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Case Nos: 201804881 C3, 201805144 C3, 201805158 C3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SOUTHWARK
HIS HONOUR JUDGE GRIFFITH
T20157173, T20157174,T20170313

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 January 2021

Before **:**

LORD JUSTICE STUART-SMITH
MR JUSTICE EDIS
and
HIS HONOUR JUDGE JAMES BURBIDGE Q.C.
HONORARY RECORDER OF WORCESTER

- -

Between **:**

TAMIJ UDDIN	**Appellant**
KAZI BORKOT ULLAH	
and	
ABDUL KALAM MUHAMMAD REZAUL KARIM	**Applicants**
- and –	
THE QUEEN	**Respondent**

- -

MR J M BURTON QC assisted by MR P WOODALL for the Appellant

MR J CHRISTOPHER QC assisted by MR N MATHER for the Crown

Hearing date : 1 December 2020

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10:30 pm on Wednesday 13th January 2021

Lord Justice Stuart-Smith:

Introduction

1. Mr Uddin appeals against conviction with the permission of the single judge. Mr Ullah and Mr Karim renew their applications for permission to appeal against conviction, their applications having been refused by the same single judge.

2. Their convictions came at the end of a trial that lasted between March and November 2018. There were 7 defendants in all. In addition to the applicant Mr Karim, there were two other defendants whose family name was Karim. We shall refer to them as Mr Enamul Karim and Mrs Sadia Karim. We shall refer to the applicant simply as Mr Karim. The other two defendants were Ms Trivedi and Mr Khan.

3. The first three defendants on the indictment, Mr Karim, Mr Enamul Karim and Mr Ullah all absconded before the close of the prosecution case. The trial continued in their absence.

4. There were four counts to the indictment

   i) Count 1 was a charge of conspiracy to defraud the Secretary of State for the Home Office by submitting false information in support of Tier 1 immigration applications between the 31st day of December 2008 and the 27th day of February 2013. It charged 6 of the 7 defendants. Mr Karim was the first named defendant; Mr Ullah was the third named defendant; Mr Uddin was the sixth; the others were Mr Enamul Karim, Ms Trivedi and Mr Khan, who were second, fourth and fifth named defendants to the charge;

   ii) Count 2 was a further charge of conspiracy to defraud the Secretary of State in the same way by submitting false information in support of Tier 1 immigration applications between 1 March 2013 and 5 May 2017. It charged Mr Karim, Mr Enamul Karim and Mr Ullah; but not Mr Uddin or the other defendants on the indictment. In substance the allegation was that the three Defendants charged under Count 2 continued to conspire in the same way after they had been arrested and released on bail in relation to the conspiracy charged under Count 1;

   iii) Count 3 charged the six Defendants from Count 1 and a seventh, Mrs Sadia Karim, with cheating the public revenue between 31 December 2008 and 27 February 2013, i.e. the same period as alleged under Count 1. The allegation was that they conspired to create false documentation giving the illusion of payment of wages and then made false claims for repayment of tax on the basis of that documentation and fictitious employment. Once again, Mr Karim was the first named defendant on the indictment, and Mr Ullah was the third. Mr Uddin was sixth on the indictment but the charge against him was dismissed at half time on a submission that there was no case for him to answer;

iv) Count 4 was a charge under the Proceeds of Crime Act 2002 brought against Mrs Sadia Karim only.

5. At the conclusion of the trial:

i) Mr Karim was convicted on Counts 1, 2 and 3. He was sentenced to 6 years and 6 months on Count 1, 3 years consecutive on Count 2, and to 12 months imprisonment consecutive on Count 3, making an aggregate sentence of 10 years and 6 months;

ii) Mr Ullah was convicted on Counts 1, 2 and 3. He was sentenced to 4 years imprisonment on Count 1, 18 months consecutive on Count 2 and 4 months imprisonment on Count 3, making an aggregate sentence of 5 years and 10 months;

iii) Mr Uddin was convicted on Count 1 and sentenced to 2 years and 6 months imprisonment.

iv) Of the other Defendants at trial, Mr Enamul Karim was convicted on Counts 1, 2 and 3 and sentenced to a total of 9 years and 4 months imprisonment; Ms Trivedi was convicted of counts 1 and 3 and sentenced to a total of 3 years imprisonment; ; the jury were unable to reach a verdict in relation to Mr Khan (who was subsequently convicted on Count 1 in a retrial and sentenced to 2 years imprisonment suspended for 2 years); and Mrs Sadia Karim was acquitted of Count 1 and, no evidence being offered on Count 4, was acquitted on the direction of the trial judge.

Background facts

6. Although the evidence was very extensive and in some respects complicated, the facts underlying Counts 1-3 may be shortly stated.

7. The Defendants, with the exception of Ms Trivedi who was an accountant, were involved in the running of companies that gave immigration advice, Rukaiya and Associates and Immigration4u, in order to carry out an immigration fraud. It was the prosecution case that Mr Karim was in charge of the companies.

8. One of the activities undertaken by the businesses was to assist their clients, who were not British citizens, to lodge visa applications for leave to remain in the United Kingdom. The applications fell into two groups:

i) Tier 1 (General) applications which were for highly skilled workers;

ii) Tier 1 (Entrepreneur) applications which were for individuals who wished to set up, take over or be involved in running a business in the UK.

9. It was alleged that in each of the Tier 1 (General) applications the claimed employment for the clients was untrue and the applicants would have been

aware of this. The alleged offending involved the use of a large number of companies which were supposedly providing well-paid employment to the individuals who were applying for visas. However the wages from this employment were simply paid into the individuals' bank accounts, so that they could provide their bank statements as evidence of their income, before being paid out again to other entities controlled by the Defendants. In simple terms, the fraudsters established a money loop whereby money appeared briefly in applicants' accounts but was "repaid" either before or afterwards so that the "income" submitted by the applicant in order to qualify for a visa was fictitious. In total 22 fraudulent applications were submitted between 2010 and 2011. It was a feature of the money loops that they used a number of apparent businesses and companies with similar names. It was another feature of the money loops that many of the names could be traced back to be a reference to a member of Mr Karim's family.

10. The prosecution also relied upon 5 Tier 1 (Entrepreneur) applications that were made in 2012. It was the prosecution's case that the appellant and the applicants had assisted individuals applying under that scheme by providing false evidence about the amount of money which they had supposedly invested or had available to invest in business. In doing so, they enlisted the help of Ms Trivedi, who provided apparently official letters in support of the defendants' Entrepreneur applications.

11. These two forms of application were the basis for the Charge under Count 1.

12. As we have said, the prosecution's case on Count 2 was that, having been arrested and charged for the criminal activity that formed the basis of Count 1, Mr Karim, Mr Ullah and Mr Enamul Karim continued helping new and existing clients by submitting false information in support of their claims to be high value entrepreneurs. It was the prosecution case that there were five such applications in 2014 and 2 more in 2017. The methods adopted by the conspirators were essentially the same as before.

13. As an offshoot to the conspiracies in counts 1 and 2, the prosecution alleged that the applicants were also involved in a tax fraud. The prosecution case was that the applicant Mr Karim and the co-accused Mr Enamul Karim would provide forms to the co-accused Ms Trivedi with fictitious dates of employment for some of their clients and state that their wages had been subject to a 40% deduction. Claims were then made to HMRC for repayment of the tax. However, the true position was that there had been no employment, no payment of tax to HMRC by the companies in the first place and no deduction of the tax from any wages. The Prosecution case focussed on 33 such claims made in the names of clients. In addition, there were further claims made by Mr Ullah and Mr Karim in their own names.

14. This formed the basis for Count 3.

15. When Mr Uddin was first arrested in 2013, his phone was seized. On examination it was found to contain a large number of texts passing between him, Mr Karim and applicants, which apparently related to the making of loop payments in the manner we have described. The texts referred to applicants

making and receiving many payments to and from various of the suspect companies. They discussed the amounts, destination and bank details of the payments made to and by the applicants in terms that were strongly supportive of the prosecution case that those involved in sending the texts knew exactly how the fraud was operating and were participating in it. In the case of three of these applicants - Mr Enamul Huq, Mr Prodip Sarkar and Mr Rahul Saha, Mr Uddin was the named representative for the applicant. He had therefore been responsible for the presentation of their application.

16. We are told by Mr Christopher QC, who represented the Crown before us, and can readily accept that these texts, though not falling within the indicted period, formed the central thrust of the case against Mr Uddin because they provided clear and potent evidence that he, as named representative to the three applicants, was pursuing precisely the same course of conduct as was alleged to be the central core of the conspiracy within the period charged by the indictment. This was reflected by the Judge when drawing the strands of the case for and against Mr Uddin together at p. 215 of the summing up, where he said:

> "The prosecution case against him, as you know, is that he is an advisor on three of the 22, just three of the 22 [Tier 1 General applications upon which the prosecution relied]. He used the money loops [to inflate] the income and it is suggested on his behalf that he is just the post box and he is doing his part but he isnot a knowing, willing party to what is going on in count 1. And even when it comes down to those emails from [Mr] Haq and [Mr] Sarkar that there, all he is doing is building [?receiving] requests from those people and then passing them on. You will want to look at the [relevant tab of evidence] to see what you make of that and what you find to be the role that you are sure he has and it is put on his behalf, he is a barrister and you will want to consider that."[1]

17. After going through a significant number of the texts when summing up the facts, the Judge drew attention to the fact that they had been sent after the applications for the three applicants had been submitted. He continued at p. 154:

> "… You are entitled to look at that to see the nature and relationship between Tamij Uddin and someone for whom he was an advisor at a time when the application went in and it contains, if you are satisfied with that, false information. So these messages backwards and forwards are outside the period of the actual applications going in but inside the period of the conspiracy. Its for you to decide if the relationship, if there is any, of a criminal nature between Tamij Uddin and Resa Vai with whom he is communicating there. That's the purpose of all these messages going backwards and forwards with people like [Mr Sarkar]."

[1] Here, as elsewhere, the transcript is not immaculate, but the sense is clear.

18. After going through a further sequence of texts, the Judge said at p. 156:

> "Is that Tamij Uddin the post box, or is that Tamij Uddin, something more than that? That is an issue for you to decide when you look at the evidence and you weigh up what is going on in the various conversations and text messages that are being sent here."

19. In addition, documents were found at his home, which were described as "blank affidavits" from banks and which appeared to be pre-sworn in blank. It was the prosecution's case that these were to be fraudulently used by persons making entrepreneur applications, though Mr Uddin was not demonstrated to be directly involved in making any of the applications which the prosecution alleged to be fraudulent which used these documents. The search of his home also revealed a bank account showing that he had paid £5,000 into one of the bank accounts alleged to be involved with the fraud. Documents linking his wife, who was not alleged to be a conspirator, to some of the fraudulent companies were relied upon.

20. At trial, the first three and the second three defendants ran mutual "cut-throat" defences, with the first three Defendants saying that it was the second three who were behind the fraud, and vice versa. It is apparent that Mr Karim's case was that there was no fraud and that, if there was, it wasn't by him and he was being framed. Ms Trivedi said that her involvement was all at the instigation of Mr Karim and that she did not realise there was a fraud taking place. Mr Khan said that the fraud was the responsibility of Mr Karim and that he had played an unknowing part, as did Mr Uddin. Only Ms Trevidi and Mr Khan of the Defendants gave evidence. For our purposes, there is no doubt that the frauds took place and that they operated generally as set out above.

Mr Uddin's Appeal

21. On this appeal Mr Uddin is represented by Mr Burton QC as he was at trial.

22. When first interviewed, Mr Uddin answered questions denying wrongdoing. He accepted that he had been involved with three of the Tier 1 applications that were advanced as fraudulent by the Prosecution; but he said his involvement was innocent. At trial he did not give evidence.

23. Mr Uddin originally applied for permission to advance two grounds of appeal. Permission was refused on the first ground and that application has not been renewed. We are therefore only directly concerned with the second of the two grounds as a potential reason for finding Mr Uddin's conviction to be unsafe. The first ground, however, referred to facts that are potentially relevant to our decision. In April 2008 (before the period covered by the indictment) Mr Uddin, when employed by Immigration4U, represented two appellants before the Asylum and Immigration Tribunal. The various documents upon which they relied were so strikingly similar that the Immigration Judge concluded "to a high degree of probability that the application for entry clearance in respect of each appellant [had] been manufactured in the sense that it [was] not a

genuine application based on either appellant's personal circumstances." Mr Uddin had failed to provide any credible explanation for the similarities. The AIT complained to the OISC about the applications. The Commissioner concluded that Mr Uddin had knowingly, recklessly or negligently misled the AIT and had acted recklessly or negligently. This evidence was put in at the behest of Mr Karim who said it was bad character evidence of substantial probative value in relation to the issue whether it was Mr Uddin or Mr Karim who was responsible for the indicted fraud: it was Mr Karim's case that Mr Uddin had been acting as a senior and important member of Immigration4U and not, as Mr Uddin said, as a mere go between either in 2008 or in relation to the indicted fraud.

24. The single ground of appeal for which permission has been given is that the trial judge failed to sum up Mr Uddin's case to the Jury. He identifies 10 criticisms.

25. To put these criticisms in context, the Judge was obliged to sum up a substantial body of evidence, which he did in a summing up that ran to more than 250 pages. He gave appropriate directions of law, including telling the jury that it was for them to decide what they made of both documentary evidence and live witnesses. Furthermore, as Mr Christopher submitted, the prosecution's case against Mr Uddin was founded on a relatively narrow body of evidence, which we have outlined at [15]-[16] above.

26. First, it is said that the Judge failed to direct the jury that, although he was asked and agreed to provide handwriting samples, there was no expert evidence about Mr Uddin's handwriting. It is submitted that there was therefore no document that could be linked to him other than those which he had admitted signing when interviewed. There is no substance in this criticism. At p. 162 of the summing up the Judge, expressly referring to Mr Burton's closing speech, said:

> "Tamij Uddin … was asked to, as Mr Burton reminds you, he was asked to go and did give a handwriting sample, not that it led to anything, but he was prepared to give it in the first place. That's the point that's being made on his behalf. There is no handwriting evidence in his case. "

27. In our judgment, the submission that the Judge should have gone on and expressly stated that this meant that there was no expert evidence to link Mr Uddin to documents is fanciful. The jury had been immersed in the case for months and had heard the evidence and speeches for months. They had already had the significance of handwriting evidence (or its absence) explained to them by the Judge at p. 18 of the summing up, where he said:

> "… [D]on't compare signatures because the handwriting evidence you've heard, where it has been put before you, it is agreed. You haven't heard any other evidence about handwriting apart from witnesses saying, "That's mine, that's not mine, that's mine, that's not mine" and that's part of the witness's evidence that you have to assess when you deal with

> that person, but you must not compare signatures as part of your exercise in this case."

28. Second, and following on from the first point, it is submitted that the Judge failed to remind the Jury that Mr Uddin's passport indicated he was out of the United Kingdom on dates when some documents were signed, purportedly by him. Mr Burton drew our attention to a letter to the OISC dated 28 September 2011, which was purportedly signed by Mr Uddin as the client's adviser. He submits that the conviction is unsafe because the Judge failed to draw specific attention to this point, particularly in circumstances where the Defendants were running a cut-throat defence. However, the documents to which Mr Burton refers were not relied upon by the Prosecution at trial in support of the case against Mr Uddin; nor did this point undermine the evidence upon which the Prosecution did rely, which we have summarised above. At the highest, they indicated dishonest involvement by others in those particular transactions with which Mr Uddin was not concerned. They do not affect the evidence relating to the three transactions that formed the basis of the Crown's case against him. We therefore do not accept that this omission can have had any material effect on the safety of Mr Uddin's conviction.

