



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/22137/2012
IA/22143/2012

THE IMMIGRATION ACTS

Heard at Bradford
On 16th August 2013

Determination Promulgated
On 29th August 2013

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SAQUIB ALI KHAN
NAUSHEEN SAQUIB

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the Appellant's against the decision of Judge Shimmin made following a hearing at Bradford on 23rd November 2012.

Background

2. The Appellants are citizens of Pakistan and the second Appellant is the dependent wife of the first Appellant.
3. The first Appellant was admitted to the UK to study on 25th September 2007. His leave expired on 30th November 2008. On 12th February 2009 his application for leave to remain as a student was refused but on 13th October 2010, following a successful appeal, he was granted leave to remain in the UK as a student until 16th January 2012. On 13th January 2012 he applied for leave to remain in the UK as a Tier 1 (Post-Study Work) Migrant.
4. The Respondent refused the application on the basis that she was satisfied that the Appellant had supplied false bank statements, and that in his previous application for leave to remain he had submitted a postgraduate qualification in information technology from a college which had never offered a legitimate postgraduate qualification. Furthermore, his award from Anglia Ruskin University post-dated his application.
5. The judge considered the relevant case law namely NA and Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031, IR (CCOL cases) Pakistan [2011] UKUT 33, Khan and Tabia.. (CCOL - postgraduate certificates) Bangladesh [2011] UKUT 00249 and NO (Post study work - award needed by date of application) Nigeria [2009] UKAIT 00054. He concluded that the Appellant had practised clear deception with respect to the Cambridge College of Learning qualification, and he preferred the evidence of the respondent with respect to the bank statements. Applying NO, he said that the Appellant could not meet the requirements of the Rules and he dismissed the appeal.
6. The Appellant sought permission to appeal in lengthy grounds, challenging the judge's decision and restating that he had never used any deception with respect to the Cambridge College of Learning, had established that the bank statements were genuine and had tried to keep the Home Office properly informed by sending his provisional results before his visa expired.
7. On 18th December 2012 Judge Nightingale stated that the original judge had given sustainable reasons for finding that the Appellant had previously submitted false documents. However he noted that the judge had said that the Appellant bore the burden of proof and therefore granted permission.
8. On 28th December 2012 the Respondent served a reply stating that the judge was entitled to conclude that the Appellant had submitted false documents on the evidence before him and the issue of where the burden of proof lay was immaterial.
9. This case was listed before another judge on 17th April 2013 when the Appellant did not appear. He sent his apologies and asked that written submissions be taken into account. They consisted mainly of the original Grounds of Appeal and asked that the appeal be allowed, said that the Appellant that he had no intention to deceive

and that his wife needs serious medical attention. His uncle has died and he is disappointed, depressed and sad because he cannot join his family when they need him. The hearing was adjourned on that occasion because the Home Office Presenting Officer on the occasion said that he had not had adequate time to prepare and the outcome of the appeal might be affected by the imminent decision by the Court of Appeal in the case of Khatel.

10. The Appellant was sent another hearing notice. On 17th July 2013 he wrote to the Tribunal and said that he was not expecting the notice because his hearing had been completed. On 18th July 2013 the Tribunal wrote to the Appellant and examined that his hearing had been adjourned to a future date and he was required to attend the hearing.
11. The Appellant did not appear at the hearing, but I am satisfied therefore that he has received the Notice of Hearing and has chosen not to attend.
12. Mrs Pettersen submitted that the appeal ought to be dismissed.

Findings and Conclusions

13. In a thorough and well reasoned determination the judge set out the relevant case law which he properly applied and reached conclusions open to him. He said that he did not find it plausible that the Appellant did not know the history of the Cambridge College of Learning and that he was unaware that the postgraduate diploma was false because the Appellant could not have studied for the diploma there and must have known that the certificate was fraudulent. This constituted clear deception which he failed to declare in the application.
14. The judge noted that the Appellant had supplied a bank statement from the National Bank of Pakistan. He considered the letter from the bank to the Appellant's representatives saying that they agreed with their letter certifying that the Appellant had held a current account with them since 9th January 1999. However the judge observed that the letter does not mention the date of the original letter and does not show the particular employee's email. He considered the document verification report carried out by the Respondent which concluded that the statement was not genuine together with an email from a named employee of the bank stating that the account was fake. He observed that it would have been open to the Appellant to challenge that email by sending it to the bank but had elected not to do so.
15. The judge unfortunately included a standard paragraph stating that the standard of proof was the balance of probabilities and the burden of proof was on the Appellant. The error in including the standard paragraph is however immaterial. Firstly, nothing in the determination shows that the judge wrongly misapplied the burden in his reasoning and secondly, the evidence is clearly capable of showing that the burden of proof on the Respondent has been discharged.
16. With respect to the NO point, the Court of Appeal has recently held in the case of SSH D v Raju and Others [2013] EWCA Civ 754 that the Upper Tribunal decision in

Khatel was wrongly decided and that the operative date for the accumulation of points is the date of application and not the date of decision.

17. Nothing in the Appellant's grounds, which amount to a generalised disagreement with the decision, establishes an error of law. The Appellant had an opportunity to come to court and argue his case and decided not to do so.
18. The reference to the Appellant's wife's medical condition may be taken to a claim that he ought to be allowed to remain here on Article 8 grounds although that has not been specifically pleaded. There is however no medical evidence as to his wife's illness and no basis for finding that there would be any breach of his Article 8 rights. There is no evidence that he enjoyed family life in the UK save with his wife who would be removed with him. Any private life which he has established was during a period when he knew that his stay here would be temporary. All his ties appear to be with Pakistan.

Decision

19. The judge did not err in law and his decision stands. The appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor