



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

Appeal Numbers: IA/18965/2013

THE IMMIGRATION ACTS

Heard at Field House

On 17 July 2014

**Determination
Promulgated**

On 8 August 2014

Before

UPPER TRIBUNAL JUDGE LATTER

Between

NAUSHAD RUNEL CHOWDHURY

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Hassan of Universal Solicitors,

For the Respondent: Mr I Jarvis, Home Office Presenting

DETERMINATION AND REASONS

1. This is an appeal by the appellant, a citizen of Bangladesh born on 07 January 1992, against the decision of the First-tier Tribunal (Judge Brenells) issued on 06 May 2014 dismissing his appeal against the respondent's decision made on 14 May 2013 refusing to grant further leave to remain as a Tier 4 (General) Student.

2. The application was refused on the basis that the appellant could not meet the English Language test and that in the application had submitted a letter and bank statement from Prime Bank Limited which were false. The decision letter dated 14 May 2013 records as follows:

“I am satisfied that the documents were false because:

On sending your letter and statement for verification with our overseas verification team , it was confirmed by the bank that the transactions recorded on your submitted statement did not match with the records held by the bank, and consequently the statement for your submitted account were confirmed as non genuine. “

3. The appellant appealed against that decision and in his grounds argued that the statement that he had submitted was genuine and had been issued by the bank. It was further argued that the respondent had failed to make any or any adequate enquiries before reaching a decision about the genuineness of the documents and had failed to follow the guidance in RP (proof of forgery) Nigeria [2006] UKAIT00086.

The Decision of the First Tier Tribunal

4. The appeal was heard by Judge Brenells on 10 April 2014 and his decision was issued on 06 May 2014. It was accepted that the appellant could meet the required English language test in the rules as they did not require all the tests to be passed on the same day. However, the respondent relied on the issue that false documents had been submitted. The judge referred to the document verification report relied on by the respondent and a letter produced in evidence on behalf of the appellant purporting to come from Prime Bank Limited (page 7 of the appellant’s bundle “A”) which said that the statement the bank had provided to the appellant was accurate. It was argued on behalf of the appellant that the correct document verification procedure not been complied with and that no evidence of the precise procedure had been provided by the appellant [11].
5. The judge referred to a copy of the published guidance (General Reasons for refusing valid from 28 February 2012) which said “ideally you should ask the authority which issued the document information to confirm in writing that it is not genuine”. The judge commented that it did not require every report to demonstrate written confirmation. The judge accepted the contents of the document verification report [12]. He commented that there was nothing in the letter from the bank at A7 which indicated that the statement the bank issued and the statement the appellant submitted with his application were the same. He found that the application had been refused for proper reasons. He went onto consider Article 8 but found that there was no adequate evidence to establish that Article 8 was engaged or that the appellant would be unable to continue studies on return to Bangladesh.

The Grounds and Submissions

6. In the grounds of appeal it is argued that the judge was wrong to make a substantive decision on the basis of mere assumptions rather than substantive evidence and unreasonably discarded evidence material to the appeal. It is further argued that the judge was wrong to shift the burden of proof on to the appellant to disprove the allegation against him and had erred by failing to take note of the published guidance that ideally the issuing authority should confirm in writing that the document was not genuine.
7. In his submissions Mr Hassan argued that the evidence relating to the falsity of the document was hearsay and should not be regarded as admissible. The judge had further erred by not taking into account the advice set out in the respondent's policy guidance and argued that the respondent had failed to discharge the required standard of proof in the light of the fact that the evidence produced was not independent and there was positive evidence produced from the bank that the appellant's account was genuine.
8. Mr Jarvis submitted that the evidence in the document verification report was admissible and it had been for the judge to decide what weight to give to it. The policy guidance was simply guidance. It had been a question of fact for the judge to assess what weight to give to the conflicting evidence. He had reached a decision properly open to him for the reasons he gave.

Assessment of where there is an Error of law

9. The issue for me at this stage of the appeal is whether the judge erred in law such that his decision should be set aside. It is argued firstly in submissions that the judge was wrong to take into account hearsay evidence but the judge is entitled to take into account any evidence relevant to the matters in issue, but it is for him to decide what weight to give to that evidence. It was then argued that the judge erred by failing to take into account the policy guidance. This, however, refers to the fact that "ideally" evidence should be obtained in writing and refers to the standard of proof but the judge was clearly aware of this policy as he referred in [11] to the desirability of obtaining confirmation in writing and in [6] to the need for a higher standard of probabilities.
10. It has been confirmed that there is only one civil standard, the balance of probabilities, in Re B (children) [2008] UKHL 35 but the judge's reference to a higher balance of probabilities is simply short hand for recognising that the more serious an allegation is the more cogent the evidence needs to be in assessing whether the standard is met. It was argued that the judge failed to give proper weight to the fact that the appellant had produced a letter from the bank saying that the statement provided to him was accurate. However, the judge was entitled to note and take into account that there was nothing to indicate that the statement the bank issued and the statement the appellant submitted with his application were the same.

11. When granting permission to appeal Judge Osborne said in [4] of the grant that she was satisfied that it was a serious allegation to raise in refusing an application, namely that a false document had been provided and she was not satisfied that the evidence relied upon by the respondent was either in a suitable form or of the requisite strength to raise a justifiable suspicion that a false document had been provided whereupon the burden of proof would pass to the appellant overcome the allegation.
12. When granting permission the judge was right to identify what she regarded as arguable grounds. However, I am not satisfied that this is a case where the evidence relied upon by the respondent was not in a suitable form or not of sufficient strength to raise a case to answer. The document verification report records information received from the bank. It is correct (and the point was emphasised in submissions) that there was a contradiction in the document where the dates at one point are recorded as August 2012 and at another as December 2012 but this in all likelihood is simply a clerical error. There is no doubt that the relevant dates are the balances on the two separate dates in August 2012. In addition to this evidence from the bank, the entry clearance officer recorded his experience in detecting forgeries.
13. When considering the evidence relied on by the appellant the judge was entitled to note that the appellant had adopted his written statement and was not tendered to cross examination [4] and the fact that there was nothing in the letter from the bank to link the statement the bank issued and the statement the appellant submitted. There is nothing to indicate that the judge took the view that the burden of proof would pass to the appellant to overcome the allegation. The appellant produced evidence to refute the respondent's evidence. It was then a matter for the judge to assess that evidence and decide what inferences could properly be drawn. There is nothing in the determination to suggest that the judge regarded the appellant as under a burden to refute the allegation made by the respondent.

Summary

14. I am satisfied that the judge's findings and conclusions were properly open to him for the reasons he gave. The assessment of whether a document is false is essentially a question of fact for the judge to assess in the light of the evidence as a whole. I am not satisfied that he erred in law as asserted in the grounds and submissions, which in substance are an attempt to re-open and re-argue issues of fact. In these circumstances the appeal must be dismissed.

Decision

15. The judge did not err in law and the decision of the First Tier Tribunal stands.

Signed

Date

Upper Tribunal Judge Latter