IAC-AH-CJ-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/36050/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 12th February 2016	**On 18th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR CHIKKU VARGHESE
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No attendance
For the Respondent: Mr D Clarke

DECISION AND REASONS

1. The Appellant is a citizen of India born on 13th May 1991. The Appellant entered the United Kingdom on 25th May 2011 as a Tier 4 (General) Student with valid entry clearance until 30th September 2013. This entry clearance was extended until 31st December 2015. The Appellant

contends that he requested permission from his college, London St. Andrew's College, to travel to India in April 2014 due to his father allegedly being taken seriously ill. However the Appellant did not depart from the UK until 12th June 2014 as the Appellant contends he was helping his friend Sreeja Rajendra, to obtain a new passport.

2. On 3rd September 2014, when the Appellant returned to the UK, the port officer acting in his capacity as the representative of the Respondent, cancelled the Appellant's leave to remain alleging that the Appellant had employed false representation in his previous application for leave to remain and that the Respondent was satisfied that the Appellant used TOEIC obtained fraudulently. Further it was also alleged that the Appellant had not undertaken his studies at London St. Andrew's College.

3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Kainth sitting at Richmond on 31st July 2015. In a decision and reasons promulgated on 20th August 2015 the Appellant's appeal was dismissed.

4. On 2nd September 2015 Grounds of Appeal were lodged to the Upper Tribunal. On 31st December 2015 Judge of the First-tier Tribunal Pooler granted permission to appeal. He noted that the application for permission was made in time and that it was submitted that the judge had erred in law by dismissing the appeal without scrutiny and failing to appreciate the standard of evidence required; failing to make clear findings; and relying on documentary evidence submitted on the date of the hearing. Judge Pooler considered that it was arguable that the judge had erred in law noting that the judge had stated at paragraph 70 that he did not think it appropriate to dissect in any great detail the statements upon which the Respondent relied as evidence that the Appellant had employed deception; and at paragraph 23 that the judge appeared to do no more than adopt the Respondent's analysis of and reasons for the decision. Further at paragraph 18 Judge Pooler noted that the First-tier Tribunal Judge had referred in general terms to concerns of the widespread use of fraud, relying on evidence adduced by the Respondent in the hearing at which the Appellant, who was then unrepresented, had no warning. He considered arguably that the judge had failed to make findings on matters in issue, failed to give adequate reasons, and committed a procedural irregularity which resulted in unfairness and/or misdirected himself in law.

5. On 7th January 2016 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Respondent opposes the Appellant's appeal and submits inter alia that the Judge of the First-tier Tribunal directed himself appropriately. In the substantive paragraph of the Rule 24 response, the Secretary of State contends that the Appellant's ETS language certificate was declared by the Educational Testing Service to be invalid. The Secretary of State contends that the judge considered this incontrovertible evidence with other relevant evidence and in the light of

relevant case law arrived at the conclusion which was, on the evidence presented, open to him.

6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. The Appellant does not attend. There is however produced to me a letter by his instructed solicitors, Legend, dated 11th February 2016 stating that due to financial stringency the Appellant is not in a position to attend the hearing personally and that they have been instructed by their client to ask that the matter be dealt with on the papers. Quite properly the clerk to the Tribunal responded, advising that the matter would remain in the list so that the Home Office representatives could make oral submissions. There are no further written representations made on behalf of the Appellant. Whilst I appreciate that he may not personally be in the financial position to instruct solicitors, the fact remains that he has chosen personally not to attend. In such circumstances I consider the Grounds of Appeal as being his submissions in this matter.

Submissions/Discussion

7. Mr Clarke takes me to the Grounds of Appeal and points out that they raise issues that were never before the First-tier Tribunal and that this is an attempt to re-litigate the matter. He takes me to the decision of the First-tier Tribunal Judge which at paragraphs 16 and 17 set out the evidence of the Respondent that is relied upon, this being the statements of Rebecca Collings and Peter Millington. These statements have been used in many appeals. Mr Clarke points out to me that that evidence is not objected to. What he submits is now raised are issues that would not in any way discharge the findings of the First-tier Tribunal.

8. So far as there is a challenge made to the evidence at interview, he submits that that has been very thoroughly dealt with and, to use Mr Clarke's words, "– the Appellant was all over the place". He points out that the judge could only rely on the evidence that was before him and I am referred to the decision of *R (On the application of Gazi) v the Secretary of State for the Home Department (ETS – judicial review) IJR [2015] UKUT 00327 (IAC)*. He submits that considering the facts of this matter there was enough evidence for the Respondent to issue a Section 10 notice to the high degree of probability in connection with their own policy. He takes me to the evidence in the hearing, particularly paragraphs 11 to 13 as recorded by the judge, and the criticisms expressed therein. In such circumstances he submits that the Appellant's case has not been made out and he asked me to find no material error of law.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational

conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Case Law

11. *R (On the application of Gazi) v the Secretary of State for the Home Department (ETS – judicial review) IJR [2015] UKUT 00327 (IAC)* is authority for stating that a challenge to the strength and quality of the evidence underpinning the Secretary of State's decision to remove a student from the United Kingdom under Section 10 of the Immigration and Asylum Act 1999, on the ground of fraud in procuring a TOEIC English language qualification, is best suited to the fact-finding forum of the First-tier Tribunal and is unsuitable for determination by an application for judicial review.

12. As the president of the Tribunal quoted therein, the evidence must always prove to a high degree of probability that deception has been used to gain the leave, whether or not an admission of deception is made. The onus – as always in such situations – is on the officer making the assertion to prove his case.

13. The Tribunal must evaluate and determine the applicant's improper purpose challenge by reference to the material presumptively considered by or available to the decision-maker when the impugned decision was made. The Tribunal has to be satisfied that the evidence upon which the impugned decision was made has the hallmarks of care, thoroughness, underlying expertise and sufficient reliability.

Findings

14. It is against that background that I have to consider whether or not there has been a material error of law in the decision of the First-tier Tribunal

Judge. I emphasise that I am not rehearing the appeal. I have given full and detailed consideration to the Grounds of Appeal and I am not persuaded that those grounds show that there has been any material error of law in the decision of the First-tier Tribunal Judge.

15. This is a judge who has given very careful consideration to the evidence as produced and has made strong criticisms at paragraphs 11 to 13 as to the inconsistencies in the Appellant's testimony. The judge has then gone on to consider the law and the generic evidence produced by the Secretary of State at paragraphs 16 to 17.

16. There is no further evidence produced whatsoever to even try and remotely persuade me that the judge has not made findings that he was not entitled to. Indeed for reasons best known to himself, the Appellant has chosen not to personally attend. I acknowledge that he claims that this is for financial reasons but that cannot explain his own personal failure to attend. It may well explain his failure to be able to instruct solicitors.

17. I am satisfied having given anxious scrutiny to the decision of the First-tier Tribunal Judge that it is well-reasoned and that the judge has made clear findings which he was entitled to. The submissions and arguments in the Grounds of Appeal put forward amount to little more than an attempt to disagree with the finding of the First-tier Tribunal Judge and to re-argue the case. In such circumstances there is no material error of law disclosed in the decision of the First-tier Tribunal Judge and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris