



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

Appeal Number: IA/00069/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 12 July 2019 & 5 August 2019**

**Decision & Reasons Promulgated
On 15th August 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR MOHAMMED ABDUL JALIL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Sanders (instructed by MQ Hassan Solicitors) on 12 July 2019

No attendance or representation on 5 August 2019

For the Respondent: Mr E Tufan (Senior Home Office Presenting Officer) on both days

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the appellant in relation to a Decision and Reasons of Judge Ripley in the First-tier Tribunal, promulgated on 30 April 2019. Permission to appeal was granted by Judge Ford of the First-tier Tribunal on 5 June 2019.
2. The appellant is a national Bangladesh born on 15 August 1974. He had appealed to the First-tier Tribunal against the Secretary of State's

decision, taken on 8 March 2018, to refuse his application for leave to remain as a Tier 4 General student migrant pursuant to paragraph 322 (1A) and paragraph 245 ZX (a) and (c) of the Immigration Rules.

3. The appellant arrived in the UK in April 2010 with entry clearance as a Tier 4 general student, valid until May 2011. An application to extend that leave made in May 2011 was refused on 16 December 2014 on the basis that the Secretary of State was satisfied the appellant had submitted a false International English Language Testing System (IELTS) certificate and because his application was not supported by a valid Certificate of Acceptance for Studies (CAS).
4. The appellant appealed that decision and his appeal was allowed on the basis that the Secretary of State had failed to establish the certificate was false. The appeal in relation to the absence of a CAS was allowed on the basis that it was not in accordance with the law as the appellant had not been provided with the 60 days that was required to obtain an alternative sponsor.
5. Thereafter the respondent provided the appellant with 60 days to find a sponsor and thereafter a further 60 days until 6 September 2017. The appellant did not obtain an alternative CAS and so the respondent made the decision under appeal on 8 March 2018.
6. Before the First-tier Tribunal, the respondent provided a bundle which included the appellant's application form from 2011 and a copy of the previous Judge's decision of 28 August 2015. It also included a Temporary Migration Verification Referral form dated 13 February 2018.
7. Judge Ripley dealt with the application on the papers. She did so on the basis that the appeal had initially been listed for hearing on 11 February 2019 but adjourned because the appellant had sent in a text saying that he was unwell. The appellant was directed to provide medical evidence within five days but failed to do so. The matter was therefore relisted for hearing on 27 February 2019 which prompted an email from the appellant's representatives on 13 February 2019 asking that the appeal be determined on the papers.
8. Judge Ripley noted that she had been provided with a bundle by the respondent and nothing from the appellant.
9. The judge referred herself to the relevant Immigration Rules, namely paragraphs 322(1A) and paragraph 245 ZX. She noted that the application had been refused on the basis of the submission of a false IELTS test certificate and the absence of a CAS.
10. The Temporary Migration Verification Referral form indicated that nobody with the appellant's name and date of birth had ever taken an IELTS test and the test date shown on the certificate was not an IELTS test date in 2011. She noted the appellant had provided no evidence to dispute that

information rather, he simply denied having submitted a false IELTS certificate saying that an agent had processed his application. However, the judge noted the appellant's signature appeared on the application form and that he would have known that, in order to obtain further leave as a student, he would have to have submitted an English language test certificate.

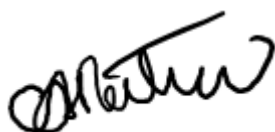
11. The judge noted that the verification document had not been before the previous judge who had allowed the appeal.
12. Judge Ripley, satisfied the appellant was guilty of fraudulently submitting a false test certificate and also that he was without a CAS, dismissed the appeal.
13. Permission to appeal was sought claiming that the First-tier Tribunal's decision resulted from an unfairness in that the verification referral form referred to and relied upon by the judge had not been made available to the appellant or his representatives.
14. At the hearing on 12 July the appellant was present himself and he was represented by Ms Sanders of Counsel. It was Ms Sanders' case, as instructed by her instructing solicitors that they had not been in possession of the respondent's bundle which contained the verification document. I queried why, if they had not received the respondent's bundle, they did not point that fact out to the tribunal or request one and I also queried why, in that situation, they would have asked that his appeal be determined on the papers. She was unable to provide an explanation for that.
15. In an abundance of fairness to the appellant, on the basis I was told by solicitors that they had not received the respondent's bundle, I set aside the First-tier Tribunal's decision on the basis that it had been made in reliance on documents not made available to the appellant.
16. At that hearing I caused the respondent's bundle to be copied and handed to Ms Sanders. Mr Tufan had handed up some further documents, which included an email from IELTS Verification at British Council.org confirming that the test report form in question was not authentic. I also caused those to be copied and provided to Ms Sanders.
17. I indicated that I would redecide the appeal at a resumed hearing and, in the presence of the appellant and Counsel we agreed a date suitable for Ms Sanders and the appellant of 5 August 2019. I also directed that any further evidence should be filed no later than 5 days before the resumed hearing.
18. Later that same day the representatives contacted the tribunal saying that the appellant would be unable to attend on 5 August as it was Eid. In fact, 5 August is not Eid, Eid is the following week and they were informed that

the matter remained listed on 5 August. Notices to that effect were sent to both the appellant and his solicitors

19. Then, on 2 August 2019 the representatives again emailed the Upper Tribunal, this time indicating that the appellant wished to raise a new article 8 matter and needed time to provide further evidence. Curiously that email also suggested that the clerk told them that I was unavailable in any event on 5 August and the case would not proceed on that date. That was wholly erroneous.
20. That adjournment request was refused by an Upper Tribunal Judge and the refusal communicated to the appellant and his representatives.
21. On 5 August neither the appellant nor his representatives, nor Ms Sanders attended. My clerk telephoned MQ Hassan solicitors who informed him that they had been unable to obtain any instructions from their client and that he was not answering the telephone. They were informed that I would proceed to deal with the case in the appellant's absence.
22. The appellant has provided no evidence whatsoever in this appeal. He produced no evidence before the First-tier Tribunal and he has produced no evidence to the Upper Tribunal. He was fully aware that the matter was going to be decided on 5 August and has done nothing to advance his case.
23. I have been provided with the Temporary Verification Referral form and also an email confirming the certificate was not authentic. Given that no one of the appellant's identity has ever sat in IELTS test, I am led to the inevitable conclusion that the certificate was indeed false. In the absence of any explanation from the appellant, other than to say that he did not submit it, I find that he is guilty of dishonesty. He would know that such a certificate was a prerequisite in an application for further leave to remain as a student and his signature appears on the application.
24. I find therefore that the appellant did indeed practice dishonesty and his appeal is dismissed on that basis. Furthermore, he remains without a CAS and could not succeed under the substantive rule either.

Decision

25. Having found that the First-tier Tribunal made an error of law on the basis of deciding the matter in reliance on documents not provided to the appellant and having set aside that decision, in re-deciding the appeal in the Upper Tribunal it is dismissed.



Signed

Date 5 August 2019

Upper Tribunal Judge Martin