



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003415

First-tier Tribunal Nos: HU/55984/2023
LH/00295/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 6th of November 2024

Before

UPPER TRIBUNAL JUDGE LOUGHRAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SC
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms S Nwachuku, Senior Home Office Presenting Officer
For the Respondent: Mr P Emmanuel, Counsel instructed by Chris Solicitors

Heard at Field House on 15 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The Secretary of State for the Home Department (“SSHD”) appeals with the permission of First-tier Tribunal Judge Moon against the decision of First-tier Tribunal Judge Atreya (“the judge”) dated 14 June 2024, in which the judge allowed SC’s (“the claimant’s”) appeal.

Background

2. The claimant is a national of Bangladesh born on 15 November 1984. On 31 May 2007 the claimant applied for entry clearance as a student. His application was refused, and the claimant appealed against that refusal. In a determination promulgated on 29 February 2008 his appeal was allowed by Immigration Judge Blair-Gould and he entered the UK on 19 May 2008 on a three-year student visa.
3. On 31 August 2011, the claimant made an application for further leave to remain as a Tier 4 (General) Student Migrant under the Points Based System. The SSHD refused that application in a decision dated 3 January 2012 because the SSHD was not satisfied with the Test of English for International Communication (‘TOEIC’) certificate was genuine and therefore was not satisfied that the claimant’s English language ability met the requirements of the immigration rules. The SSHD was satisfied that the claimant had used false documents in his application, so she also refused it under one of the general grounds of refusal (paragraph 322(1A) of the immigration rules).
4. The claimant lodged an appeal against the SSHD’s appeal, and it came before First tier Tribunal Judge J.H.Bell on 11 April 2021. In a decision promulgated on 16 April 2024 First tier Tribunal Judge J.H.Bell found that the claimant had dishonestly submitted a false TOEIC certificate and dismissed the claimant’s appeal on human rights grounds. The claimant became an overstayer.
5. On 19 March 2022, the claimant made an application for leave to remain on the basis of his private life in the UK. On 17 April 2023 the SSHD refused the claimant’s application for leave to remain and his human rights claim. The claimant appealed against the refusal of his human rights claim.
6. The matter was listed for a hearing on 1 February 2024. The hearing was adjourned. The SSHD was directed to file and serve the Reasons for Refusal Letter from the previous application dated 3 January 2012 and any other evidence she relied on.
7. On 7 March 2024 the SSHD responded to the directions providing the Reasons for Refusal Letter dated 3 January 2012. The SSHD also uploaded First tier Tribunal Judge J.H.Bell’s determination and written submissions referring to both the decision and the determination arguing that the claimant should be refused on suitability grounds because of the previous judge’s findings that the TOEIC certificate was in fact obtained untruthfully and dishonestly.

The appeal before the First-tier Tribunal

8. The appeal came before the judge on 15 May 2024. The claimant was represented by Mr Manna of Chris Solicitors. The SSHD was not represented and there was no application for an adjournment, so she could be represented. The judge heard oral evidence from the claimant and found him to be a consistent and truthful witness.

9. The judge found that the claimant had at all times been a genuine student. She did not accept that he had any reason to cheat on his TOEIC test. She found that he had got caught up in the TOEIC litigation, became an overstayer and had lost his opportunity to finish his education in the UK through no fault of his own.
10. The judge noted that the claimant entered the UK when he was 23 years old and was then 40 years old. The judge found that claimant has established ties in the UK which are significant and demonstrate that he is able to build community. The judge considered that the claimant's voluntary work demonstrated a commitment to the best values of British culture.
11. The judge accepted that the claimant had borrowed £25,650 from his maternal uncle which he had not repaid, and that the claimant's maternal uncle is angry and upset with him and has made threats of violence including threats to kill. The judge noted that the loan from the claimant's maternal uncle had been accepted by "another judge" and was not challenged by the SSHD.
12. The judge found that the claimant would be destitute on return to Bangladesh. The judge also found that the appellant would be at risk from his maternal uncle in the area where the appellant's mother lives, so he could not return to his mother's home. The judge considered that he would not be able to obtain sufficient protection against his uncle's threats.
13. The judge concluded that because of the TOEIC litigation and Home Office errors and delays the claimant became a victim in that he lost his opportunity to complete his studies and return to Bangladesh with qualifications.
14. The judge concluded that there would be very significant obstacles to the claimant's integration into Bangladesh "because of the threats from his uncle from unpaid debts, his mental health vulnerability and risk of destitution which would prevent him from participating in meaningfully in society and would be a very significant obstacle to him development relationships and his private life if there are ongoing threats to him."