29. Third, it is submitted that the prosecution had made fundamental errors in bringing a case against Mr Uddin on count 3. Specific reference is also made to the prosecution's belief that Mr Uddin worked at a location called Grampian House that was alleged to be the centre of the frauds and that some £42,227 had passed through one of his accounts, when the actual figure was some £4,327. Yet the Jury knew and cannot have forgotten that they had been directed to acquit Mr Uddin on Count 3 at the end of the prosecution's case, a fact of which the Judge reminded them frequently during the summing up. The Judge properly directed the Jury that they were not entitled to assume that Mr Uddin was not guilty as charged under Count 1 simply because he was not guilty on Count 3, but that they should look at the evidence separately for each defendant on each count that they faced. The Judge also expressly referred to the incorrect figure that had originally been asserted by the Crown and the corrected figure which he said "everybody agrees" should be £4,000: see page 229 of the Transcript. Furthermore, we are assured by Mr Christopher that it was no part of the prosecution case at trial that Mr Uddin worked at Grampian House even though there were documents that suggested an association with it on his part. There is no substance in this submission.

30. Fourth, it is suggested that the fact that Mr Uddin was not involved in Count 3 was important and "strong evidence that he was not involved in count 1". We do not accept the suggested logic that underlies this submission. There is no inherent reason why a person who was involved in count 1 should be involved with count 3; and it was always the prosecution's case that some who were involved in Count 1 were not involved in Count 3. It was open to counsel to suggest that absence of guilt on count 3 supported Mr Uddin's case on count 1 and he did so. The judge reminded the jury of that submission; but we see no reason in the evidence or in logic why the Judge should have endorsed it. All that he was required to do was to ensure that the Jury appreciated the need to give separate consideration to separate counts and the fact that Mr Uddin was

not involved in count 3. Of that there could have been no reasonable doubt on the basis of this summing up. The Judge referred expressly to Mr Burton's submission and dealt with it correctly at pp. 34-35 of the summing up, as follows:

> "And since … Mr Burton was addressing you, since Tamij Uddin was acquitted on Count 3, he must be not guilty on Count 1. You have to consider the evidence for and against him on Count 1 when you reach your decision on Count 1 as to whether he is guilty or not. Whether he's been acquitted on Count 3 is neither here nor there. It's a matter of evidence about the absence of evidence on Count 3 that Mr Burton can put forward, but you can't say well, not guilty on Count 3 equals not guilty on Count 1. You must look at all the people you're looking at on whichever count you're looking at and the evidence for and against them on that count."

31. When coming to summarise the case for and against Mr Uddin at p. 215 of the summing up, the Judge repeated this direction in similar terms. Once again he summarised Mr Burton's argument that being not guilty on Count 3 meant that Mr Uddin was not guilty on Count 1 on the basis that, if he had been involved in the original Count 1 conspiracy "you would think he would have made an application for a refund too…". He then correctly directed the jury that they should consider the argument and "assess the evidence as to whether or not you are sure he is party on Count 1 to what was going on." We can detect no error in the Judge's approach or directions on this point. There is no substance in this submission.

32. Fifth, it is submitted that it was important that Mr Uddin was not charged under Count 2. We are told, and can readily accept, that this point was made in speeches. The Jury cannot have been unaware of the fact, as they had and were directed to the terms of the indictment. The judge drew their attention to the fact that Count 2 involved "fewer people and different days, starting in effect, when the conspiracy in count 1 finishes…": see p. 9 of the summing up. There is no reason in logic or the evidence why non-involvement in count 2 should be taken as evidence of innocence under Count 1. There is no substance in this submission.

33. Sixth, it is submitted that there was no evidence that Mr Uddin was aware of the fraudulent documentation before using it before the AIT in 2008. The judge dealt with this episode at p. 198 of the summing up. He pointed out that it occurred before the indictment period and he said that the only purpose for which the crown put the information before the jury was on the basis of "once bitten, twice shy" – or, in other words, that having had this experience he should have been more careful in the future.

34. It is submitted that there was no evidence that he responded to the enquiries from the OISC; and it is said that a phrase that was used in the fraudulent documentation was a pet phrase of Mr Karim's in both emails and letters. So, it is submitted, the Jury should have been directed that he may not have been

responsible for the responses that were sent or, at the least, that Mr Uddin's case was that he was not involved.

35. In response, Mr Christopher accepts that the point being made below was that the response may not have been drafted or sent by Mr Uddin. However, the letter setting out the OISC's determination that there had been serious breaches of the relevant code of conduct was addressed to Mr Uddin personally, he being the adviser who had represented the parties before the AIT and against whom the findings of breach were made; and it was sent to the address at which Mr Uddin then worked. So the significance of the episode for the prosecution was that he would have known of the determination and should have been, at the least, on his guard in the future. That then linked in to the evidence about his involvement with the three applicants and transactions on which the prosecution relied to found its case against Mr Uddin on Count 1, where loop payments through suspect companies had been the means of operation.

36. In our judgment the Judge's treatment of this episode was reasonable and proportionate. He could have done more to highlight the difficulties inherent in Mr Uddin's position but did not do so. We have summarised the findings of OISC above and do not repeat them: those findings were based upon the fact that Mr Uddin as representative of the two appellants before the AIT was under a duty to scrutinise the documents before submitting them for the appeal. That duty may have rested on his employers, but it also rested on him as the representative taking responsibility for the hearing of the appeal. Having been once bitten, it was reasonable to suggest that he should thereafter have been twice shy. There is no substance in this submission.

37. Seventh, it is submitted that a prosecution witness agreed that analysis of the text messages between Mr Uddin's phone and the phones of the three applicants with whose fraudulent applications the prosecution alleged that he was involved demonstrated that "for the most part" Mr Uddin was simply forwarding messages on without adding anything to the body of the message. The jury was taken through the communications schedule so that they could assess Mr Uddin's actions for themselves; and they were expressly reminded on three occasions when dealing with this section of the evidence that Mr Uddin's case was that he was merely a "post box": see the passages at pp. 153, 156 and 215, to which we have referred above. The last occasion, which we have set out at [16] above, would have been sufficient on its own. The judge also took various points in Mr Uddin's favour, including that some of the text messages simply repeated text that had been sent to him and that the texts fell outside the period of the indicted conspiracy. Unsurprisingly, we were told that no defendant put forward a case at trial that money loops, if proved, were not evidence of fraud. The questions were (a) whether the loops were proved and (b) who were knowing participants in the loops.

38. Before us, no challenge to the existence of the loops was or could be mounted. The mere fact that a prosecution witness agreed that Mr Uddin was, for the most part, forwarding messages that he had received from others is virtually immaterial. Having seen a schedule setting out the texts upon which the

prosecution relied, it is obvious on a moment's inspection that some of Mr Uddin's texts forwarded material sent to him by others and that others of them sent text that was "new". A further moment's inspection enables a view to be formed about the pattern of the texts and whether the mix of forwarded and new material supported the prosecution case that, despite some being forwarded, the body of texts as a whole showed Mr Uddin to be a knowing participant with the forwarded texts being part of a wider pattern of knowing participation. The Judge rightly left that question to the jury to decide for themselves. Having reminded the jury that the texts fell outside the indicted period, the Judge did not provide a legal analysis of precisely how they could be relevant to the prosecution case. But he did direct the jury that it was for them to decide whether the texts showed a relationship of a criminal nature between Mr Uddin and those with whom he was communicating. In our view, the relevance of that decision to the question of Mr Uddin's guilt or innocence on Count 1 was so obvious as not to require further legal analysis or direction. There is no substance in this submission.

39. Eighth, in relation to the so called "blank affidavits" found at Mr Uddin's home, it is submitted that there was no other evidence that he was involved in fraudulent entrepreneur applications. That said, the blanks were the same type as were used in the fraud and clearly called for an explanation, which Mr Uddin did not provide. It is pointed out that the equivalent documents that were used to support applications were notarised, whereas the ones found in Mr Uddin's house were not; and it is said that affidavits that were used were dated in December 2012 when Mr Uddin was in Bangladesh. The summing up did not make these points. However, the Judge treated their existence with a very light touch overall, at p. 55 of the summing up, where he said:

> "If you look at A6-32, there are 20 of those blanks found in an envelope at Mr Tamij Uddin's address and you know from the evidence that you have heard, [Ms] Trivedi said that [Mr Karim] and Mr Enamul Karim were sending documents in respect of [the first three Entrepreneur applications] to her and requesting accountancy certificates."

40. There was no other mention in the summing up of the blank affidavits found in Mr Uddin's house. They were stated to be relevant to Entrepreneur applications; and it was no part of the Prosecution case to suggest that Mr Uddin was involved in fraudulent Entrepreneur applications. We are told that at one point they may have featured in the prosecution's view of the evidential case against Mr Uddin but that, as may often happen in the course of a long trial, they later "faded from view". In that context, while it would have been preferable if there had been an additional sentence clarifying that the blank affidavits were no longer relied upon by the prosecution as against Mr Uddin, we are not persuaded that the failure to do so or to refer to the points now identified by Counsel could render his conviction unsafe.

41. Ninth, it is recorded that in interview Mr Uddin was asked about a bank statement for Karan and Associates which showed that he had paid £5,000 into the account, which he explained was a loan to friends at London Denning

College, paid via Karan & Associates. He said in interview that there had been "technical problems with paying the money directly, as Mr Uddin did not have the account at the time, although he could not remember why, exactly." The Jury had that record of his interview. He had not otherwise given any explanation of the payments. There were payments amounting to £5,000 from various accounts referring to Denning College with Mr Uddin's name as a reference. These matters were not referred to by the Judge in the summing up. However we are quite unable to see how this omission could be said to affect the safety of the conviction. The name of Denning College appeared in various bank statements for suspect companies involved in the fraud. Since Mr Uddin did not give evidence, what he said in interview was the only explanation he had provided. Mr Burton has not persuaded us that it could have been an advantage to Mr Uddin for the Judge to have referred to Mr Uddin's association with the Denning College. We therefore see no substance in this submission.

42. Tenth, and last, it is said that Mr Uddin's case that he was an innocent dupe was shown by a file known as the Golamaully file, which was found at Grampian House. Documents in the file implicated Mr Uddin and there was no reference to Mr Karim. But Mrs Golamaully had complained to OISC that it was Mr Karim (and not Mr Uddin) was her immigration adviser. It is submitted that this provides evidence of Mr Karim creating documents without Mr Uddin's knowledge. It is submitted that this was not dealt with by the Judge, even after the point had been raised by Mr Burton. It appears from the transcript that Mr Burton had made this point during his speech, though we recognise that is not a determining feature. It is also apparent from the transcript that, although there was technically no evidence that Mr Uddin had worked at Grampian House, the position was complicated by the fact that he appeared to have replied to letters that had been sent to him at that address. Mr Uddin's case was that this showed that Mr Karim was responding in his name.

