**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA100862015

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 27th May 2016** | **On 9th June 2016** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**MR SUJIT PRASAD SHAH**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Abbas, Counsel, instructed by Imperium Group Immigration Specialists
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Kimnell sitting at Harmondsworth on 20 August 2015) dismissing his appeal against the decision by the respondent to refuse to vary his leave to

remain in the United Kingdom, and to give directions for his removal under Section 47 of the Immigration, Asylum and Nationality Act 2006. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

**The Reasons for Granting Permission**

2. On 12 April 2016 Judge Pooler gave his reasons for granting the appellant permission to appeal:

> "2. The application for permission was made in time and submits that the judge erred in law by failing to make findings in respect of an allegation that the appellant had used a false document.
>
> 3. The judge considered that it was unnecessary to make findings in relation to the allegation of deception because the respondent had not decided a Tier 2 application with which the document in question was submitted. However, it is clear from the refusal letter of 13 February 2015 that the respondent relied on S-LTR.2.2, the consequences of which were potentially serious for the appellant insofar as he might in future be unable to obtain entry clearance. Arguably the judge failed to take into account and/or resolve conflicts of fact on material matters.
>
> 4. It is entirely possible that the Upper Tribunal will not, if it finds there to be a material error of law, re-decide the appeal in favour of the appellant; but the grounds relating to the issue of deception and the long-term consequences for the appellant of such a finding warrant the grant of permission."

**Relevant Background**

3. The appellant is a national of Nepal, whose date of birth is 5 March 1987. He arrived in the United Kingdom on 14 September 2009 with valid entry clearance as a student. He remained in the United Kingdom with valid leave as a student until 31 July 2014. He made an in-time application for further leave to remain as a Tier 2 Migrant. He relied on a certificate of sponsorship from N Peal Retail Limited, sponsor licence number FA8RZSG3W, which had been assigned to him on 9 June 2014.

4. On a date which is not apparent from the document at E1 of the Home Office bundle, the Home Office carried out a check on the certificate of sponsorship. The Home Office found that the COS did not exist on the COS checker. The sponsor was on the sponsorship management system, and the sponsor's licence number was X366DDB58.

5. On 6 November 2014 the appellant wrote to the Home Office to say that he wanted to vary his application for leave to remain. Instead of proceeding with his Tier 2 application, he wished to make an application for leave to remain under a form FLR(O). In a follow up letter dated 7 November 2014, his representatives explained that the appellant now wished to do a research degree and had applied to Leeds University Business School for this purpose, as well as to Anglia Ruskin University.

In order to obtain a CAS letter, the appellant needed to be successful in his FLR(O) visa application.

6. On 13 February 2015 the Secretary of State gave her reasons for refusing the application made using the FLR(O) form. In his previous Tier 2 application for leave to remain, he had submitted a certificate of sponsorship printout purporting to have been issued by N Peal Retail Limited which clearly displayed certificate reference number of FA8RZSG3W. She was satisfied the document was false because the UK Visas and Immigration sponsor investigations team confirmed the certificate number in question did not appear when cross-checked on their systems. As he had submitted a false document in relation to an application, the Secretary of State was not satisfied that he met the requirements of S-LTR.2.2(a). In view of this, the Secretary of State was not satisfied he could meet the requirements of Rule 276ADE(1)(i).

7. He had entered the United Kingdom on 14 September 2009 and had not lived continuously in the UK for at least twenty years, and so he did not meet the requirements of Rule 276ADE(1)(iii).

8. Having spent 22 years in Nepal, and having stated his parents and siblings still live there, in the absence of any evidence to the contrary, it was not accepted in the period of time that he had been in the United Kingdom he had lost ties to his home country and therefore the Secretary of State was not satisfied that he could meet the requirements of Rule 276ADE(1)(vi).

9. A decision had also been made on exceptional circumstances. He claimed he needed to stay in the United Kingdom to arrange admission to a university to undertake a research degree. He did not need to make his applications from within the UK. If he wished to, he can continue with his applications from Nepal. If admitted onto a university course, it would then be open to him to apply for entry clearance to the UK under the current route, if he believed he met the Immigration Rules. He had completed five years of study in the UK and he could now use this education to help him find employment or undertake further study in his home country. The UK was not under an obligation to support him in arranging to undertake higher education.

10. He had shown he was able to support himself through employment in the UK. There was no reason therefore why he could not continue to support himself in his home country where he would be legally able to be employed. His immediate family also lived in Nepal, and they would be able to support him with his reintegration on his return.

11. He had provided no compelling or compassionate reasons why he should be granted leave to remain outside the Rules, and the Secretary of State was therefore not prepared to exercise discretion in his favour.

**The Hearing Before, and the Decision of, the First-tier Tribunal**

12. Both parties were legally represented before Judge Kimnell. For the purposes of the appeal hearing, the appellant's legal representatives compiled a bundle of documents which contained correspondence between the appellant and Action Fraud, which is the UK's national reporting centre for fraud and internet crime operated by the City of London Police. In a letter dated 12 September 2014 the director of Action Fraud wrote to the appellant, saying he was sorry to hear he had been a victim of a crime, and thanking him for taking time to report the matter to Action Fraud. He gave him a national crime reference number. In a follow up letter dated 31 October 2014, the director said that experts at the National Fraud Intelligence Bureau had reviewed the information and had found enough evidence for a possible police investigation. So his report had been sent to the Metropolitan Police in Harrow. On 27 November 2014 PC Cameron e-mailed the appellant to say that he had looked at his crime report which was currently being investigated by T D C Quraishi. The investigation was very in depth and complicated. He was therefore forwarding his e-mail to T D C Quraishi for him to make contact with him.