The appeal

15. The SSHD applied for permission to appeal on the following grounds:
 - a. Ground 1: the judge failed to consider the SSHD's case that the claimant's claim should be failed on suitability grounds.
 - b. Ground 2: the judge failed to consider the previous determination dated 16 April 2012 and/or treat it as her starting point as per the **Devaseelan** guidelines.
 - c. Ground 3: the judge failed to give adequate reasons for finding that the claimant did not cheat on his TOEIC test in 2012 and failed to direct herself in law as to the correct case law in respect of dishonesty.
 - d. Ground 4: the judge erred in finding there would be very significant obstacles to the claimant's reintegration.
 - e. Ground 5: the judge erred in finding that the claimant is a refugee.
16. On 23 July 2024 the First-tier Tribunal granted the SSHD permission to appeal on all grounds.

17. No Rule 24 response was filed or served, and it was only the morning of the error of law hearing that the tribunal received a skeleton argument from the claimant's representatives that made it clear that the appeal was opposed.

Discussion

18. I heard submissions from Mr Emmanuel on behalf of the claimant and Ms Nwachuku on behalf of the SSHD.
19. Ms Nwachuku focused her grounds on the fact that the judge had not had regard to the previous determination despite the fact it was uploaded on 7 March 2024, two months before the hearing. Ms Nwachuku highlighted that there is no list in the judge's decision of the documents that she did consider.
20. During the course of the hearing Mr Emmanuel accepted that there is no direct reference to the previous determination and that the judge may not have mentioned or made reference to that determination at all.
21. Mr Emmanuel argued on behalf of the claimant that it could be assumed that the judge had regard to the previous determination because she was clearly aware of the facts of the claimant's background i.e. that he had been accused of dishonesty and that he had been caught up in the TOEIC litigation. I am not persuaded by that submission.
22. I note that the judge refers to "another judge" accepting that the claimant took a loan from his maternal uncle. I am satisfied that this reference relates to the determination of Immigration Judge Blair-Gould promulgated on 29 February 2008. This determination relates to the claimant's appeal against the refusal of the claimant's application for entry clearance as a student. It was included in the claimant's bundle before the First tier Tribunal and the Immigration Judge accepts that the claimant's uncle was able and willing to pay for his course, maintenance and accommodation during his course. It is therefore clear that the judge's reference to "another judge" at paragraph 10 of the decision relates to this determination and not the determination dated 16 April 2012.
23. The reference to "another judge" is the only reference to the existence of any previous judicial consideration of the claimant's case in the determination.
24. I am satisfied that the judge materially erred in law by failing to have regard to the previous determination and by failing to apply the **Devaseelan** guidelines to that determination to treat it as her starting point.
25. I am also persuaded that the judge failed to have regard to the submissions outlined in the SSHD's written submissions that accompanied the refusal letter and the determination on 7 March 2024 that the claimant should be refused on suitability grounds.
26. I find that those material errors of law infect the entire decision, and that the decision should be set aside. I therefore do not go on to deal with the other grounds asserted by the SSHD.
27. I add as a postscript that it is surprising that the previous decision and determination were not referred to in the SSHD's decision dated 17 April 2023 refusing the claimant's human rights claim. It is also unfortunate that they were

not included in the Home Office bundle and that there was no representative on behalf of the SSHD at the hearing to draw the judge's attention to them.

28. The claimant will be required to give oral evidence again and substantial fact-findings will need to be made. In my view it is appropriate to remit this matter to the First-tier Tribunal, see, AEB v SSHD [2022] EWCA Civ 1512 and Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).

Notice of Decision

29. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal to be heard by a different judge, with no findings of fact preserved.

G. Loughran

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 November 2024