as the judge failed to specifically deal with the requirements of S-LTR.2.2, and the fact that the English language test was not proved to be false meant that S-LTR.2.2(a) could not be met with reference to the previously forged documents, the judge fell into material error. I therefore set aside the judge's findings in relation to S-LTR.2.2.

14. However, I preserve all of the judge's remaining findings including in relation to the forged documents in respect of the previous application and the findings in relation to the Appellant's lack of credibility.
15. I remake the decision and relying on the judge's finding of fact (as noted above these credibility findings were not challenged) I find that the Appellant does not fall foul of S-LTR.2.2(a) in relation to the document submitted with the application, the English language test, as this has not been proved to be not genuine.
16. However relying on those findings of fact and on credibility, in relation to the Appellant's failure to disclose in his application, at Question 10.10, that he had previously submitted forged documents with an earlier application, I am satisfied that S-LTR.2.2(a) applies. This is because the Appellant has submitted false information/representations in his application in answering 'no' to Question 10.10. Further and in the alternative, S-LTR.2.2(b) applies, as there has been a failure to disclose material facts in relation to the application, in failing to disclose the information about the earlier forged documents.
17. As the Appellant's appeal fails on suitability grounds I need not go on to consider the financial requirements of Appendix FM. I further preserve the judge's findings (which again were not challenged) in relation to Article 8 both within and outside of the Immigration Rules.

Notice of Decision

18. The decision of the First-tier Tribunal contained an error of law. I remake the decision dismissing the Appellant's appeal.

Anonymity

19. No anonymity direction was sought or made either before the First-tier Tribunal or the Upper Tribunal.

Signed

Date: 29 September 2015

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

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

Signed

Date: 29 September 2015

Deputy Upper Tribunal Judge Hutchinson