



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10224/2018

THE IMMIGRATION ACT

Heard at Civil Justice Centre Manchester
On 29th April 2019

Decision & Reasons Promulgated
On 02nd May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mr Idris Arshad Mahmood
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed instructed by Auua Solicitors
For the Respondent: Mr Tan, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge T R Smith promulgated on the 29th November 2018 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on Article 8 of the ECHR.
2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.

3. Leave to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Kamara on 1st March 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

Factual background

4. The appellant is a national of Iraq. Having entered the United Kingdom the appellant was granted discretionary leave on 21 October 2011 valid until 20 October 2014.
5. The appellant applied for his leave to be extended on 1 October 2014. That application was granted on 26 April 2015 until 25 April 2018.
6. On 10 April 2018 the appellant made application for indefinite leave to remain in the United Kingdom on the basis of his having completed 6 years discretionary leave to remain.
7. As part of the documentation in support of his application the appellant had submitted a Life in the UK Test Pass Notification Letter (the letter). It has to be noted that the appellant need not have submitted such a letter as it was not a requirement under the rules for the application made.
8. The respondent refused the appellant's application by decision dated 18 April 2018. The respondent had conducted enquiries into the letter and was satisfied that the letter had been obtained fraudulently. The appellant's application was therefore refused under paragraph 322(1A). Paragraph 322 (1A) provides: -

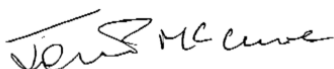
Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused.

(1A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed in relation to the application or in order to obtain documents from the Secretary of State or a third-party required in support of the application.
9. The appellant appealed against the decision. The appeal was heard by Judge Smith on 8 November 2018. Judge Smith dismissed the appeal by decision promulgated on 29 November 2018.
10. The appellant's representative indicated at the outset of the proceedings before me that he had not had sight of the notes of evidence given before the First-tier Tribunal. He seemed to be suggesting that there may have been some confusion in some of the evidence. That appears to be nothing more than speculation in the absence of the record of the evidence. The judge has clearly noted down the material parts of the evidence before him, carefully setting out the factual basis for the decision reached.

11. In seeking to challenge the decision of Judge Smith the appellant asserts that the judge has failed to give anxious scrutiny to the appellant's account; failed to consider the material evidence in the round; and taken immaterial matters into consideration. The appellant's representative accepted in the circumstances that the issue was the credibility of the appellant's account.
12. The judge has made a number of findings to the benefit of the appellant, see paragraphs 33 to 39. The judge from paragraph 41 onwards sets out the evidence that had been presented to him. The judge notes in paragraph 41 that the appellant accepted that he had not taken the test at the test centre originally bought. The circumstances are set out in paragraph 42 where the appellant was taken to another centre. The appellant otherwise had admitted that on the day he had paid £350 for intensive coaching of an hour and for the certificate.
13. In the decision the judge noted that the appellant had undertaken coaching sessions in order to prepare for the test. It is noted that the appellant paid £300 a significant amount of money for the coaching sessions and that those lessons could be unlimited until the appellant pass the test. However on the day of the test the appellant had paid £350 for a one hour intensive coaching session and the letter.
14. The judge then goes on to give reasons for finding that it was obvious on the basis of the appellant's account not only did the appellant believe he needed the letter but also that he knew that the person to whom he was paying the money was not employed by Learn Direct. The judge has carefully looked at the evidence given and given valid reasons for finding that the letter produced by the appellant was not genuine and that the appellant knew that it was not genuine. The judge has concluded that the appellants claim to be the innocent victim of fraud was not in the circumstances credible. The judge has given valid reasons for finding the appellant knew that the letter was a fraud and that what he was doing was dishonest.
15. The judge has given valid reasons for coming to the conclusion that he has. There is no arguable error of law in the decision. The decision therefore stands.

Decision

16. I dismiss the appeal on all grounds.



Signed

Deputy Upper Tribunal Judge McClure

Date 30th April 2019