43. After hearing submissions, the Judge supplemented his summing up by saying that Mrs Golamaully "complained to OISC that her advisor had been [Mr Karim]. There is no record of [Mr Karim] being her advisor on the file." This did not fully make the point that Mr Burton had made in his speech, to the effect that it was Mr Uddin's case that Mr Karim had been responding in his name. But we accept that it provided a degree of balance by (a) pointing out that Mrs Golamaully's complaint had been against Mr Karim rather than Mr Uddin while (b) also pointing out that there was no record on the file of Mr Karim being her advisor. Mr Christopher submits that, in the context of mutual cut-throat defences being run by Mr Karim and Mr Uddin, this solution held the ring where the jury knew that documents had been sent that purported on their face to have come from Mr Uddin. Having reviewed all of the evidence, we think it highly unlikely that the Jury would not have been aware that it was Mr Uddin's case that documents other than those which he had accepted as his were routinely being created by others, and Mr Karim in particular, in his name. Therefore, although we consider that greater clarification could have been given on this point, we are not satisfied that it renders the conviction unsafe.

44. We have given anxious consideration to whether any of the matters raised by Mr Burton singly or cumulatively cast doubt on the safety of Mr Uddin's conviction. We accept that the Judge's summary of the central features of Mr Uddin's case, which we have set out above, was very short. It would clearly have been better if a longer section had been provided that marshalled and, as necessary, analysed the main points being put forward on Mr Uddin's behalf. This is what the CrimPD requires, and it is of particular importance where a defendant has not given evidence because the jury does not have the advantage of hearing his case from his own mouth and seeing it tested by opposing parties. The absence of such a passage in this summing up is a defect, and we have therefore had to consider with care the individual points which have been made by Mr. Burton to determine whether individually or collectively they render the conviction unsafe because the judge failed to sum up the defence case more fully.

45. Despite what we consider to be the failure to provide a fully structured marshalling or analysis of Mr Uddin's case, we are not persuaded that it renders Mr Uddin's conviction unsafe. As we have set out above, the essence of the case against him was narrowly based and explained by the Judge. Equally, the essence of the case being put forward on his behalf was simple and was clearly before the jury: he was an innocent dupe whose name had been taken in vain. Having read the summing up as a whole, we are not persuaded that the points taken on this appeal, either singly or cumulatively, demonstrate that Mr Uddin's defence was not placed fairly before the jury so as to render Mr Uddin's conviction unsafe.

46. Mr Uddin's appeal against conviction is therefore dismissed.

Ullah Renewed Application

47. Mr Ullah renews the three grounds of application identified in the original Grounds settled on his behalf by counsel. It is said that singly or cumulatively the effect of the grounds are that the case against him should have been stayed as an abuse of the process.

48. The first ground is that the prosecution failed to carry out sufficient investigations and that its failure to do so rendered the trial process unfair because the defence were less well able to carry out the investigations than the prosecution would have been. The alleged failure extends to applicants on whose behalf fraudulent claims were made, the applicants' legal advisers, other advisers, employees or directors of the two immigration firms at the heart of the fraud.

49. It is clear, and was recognised by the Judge in his ruling, that a strategic decision was taken to prosecute those who were identified as being "higher up the scale who provided the false evidence to satisfy the criteria for the grant of visas." When asked by the Judge why not all applicants whose applications were alleged to be fraudulent had been interviewed, the answer was that it would have involved about 60 people and would have rendered the trial process unwieldy. There is nothing wrong in principle with prosecuting authorities, who will inevitably be subject to finite resources, limiting the

scope and extent of their investigations. The question for them is whether, without unfairness, they have accumulated sufficient evidence to charge and, later, secure convictions.

50. As a matter of fact, it is plain that the prosecution carried out extensive investigations in relation to applicants, accountants, lawyers and others, some of whom were charged. Ms Trivedi, the fourth defendant to this indictment, was involved as an accountant. We are told that four named applicants were tried in a severed second trial. We are informed, and there are indications of this in the summing up, that the scope of the prosecution's investigations extended to employees and directors of both "bogus" and entirely legitimate businesses and honest accountants who were used by the conspirators to further their ends. Proper disclosure was given of all investigations. When the Defence asked the prosecution to do so, a series of applicants were contacted by investigating officers with a view to establishing whether they would be prepared to assist the Defence. Perhaps unsurprisingly, none were: but that is no indication of unfairness.

51. In summing up the case to the Jury the Judge told them that there is a code of practice that investigators should go looking at reasonable lines of investigation and commented that some investigators had not done so. But he was astute to point out that the effect of any such failures was to leave a gap or gaps in the evidence and, as he put it at 57 "if you're left with a gap in the evidence which leads to you having doubts, well then, you won't be sure of guilt."

52. In our judgment the trial judge was best placed to assess the scope and adequacy of what had been done by the prosecuting authorities and whether it had resulted in any possible unfairness to the Defendants. He held that it had not. We agree: the contrary is unarguable.