13. In his witness statement for the appeal hearing, the appellant said that he had been duped by Amita Solutions, who had marketed themselves as upmarket recruitment consultants. Amita Solutions had charged him £8,000 as an introduction fee, and he had signed an employment contract with N Peal Retail Limited on 9 June 2014 when he visited their office. When he later found that he had been conned into a scam by criminals, he contacted Action Fraud to report the matter on 12 September 2014. If he had not been conned by Amita Solutions, he would have focused on completing his research degree. As a result of the wrongful allegation of deception in the refusal letter, he had lost an important right to make a fresh application to the respondent because his application was going to be refused under the general grounds of refusal. So he requested the court to make a finding that the allegation of deception was not maintainable, and to allow his appeal with a grant of 60 days' leave to enable him to obtain a CAS letter from a university.

14. In his subsequent decision, Judge Kimnell noted at paragraph [14] that Mr Uppal, Counsel for the appellant, submitted that the appellant did not rely on Article 8 or Rule 276ADE. At paragraph [16], he said if it were relevant in this case, the burden would be on the respondent to prove that a document submitted with an application was false. But because the Tier 2 application was never decided, the allegation of falsehood was not material. There was no evidence on which he could make a finding, even if it were necessary to do so in order to determine this appeal. The appellant appeared to acknowledge that the document he submitted was false, although he had no knowledge of the falsehood. It was not necessary for him to make a finding on that point, and he did not do so.

15. The judge continued in paragraph [17]:

> "As to the current application it is very difficult to identify any ground on which it can succeed. Mr Uppal said the decision was not in accordance with the law, but that has not been demonstrated. The appellant has claimed he does not rely on Article 8 ECHR

> but invites a favourable decision from the Tribunal on compassionate grounds. However, the Tribunal has no jurisdiction to do that, even if compassionate grounds could be made out which, on the evidence, in this case they are not."

16. In paragraph [18] the judge held that Article 8 was not engaged, and that he did not have jurisdiction to allow the appeal, "with the grant of 60 days' leave to find a CAS letter from a university". The Tribunal did not have jurisdiction to make such a decision unless one of the legal grounds specified in Section 82, as amended, was made out, which in this case was not the position. The judge continued in paragraph [19]:

> "The appellant appears perfectly genuine judging by his acknowledgement in evidence that there is nothing to prevent him from making a further application from abroad; he merely finds it convenient to make a new application from the UK, whatever the personal merits of the appellant but the appeal has no merit at all and is dismissed."

**Rule 24 Response**

17. On 6 May 2016 a member of the Specialist Appeals Team settled a Rule 24 response opposing the appeal. In summary, it was contended that the Judge of the First-tier Tribunal had directed himself appropriately. In the event that the appellant was to make an application from abroad, it would be open to him to adduce evidence to demonstrate that he was the victim of a scam and therefore his application should not be refused under the general grounds for refusal.

**The Hearing in the Upper Tribunal**

18. At the hearing before me, Mr Abbas explained that a number of people had been the victims of fraud perpetrated by Amita Solutions, and a group of them were pursuing statutory appeals in the First-tier Tribunal against decisions by the Secretary of State to refuse to grant them leave to remain. Upon further inquiry, it became apparent that a distinguishing feature in their cases was that they had informed the Home Office that they were victims of fraud *before* the Home Office made a decision on their respective applications. Mr Abbas agreed that the appellant had not relied on such a claim when varying his application. He submitted that this was not fatal, as the evidence put before the First-tier Tribunal showed in retrospect that the exercise of discretion by the Secretary of State was flawed. He relied on the case of **Aliu and Another [2014] EWHC 3919 (Admin)**, a decision of Judge Grubb sitting as a Deputy High Court Judge.

**Discussion**

19. It appears that the case advanced before the First-tier Tribunal by appellant's Counsel was solely that the decision appealed against was not in accordance with the law. There was however no evidential basis for this case, as there was no attempt to prove that the Secretary of State was aware at the date of decision that the appellant was claiming to be an innocent victim of fraud. All the Secretary of State knew when making the decision was that the certificate of sponsorship which had been relied on in support of the previous Tier 2 application was false. In the circumstances, there

was nothing in the decision under the Rules which the Secretary of State wrongly took into account or wrongly omitted to take into account. Similarly, when the Secretary of State went on to consider whether there are exceptional circumstances to justify discretion being exercised in the appellant's favour outside the Rules, there was nothing which the Secretary of State wrongly omitted to take into account. In order for the Secretary of State's decision to be unlawful, the Secretary of State had to be in possession of the relevant information at the time of making the decision. So no error of law is disclosed by the judge rejecting Mr Uppal's submission that the decision was not in accordance with the law. On the contrary, this was the only finding that was open to the judge on the evidence that had been put before him.

20. Mr Uppal made it clear the appellant was not pursuing an Article 8 claim either under the Rules or outside the Rules. Accordingly, it was open to the judge not to make a finding on the question of whether the appellant was complicit in the false certificate of sponsorship on the ground that it was immaterial. It was immaterial because, even if the appellant's evidence was accepted, it did not retrospectively convert a lawful immigration decision by the Secretary of State into an unlawful one.

21. It was also immaterial for another reason, which is that the appellant did not qualify for leave to remain on private life grounds under Rule 276ADE in any event.

22. In short, the judge reasonably exercised discretion in choosing not to make a finding on an issue which he did not need to determine in order to resolve whether the appeal should be allowed or dismissed. As submitted in the Rule 24 response, the appellant can bring forward evidence that he was not complicit in the false certificate of sponsorship in any further application which he may choose to make.

**Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed Date 9th June 2016

Deputy Upper Tribunal Judge