



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

Appeal Number: IA/29910/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 15th June 2017**

**Decision & Reasons Promulgated
On 27th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MRS BUSHRA NAZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal (Counsel)

For the Respondent: Mr P Singh (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge R Scott, promulgated on 28th October 2016, following a hearing at Taylor House on 13th September 2016. In the determination, the judge dismissed the appeal of the Appellant whereby the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Pakistan, who was born on 4th April 1983. She appealed against the decision of the Respondent dated 17th August 2015, refusing her further leave to remain in the UK as a Tier 2 (General) Student under paragraphs 245HD(b) and (f) and paragraph 322(2) of the Immigration Rules. The reason she was refused was that she had made a false representation for the purpose of obtaining leave to remain.

The Appellant's Case

3. The Appellant's case is that she was originally granted leave to enter the UK as a student in 2008, and this was extended thereafter when she had made a series of applications. She accepts that the documents now submitted were fraudulent. However, she denies that she herself is guilty of deception. She states that, without her knowledge or agreement, a Mr Masood and/or CK Solicitors, exercised deception. Mr Masood was an immigration consultant, and he had advised the Appellant that she could qualify as a student migrant. The Appellant paid him a fee and gave him the documents that he had asked for, which included her passport, two photographs, and previous education certificate. Mr Masood also took signatures on the blank page of the application form for him to complete by himself. He did not disclose the name of the firm of solicitors.
4. When in October 2011, the Appellant received a refusal of her application, the basis of this was that the documents submitted were not genuine, and so the Appellant arranged to see Mr Masood at CK Solicitors' office. CK Solicitors said that they had not submitted any false documents. She accepted this explanation. They also told her that the refusal decision carried no right of appeal. She therefore submitted a fresh application. Mr Masood then submitted this new application through his own consultancy, Ebiz Consulting Limited. That application was also refused.
5. The decision, however, made no reference to the previous refusal or deception. She made another application. This was done through another firm of solicitors. It was also rejected. When the Appellant challenged that decision by judicial review, the deception emerged. The Appellant states that she has no knowledge of false documents being submitted and the signatures were not her signatures. They were arranged and submitted without her knowledge. She subsequently went on to lodge a complaint with the Solicitors Regulatory Authority. She also lodged a complaint with the Immigration Services Commissioner.
6. At the hearing before Judge Scott, the Home Office Presenting Officer commented on the slowness of the Appellant to respond. She took a while to complain of the deception in August 2015. She did not seek the documents mentioned until almost a year later in June 2016. These were not the actions of someone who was genuinely a victim of fraud. The only evidence that the deception was not wilfully exercised by the Appellant

was the Appellant's own word. It could not be relied upon. As far as signatures are concerned, these change. Judge Scott accepted that signatures do change after a while (see paragraph 37).

7. The judge went on to hold that, as far as the Appellant's lack of knowledge is concerned in the deception, "even if I were to accept that, it does not take the Appellant any further, since it is irrelevant whether she personally was involved in or knew of, the deception. What matters is that it was done on her behalf" (paragraph 41).
8. In coming to this conclusion, the judge placed reliance upon paragraph 322 of HC 395 which states that "a refusal can be made on false representations made in an application, whether or not to the applicant's knowledge".
9. The appeal was dismissed.

Grounds of Appeal

10. The grounds of application state that the Grounds of Appeal allege that, although the Appellant accepts that she cannot succeed under the Immigration Rules because her Sponsor had not completed the Resident Labour Market Test, she wished to pursue her appeal in an attempt to establish that she had no knowledge of the deception, which she accepted had taken place, when the documents were submitted by her representative, falsely representing that she was self-employed when she was not. She claims that she has been an innocent victim of fraud. On 5th May 2017, permission to appeal was granted on the basis that the case of **AA [2010] EWCA Civ 773** required there to be established dishonesty on the part of the applicant.

Submissions

11. At the hearing before me on 15th June 2017, Mr Iqbal, appearing on behalf of the Appellant, made the following submissions. First, he stated that it was incumbent upon the judge, in the light of the decision in **AA [2010] EWCA Civ 773**, to actually make a finding as to whether or not the Appellant had been dishonest. The judge had not done so, but had rather concluded that, "even if I were to accept that, it does not take the Appellant any further, since it is irrelevant whether she personally was involved in, or knew of, the deception" (paragraph 41).
12. Second, Mr Iqbal took me to the development of the jurisprudence since that case, most notably in the Scottish judgment of **SJL (AP) [2012] CSOH 93**. In that case, the court held that, "the mere fact that false pay slips were submitted" by the fraudster immigration consultant, "is not in my opinion relevant if the petitioner in fact had no knowledge of the deception" (see paragraph 23).

13. Third, in this case the Appellant has been so concerned to clear her name that she has even reported the fraud to the Solicitors Regulatory Authority and the Immigration Services Commissioner.
14. Fourth, the suggestion that it is not relevant, whether the Appellant had knowledge of the deception, had already been run as an argument in the case of **AA [2010] EWCA Civ 773** (see paragraph 5) and had been rejected, and so should not figure as an argument again hereafter.
15. For his part, Mr Sing submitted that the Rules were clear, namely, that the knowledge of the applicant was irrelevant to the exercise of deception. Second, the case of **SJL (AP)** involved deception by a convicted fraudster. This was not the case here.
16. In his reply, Mr Iqbal submitted that it was incumbent upon the judge to have made a clear finding at paragraph 41 as to whether or not the Appellant was guilty of fraud. It was not enough to say that, "it is irrelevant whether she personally was involved". There had to be a finding. The burden of proof in relation to the fraud rested on the Secretary of State. Second, there was an insufficient finding in relation to whether the Appellant's signature had been forged by the immigration consultant previously. There was now before this Tribunal an expert report from a "forensic examiner of handwriting and questioned documents" by the name of a Michael Handy, dated 9th June 2017 which had been served on the Tribunal yesterday, and also served on the Home Office Presenting Officer, and this report made it clear that, after examination of all the documents, that there was "strong evidence to support the proposition that Bushra Naz did not sign the three questioned documents (see paragraph 23). Given this, submitted Mr Iqbal, the conclusion arrived at by the judge, that signatures change anyway and matters are not taken any further, because in this case, "the signatures do not appear to be very different" (paragraph 37), was insufficient. There was an error of law here as well.

Error of Law

17. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and re-make the decision. My reasons are as follows.
18. First, as has been made clear both in the case of **AA [2010] EWCA Civ 773**, and subsequently in **SJL (AP) [2012] CSOH 93**, there has to be a finding as to whether the Appellant has been involved in fraud or deception, because as the judge made clear these "are very serious allegations, and if proven have potential to affect an individual's future prospects" (paragraph 40). Given this, the judge ought to have made a finding of there being fraud or not, as the case may be, at paragraph 41. The failure to do so, the burden of which rested upon the Respondent, led to an error of law.

19. Second, it is not enough to say that the signatures on the documents “do not appear to be very different” (paragraph 37). If the Appellant is denying all culpability in terms of fraudulent conduct, and the burden rests upon the Respondent, and there is moreover, at this hearing today an expert report from Michael Handy, confirming that there was “strong evidence to support the proposition that Bushra Naz did not sign the three questioned documents”.
20. Given these errors, the appropriate course of action can only be that this matter is remitted back to the First-tier Tribunal for there to be a finding on these matters specifically, and in re-making the decision, I remit the matter back to the First-tier Tribunal.

Notice of Decision

21. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal under Practice Statement 7.2(b) to be determined by a judge other than Judge R Scott.
22. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

26th June 2017