Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/06808/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 21 November 2014	**On 9 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DRABU CBE

Between

MISS JASPREET KAUR

(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Makol, Legal Representative
For the Respondent: Mr Shilliday, Senior Presenting Officer

DECISION AND REASONS

1. This appeal has been brought by the appellant, a citizen of India born on 23 June 1985 against the decision of Judge Miles, a Judge of the First Tier Tribunal who dismissed the appeal brought by the appellant against the decision of the respondent refusing further leave to remain as a Tier 4 (General) Student Migrant under rule 245ZX HC395. The respondent made the decision on 22 January 2014 and the appellant gave notice of appeal on 31 January 2014.

2. The respondent refused the application of the appellant for further leave to remain on the basis that when her officers visited the College premises on 5 February 2013, it was discovered that the College no longer had any presence in that building and was closed. Before the First Tier Tribunal the respondent produced letter dated 8 February 2013 putting the college on notice that its licence is likely to be revoked and that is suspended forthwith. The appellant had in support of her application for further leave to remain submitted a letter dated 30 April 2013 setting out the results of her course, which she had been on and was going to end on 22 March 2015. The respondent took the view that having submitted a false document the mandatory provision of refusal under rule 322 (1A) HC 395 applied. The respondent asserted that the document was false as the college had not been functional as from January 2014 and could not have issued the document upon which the appellant had relied. It was a document that told a lie about itself.

3. Judge Miles heard oral evidence from the appellant. The appellant confirmed that she had not been to the college from January 2013 onwards having been told at the college that there would be no more classes. She made no contact with anybody at the college to find out why there would be no classes and what she was supposed to do instead as a student of the course for which she had paid. She insisted that she is a genuine student and needed the opportunity to continue her studies.

4. Judge Miles analysed the evidence and made references to settled law in establishing the use of false document. He referred at length to the judgment of the Court of Appeal in AA (Nigeria) [2010] EWCA Civ 773. Judge Milne concluded that the respondent had proved on the balance of probabilities, that the transcript document is a false document and he therefore dismissed the appeal under rule 322 (1A) HC 395. The appeal was also dismissed on human rights grounds and before this Tribunal that decision has not been challenged.

5. The appellant sought and was granted permission to appeal to the Upper Tribunal by Judge P J M Hollingworth, a Judge of the First Tier Tribunal. In his decision dated 3 October Judge Hollingworth said, " An arguable error of law has arisen in relation to the standard of prof. At paragraph 18 the Judge has referred to the burden of establishing that a false document had been submitted on the respondent on the balance of probability standard. The Judge has not referred to where on the spectrum of the balance of probabilities the standard falls."

6. At the hearing before me Mr Makol argued that the Judge should not have dismissed the appeal and that in so doing he had applied a leaser standard of proof and that being balance of probabilities. He said that the evidence to establish deception on the part was lacking and that in the circumstances it was not open to Judge to dismiss the appeal under 322 (1A) HC395. He said that it had been incumbent on the respondent to prove her case on a high standard of not probabilities. He asked that the

decision of the First Tier Judge be set aside for being in material error of law.

7. Mr Shilliday for the respondent argued that the respondent had proved that the document tendered by the appellant was a false document and based on that the First Tier Tribunal Judge was correct in dismissing the appeal. Mr Shilliday went on to submit that there is only one standard of proof in immigration matters and that is the balance of probabilities. He asked me to reject the argument that within the broad standard of balance of probabilities there are gradations. There is no lower standard or higher standard of probabilities.

8. Having given the matter my careful consideration, the standard of proof is a red herring in this case. On the totality of evidence Judge Milne found it proved that the appellant had submitted a false document. He noted that the appellant had not challenged that the document was one that tells a lie about itself – in that it purports to state that the appellant was a student at the college and had secured certain results in her examination in March. These were manifest lies as according to the appellant herself she had not been to the college from January/February onwards on advice from college. In the circumstances the argument about standard of proof has little relevance on the facts presented in this appeal.

9. Of course the legal principles set down by the House of Lords in the historic case of Khawaja v Secretary of State for the Home Department (1984) 1 All 765 HL remains the legally binding authority on the gradations of the balance of probabilities standard. Also the judgement of the House of Lords in re B (Children) (FC) to which my attention was drawn by Mr Shilliday provides very helpful principles of guidance.

10. In my judgement the decision of Judge Miles was not in material error of law. His conclusion on the applicability of rule 322 (1A) HC 395 is perfectly valid in law. His reasoning that underpins his conclusion is sound.

11. In the circumstances Judge Miles decision to dismiss the appeal does not need to be interfered with.

K Drabu CBE
Deputy Judge of the Upper Tribunal.
4 December 2014