53. The second ground advanced by Mr Ullah is that the decision to charge him under Count 2 was taken on the basis of evidence that included evidence from a Mr McLanaghan who had at some point was engaged by Mr Karim, Mr Enamul Karim and Mr Ullah. Yet at a later date, the prosecution decided not to rely upon Mr McLanaghan's evidence. Instead it relied substantially on evidence found in searches after the arrests leading to Count 2 and oral evidence from witnesses who disputed the truthfulness of documents that had been found. This is said to be an abuse of the process.

54. The decision to charge was based upon satisfying the "threshold" test rather than "Full Code" test for prosecutors. Mr Ullah has not shown that the evidence available at the time of charging was inadequate to satisfy the "threshold" test. Furthermore, as the single judge pointed out when refusing leave, there is no rule of law that a prosecution amounts to an abuse of process unless, at the point of charge, there is sufficient evidence to secure a conviction. We would add that there is no general obligation upon the prosecution to continue to rely upon the evidence it had at the time of charging. In the absence of bad faith, of which there is no evidence or reasonable suggestion here, the protection for a defendant comes at various stages where an unmeritorious prosecution can be halted, up to and including

during trial. Here there was sufficient evidence to sustain the prosecution at the time of service of the Crown's case and, later, to take the case against Mr Ullah past half time and ultimately to conviction. There is no merit in this ground.

55. The third ground is based upon a speculation that the prosecution's engagement with Mr McLanaghan may have led to a failure to respect Mr Ullah's legal professional privilege. There is no reason to doubt the prosecution's assertion that full disclosure of its dealings with Mr McLanaghan has been provided. There is no evidence of any breach of legal professional privilege or that the Crown had relied upon or changed its position on the basis of legally privileged materials. There is no rational basis for the speculation on which this third ground is based.

56. For these reasons, which are essentially the same as those given by the single judge, this renewed application is dismissed.

Karim Renewed Application

57. Mr Karim renews his application based on 7 grounds.

58. Grounds 1 and 2 are that the judge excluded evidence about the current immigration status of applicants or the results of Immigration Tribunal Hearings for applicants whose applications were alleged by the prosecution to be fraudulent. The defence apparently wanted to argue some form of res judicata if a Tribunal had allowed the application. And it wanted to argue that it was relevant if applicants had been granted extensions on their permissions to remain after Mr Karim's arrest or even after he had been charged under Count 2. In agreement with the single judge, we consider these grounds to be unarguable. The trial judge was correct to rule that what happened in the Immigration Tribunals was inadmissible. At best those decisions were taken on the basis of the information provided to the Tribunals, including what the prosecution maintained were fraudulent applications. What mattered, as the trial judge correctly held and later directed the jury (at p. 38), was what conclusion the Jury reached on the information that was available to them at the end of the current trial.

59. Ground 3 is that the judge excluded evidence that two documents relating to a company called (in shorthand) BJGP had been found at Mr Uddin's matrimonial home address. One was a document showing that BJGP was incorporated on 25 July 2008; the second showed that Nahid Dina was appointed company secretary and director on 7 August 2008. The documents also showed that the registered office of BJGP was changed to Olympic House, 28-42 Clements Road Ilford on 24 February 2009 and that Ms Shaheen Akter was appointed a director of BJGP on 4 March 2009. Another letter addressed to Ms Akter was found at the same address.

60. There was and is no evidence that BJGP was used for fraudulent purposes; but the Olympic House address was linked to other companies that were.

61. Ms Dina is Mr Karim's sister in law. He asserts that her name was linked to various sham companies involved in the frauds. Mr Karim submits that this information was used to link him to the conspiracies. Ms Akter is Mr Uddin's wife.

62. Mr Karim submitted that the evidence should be admitted because it was in crucial importance in showing that Mr Uddin had a connection with Ms Dina that was independent of Mr Karim and that he (Mr Uddin) was involved in the setting up of companies. The submission was that this would weaken the inference that the prosecution invited the jury to draw, namely that Mr Karim was the person behind the setting up of multiple companies for fraudulent purposes.

63. As we have indicated, there was no evidence that BJGP was involved in any fraudulent activity, let alone with any activity the subject of the conspiracies charged under Counts 1 and 2. Neither Ms Akter nor Ms Dina were defendants in this or any other trial. The documents evidenced links between Ms Akter, Ms Dina and BJGP; but, apart from being found at Ms Akter and Mr Uddin's matrimonial home, they do not show any connection between Mr Uddin and BJGP, or any connection between Mr Uddin and the setting up of fraudulent companies. Apart from the fact that the registered office was moved to an address which was also used by some companies that *were* fraudulent, there is nothing in this material that weakens the case against Mr Karim or materially strengthens his cut throat case against Mr Uddin. At best its relevance was peripheral. The Judge was entitled and right to exclude it.

64. Ground 4 is that one of the strands of evidence against Mr Karim was that he transferred substantial sums of money to Bangladesh. He sought to adduce evidence that Mr Uddin had sent £6,000 to Bangladesh which was invested in property, evidently wishing to demonstrate that his own transfers were routine and not suspicious. The judge refused the application. He was right to do so for two reasons. First, Mr Karim's transfers and Mr Uddin's were not comparable: his were many times more frequent and of much greater value and were effected using false identities rather than Mr Karim's. Second, the judge was entitled to take the view that, in absolute terms, Mr Uddin's transfer was so small as not to be probative of anything that could be of assistance to the jury.

