



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/24684/2016

THE IMMIGRATION ACTS

Heard at Field House
On 9th January 2019

Decision & Reasons Promulgated
On 1st February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MISS FAIZA JABEEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal, Counsel, London View Chambers

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Pakistan, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 24th October 2016 refusing her application for indefinite leave to remain in the UK on the basis of ten years' long residence. First-tier Tribunal Judge Beg dismissed the appeal in a decision promulgated on 16th May 2018. The Appellant appeals to this Tribunal with permission granted by Upper Tribunal Judge Pitt on 26th November 2018.
2. The background to this appeal is that the Appellant first entered the UK on 13th August 2006 with leave to remain as a student and further applications for leave to

remain were granted until 30th October 2014. Her application for further leave to remain as a Tier 4 (General) Student made on 30th October 2014 was refused. An appeal against that decision was dismissed for want of jurisdiction and the Secretary of State undertook an administrative review and maintained the original decision on 13th July 2016. The Appellant applied for leave to remain on the basis of her long residence on 2nd April 2016. The Secretary of State refused that application under paragraph 322(2) of the Immigration Rules because the Appellant had submitted a false CAS statement in connection with her application of 30th October 2014. The application was further refused under paragraph 322(1A) of the Rules on the basis that deception was used in the current application. The Secretary of State considered the application under paragraph 276B of the Rules but refused it on the basis that the Appellant fell for refusal under the general grounds and in the public interest. Her application was considered under paragraph 276ADE(1) of the Rules but was refused because she did not meet the suitability requirements on the basis of the submission of the false CAS statement.

3. First-tier Tribunal Judge Beg heard oral evidence from the Appellant and considered the documentary evidence. The judge made a number of findings in relation to the Appellant's credibility and the documents and concluded that the Appellant employed dishonesty in submitting a false CAS and dismissed the appeal.
4. At the outset of the hearing before me Ms Everett properly accepted that paragraph 3 of the grant of permission to appeal by Upper Tribunal Judge Pitt contained a typographical error. At paragraph 3 Judge Pitt stated that the Grounds of Appeal do not have merit. However, this is clearly a typographical error in light of the contents of paragraphs 1 and 2 and that at the top of the notice of decision it is stated that the application is granted.
5. It was in essence the Appellant's case before the First-tier Tribunal that, although accepting that the CAS submitted with her application of 30th October 2014 was not valid, the appellant contended that she did not practise deception as she dealt with a solicitor and representatives in good faith understanding that a valid CAS was obtained for her. In essence, she was contending that she paid money for a CAS and legitimately thought it was genuine, accordingly she contended that she did not use deception.
6. In the Grounds of Appeal and at the hearing Mr Iqbal put forward three grounds. It is contended in the first ground that First-tier Tribunal Judge Beg's decision is inconsistent in that there are inconsistencies between paragraph 21 and paragraph 27. It is contended that this inconsistency goes to the heart of the appeal and as a result the findings are unsustainable.
7. At paragraph 21 the First-tier Tribunal Judge said:

"I do not find it credible that the Appellant, an intelligent and educated woman, would not think to make a PhD application herself directly to the college rather than through a consultant. There is no credible evidence that the Appellant previously used the services of Ms Gill when she applied for an MBA at Anglia Ruskin University. If she did use the services of Ms Gill, that raises serious

questions about whether that course and qualification was genuine. There is no credible documentary evidence before me that Bedfordian Business School had a contractual arrangement with Ms Gill and paid her a commission for every student on whose behalf she made an application. I find that the Appellant has been unable to produce an agreement between herself and Ms Gill”.

8. At paragraph 27 the judge found:

“... In considering the evidence as a whole, I find that the Appellant clearly employed dishonesty in submitting a false CAS. I find that she had an arrangement with the college and with Ms Gill to provide a sum of money to obtain a false CAS. The Appellant was aware that the Home Office would check the authenticity of the CAS and considered that the college would support her by stating that it was a genuine CAS. For reasons known only to the college, the college decided not to confirm the CAS as genuine, possibly because it feared that it would be found out and there would be wider repercussions. I do not find it credible that any genuine student would pay £3,800 without a receipt from the college. ...”.

9. It is contended that at paragraph 21 the judge did not accept any link between Ms Gill and the college, but in paragraph 27 she found that the Appellant, Ms Gill and the college all acted together and fraudulently and that this is an inconsistency.
10. I do not accept that there is any inconsistency as between these two paragraphs. At paragraph 21 the judge did not accept that there is a contractual relationship between the college, Ms Gill and the Appellant of the kind claimed by the Appellant in her evidence. The judge found that there is no evidence of any legitimate contractual relationship between Ms Gill and the college. The judge noted that the Appellant said in oral evidence that she did not pay any fees to Ms Gill for the services she was claiming Ms Gill was providing because Ms Gill receives commission from the college and that Mr Robin with whom she also dealt was a college employee and told her that he was a college consultant. She said that she paid course fees to Ms Gill and did not ask Ms Gill for a letter to explain her set up and how she works. This is relevant evidence which the judge was entitled to take into account at paragraph 21.
11. This is not inconsistent with the finding at paragraph 27 that it is more likely that the Appellant, the college and Ms Gill had an arrangement to obtain a false CAS.
12. In any event if anything at paragraph 27 the judge may have speculated somewhat as to the motives behind the actions of the Appellant, the college and Ms Gill but this is not in conflict with the findings at paragraph 21 about the lack of credible documentary evidence to support the Appellant’s claim that Ms Gill was acting in the way the Appellant claims. I find no contradiction between these two paragraphs. This ground has not been made out.
13. It is contended in the second Ground of Appeal that the judge made a material error in relation to the Appellant’s studies. It is contended that the judge did not understand the difference between the research proposal for a PhD and a course that

was leading to a PhD. Reliance is placed on paragraph 24 where it is contended that the judge made a mistake as to the course to be followed by the Appellant.

14. At paragraph 14 the judge noted the Appellant's oral evidence that she wanted to do a PhD in small industries and that her research proposal was "cross national strategic alliances - a challenge for small industries". The took into account that the appellant's oral evidence as to the title of her PhD differed from that stated at page 26 of the Appellant's bundle which is an email to the college and on the CAS itself, both of which referred to the course title "integrated PhD - research skills, techniques and methods education".
15. At paragraph 16 the judge noted that the Appellant said in oral evidence that the course named on the CAS is a preparatory course which has to be completed before the PhD course. The judge dealt with this issue at paragraph 24 where she said that she did not find the Appellant's explanation about the discrepancy between the course titles to be credible. The judge said that it was clear from the CAS that the Appellant's title for the PhD course was "integrated research skills, techniques and methods education" and not "cross national strategic alliances - a challenge for small industries", as claimed in oral evidence.
16. Mr Iqbal submitted that this finding was not open to the judge because in his submission the fact that the CAS says NQF Level 8 and gives a period of fourteen months for the course makes clear that this course was a preparatory course leading to a PhD rather than a PhD itself. In his submission a PhD is higher than Level 8 and would last for a longer period than fourteen months. I do not accept this submission. I do not accept that any judge could make those assumptions from the information on the CAS. The judge highlighted the lack of evidence from the Bedfordian Business School in relation to the Appellant's proposed PhD or course. The judge considered all of the evidence and was entitled to disbelieve the Appellant's explanation for this discrepancy.
17. It is contended in the third ground that the judge's findings are based on her presumptions and not on the evidence. Reference is made to paragraph 21 where the judge said that, if the Appellant used the services of Ms Gill as claimed, serious questions were raised about whether her previous course and qualification was genuine. It is further contended that the judge erred at paragraph 27 where she speculated as to why the college did not confirm the CAS as genuine. It is further contended that the judge erred at paragraph 26 where she found that the reason the Appellant did not go to the police about these issues was because she was "deeply complicit in the fraud". It is contended that there was no evidence available to the judge to reach these findings and that the judge entered into speculation in relation to the Appellant's motives and that this was a material error. In her submissions Ms Everett accepted that the judge's findings as to the Appellant's actions did border on speculation but in her submission this did not affect the findings on the core issues. I agree with this submission. The judge made clear findings as to the matters in dispute and reached a conclusion open to her that the Appellant employed dishonesty.

18. At the hearing before me Mr Iqbal further submitted that, as this is a case of deception, the burden is on the Secretary of State to provide clear and cogent evidence to support the allegation of deception. In his submission the Secretary of State's allegation that the wrong CAS was submitted was not sufficient to discharge that burden. He submitted that the judge could not expect the Appellant to prove her innocence and in so doing the judge applied the wrong burden and standard of proof.
19. However, in my view it is clear from the reasons for refusal letter that the Secretary of State considered that the submission of an invalid CAS and the fact that the Appellant said in her application that she had never used deception was sufficient to discharge the initial burden on the Secretary of State to establish that the Appellant may have employed deception. It is clear from the decision of Judge Beg that the Appellant's explanation for the invalid CAS and the Appellant's account of her use of third parties to progress her application for a PhD with a college in the context of her overall submission that she had no knowledge of the actions of these third parties was not accepted. The judge gave sustainable reasons for not accepting the Appellant's account at paragraphs 21 to 27. In my view the judge took the correct approach to dealing with the allegation of deception and reached a conclusion open to her on the evidence before her.

Notice of Decision

20. The decision of the First-tier Tribunal does not contain a material error of law.
21. The decision of the First-tier Tribunal will stand.
22. No anonymity direction is made.

Signed

Date: 28th January 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

As the appeal is dismissed no fee award is made.

Signed

Date: 28th January 2019

A Grimes

Deputy Upper Tribunal Judge Grimes