



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

Appeal Number: IA/05039/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16th January 2015**

**Decision & Reasons
Promulgated
On 20th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

**MR MD FAYSAL HUSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan, of Anwar Law Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Bangladesh born on 8th August 1988. He came to the UK on 14th October 2013 with a Tier 4 student migrant visa valid until 1st November 2014. The appellant was refused leave to enter and his leave to remain was cancelled on 23rd January 2014 when he sought to re-enter the UK after a holiday to France. He appealed on 27th January 2014. His appeal was dismissed in a determination of Judge of the First-tier

Tribunal RG Handley promulgated on 6th June 2014. On 11th August 2014 Judge of the First-tier Tribunal Colyer refused permission to appeal.

2. However the application to appeal was renewed to the Upper Tribunal by the appellant and on 1st December 2014 Upper Tribunal Judge Chalkley found that there was an arguable error of law because it was arguable that evidence about the appellant's attendance at Birmingham Informatics College in the appellant's bundle had not been considered.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions

4. I asked Mr Khan if the appellant had in fact completed his studies in the UK as the paper work indicated they were to be concluded in October 2014. It transpired however that the college had lost its licence/ closed down in spring 2014 and so the appellant had not completed his diploma.
5. Mr Khan relied upon his grounds of appeal and made further oral submissions. In summary his argument is as follows. He argues that Judge Handley erred because evidence dated 8th May 2014 from Birmingham Informatics College showing that the appellant attended his college in October, November and December 2013 was not considered and reliance was just placed on the letter of 3rd January 2014. Further insufficient weight had been given to the appellant's consistent answers before the Tribunal. The appellant explained that there had been a mistake in the timetable by the college, and this was why he had been confused at interview. A letter has been produced after the appeal showing that this evidence was correct.
6. Mr Khan submitted further that the appellant was inconsistent in his interview carried about by UKBA officers, including about the subjects he was studying, because he did not have an interpreter present, because he was tired after his travels, because he had just seen his sick cousin in France and was terrified of being sent back to Bangladesh. There was no separate statement by the interviewing immigration officers, and so Judge Handley was wrong to consider that the appellant was not telling the truth about these matters. The appellant was able to give correct answers with an interpreter before the Tribunal: it was plausible that he could not understand spoken English well given that he came from Bangladesh and might be able to write better than understand and express himself orally. The decision of Judge Handley was in error because it failed to appreciate the evidence provided by the appellant and simply adopted the case put forward by the respondent.
7. Mr Melvin submitted that the Judge had examined all the evidence before him and that the grounds of appeal did not disclose any legal errors. They were simply an attempt to re-argue the appellant's case. It was not relevant that the letter of 8th May 2014 was not explicitly referred to as he

considered the issue of attendance and was fully appraised of the facts. Judge Handley was entitled to find that the appellant ought to have been able to understand the questions put at interview if he was genuinely studying a course which was at the equivalent to A level in English. Further there could be no error for not considering the letter of 20th June 2014 which was only written after the determination of Judge Handley had been promulgated.

8. At the end of the hearing I indicated that I found that Judge Handley had not erred in law for the reasons I set out below, but that I would set out my full reasons in writing.

Conclusions

9. The appellant was refused leave to enter the UK in accordance with paragraph 320(5) of the Immigration Rules and had cancelled the appellant's existing leave under paragraph 2A (8) of the Immigration Act 1971 and paragraph 321(A) of the Immigration Rules so his residence permit was no longer effective. The basis of this refusal was that the appellant was not a genuine and credible student attending college in the UK.
10. Judge Handley does not refer explicitly to the letter of 8th May 2014 from Birmingham Informatics College when making his findings, between paragraphs 18 and 25 of his determination. However at paragraph 2 of his determination he does refer to having before him various documents from Birmingham Informatics College. Mr Khan could not explain how failure to refer to this letter had made any substantial difference. It is clear from the letter of 8th May 2014 that the appellant had only had a 66.67% attendance in the period December 2013 to February 2014. This is consistent with the evidence Judge Handley did explicitly consider in the form of the document from the college at Annex L of the respondent's bundle and the appellant's own testimony to the Tribunal, which make clear that the appellant did attend college in October and part of November but then did not attend at the end of November, in December and in January 2014 - although there were a number of days holiday during this period. Judge Handley also looked at the answers the appellant had given at his second interview and concluded that he had not properly explained his absences: this is an accurate reflection of the appellant's lack of answers to questions 19 and 20 of the interview commenced at 16.20. I find that failure to refer explicitly to the letter of 8th May 2014 made no material difference to the findings of Judge Handley which were consistent with what was said in this letter, and that this letter was unsurprisingly consistent with the other evidence provided by the college which was clearly considered Judge Handley.
11. Judge Handley also made reasoned and lawful findings on other matters. He did not believe that the appellant had requested an interpreter at his interviews as the records recorded that he had said he was happy to be interviewed in English and had understood all questions, see paragraph 18

of the determination. Further the appellant had not indicated he felt nervous, tired or unwell when he was asked if he was feeling ok. Judge Handley found that the appellant was not a credible witness on this matter when he contended to the contrary. He had clearly considered the appellant's evidence to the Tribunal on the matter but did not believe it for the reasons he sets out. This was a perfectly lawful approach.

12. Having found that the interview record was a proper reflection of what the appellant said at interview Judge Handley considers at paragraphs 19, 20 and 21 of his determination that the inaccurate answers about the days and times he attended college and the appellant's inability to give an accurate description of his courses at interview were further matters which diminished the appellant's credibility as a genuine student. Again he was lawfully entitled to come to this conclusion on the evidence before him. The letter of 20th June 2014 from the college does not change the fact that the appellant gave wrong information about the days he attended college in November and December at interview.
13. Judge Handley was entitled to conclude, as he does at paragraph 25 of his determination, that the appellant was not a genuine student given his findings about his having missed lessons without proper explanation; the inaccurate information the appellant provided at interview about the days and time he attended college; and the appellant's poor ability to describe his studies at interview.

Decision

1. The First-tier Tribunal did not err in law.
2. The determination of the First-tier Tribunal is upheld.

No anonymity direction is made.

Signed

Date 19th January 2015

Judge Lindsley
Deputy Upper Tribunal Judge

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 19th January 2015

Judge Lindsley
Deputy Upper Tribunal Judge