65. Ground 5 asserts that the summing up was biased against Mr Karim. It is acknowledged that the case against Mr Karim was a strong one; but it is submitted that the summing up was "so devoid of balance it runs the risk of creating a trial that is unfair." This ground concentrates upon a passage fairly early in the summing up during which the Judge said that he was providing an overview. In the following pages he identified the existence of very many companies, often having virtually the same names, with many more bank accounts and either no or no identified genuine employees: and he asked the rhetorical question for the Jury: what are these all for?

66. The prosecution submits that a dispassionate reading of the summing up demonstrates that it was not focused on rebutting a closing speech but rather provided an overview of the evidence *and* addressed points made in cross-

examination and a long closing speech by Mr Karim's counsel. It points out that there are limits to what can be said about a Defendant's case when he answers no questions in interview and does not give evidence at his trial and the case against him is acknowledged to be strong. The prosecution rightly identifies numerous places in the course of the summing up where the judge summarised points made by counsel on Mr Karim's behalf, some more important than others. Most importantly, at pages 208-212 of the summing up, the judge evidently attempted to summarise the main points that had been made on Mr Karim's behalf in his counsel's closing submissions; and he did so even handedly and without denigrating the quality of the submissions, so as to place them clearly before the jury.

67. We return to the overall effect of the summing up after considering the next two grounds.

68. Ground 6 concentrates on the judge's summing up about the use of companies with similar names. He starts by asking, again rhetorically for jury to consider, what is the purpose of the companies. That was, in the circumstances of this case, not merely a reasonable question for the judge to pose and address in his summing up, but an inevitable one. Objection is then taken to a passage where the Judge briefly reminisced about real-life examples of alleged or actual passing off, such as Iceland's concern about the frozen food supplier of the same name, or a shop he used to pass in the heyday of British Home Stores which called itself British Gnome Stores. He did so by way of introduction and context for evidence that was given in the trial by companies (such as the well-known LBC) and their objection to the existence of other companies with very similar names of which they had known nothing. We do not accept that the judge was giving evidence in any real or detrimental sense of the word. He was, as we have said, reminiscing. Whether it advanced the jury's understanding significantly may be doubted; but it did no damage to the fairness of the trial either generally or in relation to Mr Karim in particular. In the overall scheme of this trial, any suggestion from the judge that the "real" companies might have taken more active steps if the allegedly fraudulent companies had actually been trading seems to us to be of little consequence since the evidence that the fraudulent companies were not trading in any real sense of the word was overwhelming and evidence that they were trading (other than by shifting money round the loop) was lacking.

69. Mr Karim also characterises the judge's treatment and description of the money loops as "hostile". Certainly he reminded the jury concisely about the money flowing into and out of accounts in quick succession. But that was evidence of central importance and it was not unfair to identify evidence that was damaging to the defendants or to do so trenchantly, as the judge undoubtedly did. Given that he had carefully explained to the jury their respective functions, had told them that he would not attempt to mention every piece of evidence that they might consider important and had warned them that neither the speeches of counsel nor his summing up constituted evidence, we consider that he remained on the right side of the line when summarising the evidence about the money loops. Not every trial judge would have adopted quite the same language but, for example, it was not wrong to place

before the jury in clear terms the question whether the fact that salary payments running into thousands of pounds were repaid (or "given" back) were genuine or false payments of salary in the first place, which is what the judge did.

70. Under this ground Mr Karim complains that his case, as put to the fifth defendant (Mr Rahman Khan) in the course of their respective cut throat defences was not properly placed before the Jury. The prosecution have answered these complaints in considerable detail in the Respondent's Notice. In agreement with the Single Judge we do not consider that it is reasonably arguable that this aspect of the summing up renders Mr Karim's conviction unsafe.

71. Ground 7 relates to Mr Karim's criticism that the prosecution had not contacted the applicants themselves – the point that had been made in the context of the abuse arguments to which we have referred earlier. As we have said, at the Defendants' request, a number (but not all) of the applicants had been contacted by the prosecution to ask if they would be prepared to assist the defence by giving evidence. None agreed to do so. When summing up this part of the case, the judge gave a clear indication that, if an applicant had attended to give evidence the judge would have given them a warning against self-incrimination. It is said that this removed a central plank of Mr Karim's defence.

72. We do not consider that this observation by the judge renders Mr Karim's conviction unsafe for two main reasons. First, it was balanced by an extensive explanation to the jury of Mr Karim's central point, which was that the failure to interview or call applicants left gaps in the evidence that may cause the jury to conclude that the case was not proved. Second, in circumstances where the prosecution was making clear its view that the applicant's would have been knowing participants in the fraud even though reasons of proportionality and trial management meant that they had not been charged, the judge's observation that he should give them a warning against self-incrimination was justified.

73. Returning to the overall thrust of Grounds 5 to 7, we are not satisfied that it is reasonably arguable that the tone and content of the summing up rendered the trial unfair or Mr Karim's conviction unsafe. We agree with the submission on behalf of the prosecution that what was being done was to sum up an admittedly powerful case against Mr Karim. If some passages suggested a degree of scepticism about Mr Karim's case, in circumstances where he had chosen not to give an account in interview or to attend trial and give evidence we consider that degree of scepticism was justified and did not overreach the proper bounds of a reasonably balanced summing up, not least because the judge summarised the main tenets of Mr Karim's case as they had been advanced by his counsel in his closing speech.

74. For these reasons, Mr Karim's renewed application is dismissed.