



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/47246/2013**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On June 20, 2014

On June 23, 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MR MD TOUFIQUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Kumar (Legal Representative)

For the Respondent: Mr Saunders (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant, born October 15, 1988, is a citizen of Bangladesh. The appellant entered the United Kingdom on November 6, 2009 in possession of a visa valid until April 30, 2011. He submitted an application to extend his leave as a Tier 4 (General) student but his application was refused initially on

August 30, 2011. He appealed this decision and his appeal was heard on October 24, 2011. His appeal was allowed to the extent that the decision was remitted back to the respondent as it was not in accordance with the law and he was allowed a further 60 days to find another Tier 4 sponsor. The respondent reconsidered the application and then refused it on October 29, 2013 under paragraph 322(1A) HC 395 on the basis that a false bank statement had been submitted. A decision to remove under section 47 of the Immigration Asylum and Nationality Act 2006 was also taken.

2. On November 8, 2013 the appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002. Notices of the hearing were sent by second class post to the respondent, appellant and his solicitors.
3. The matter came before Judge of the First-tier Tribunal Meah (hereinafter referred to as "the FtTJ") on March 11, 2014 and in a determination promulgated on March 18, 2014 he found the notice of hearing had been served and he was entitled to place reliance on the document verification report (DVR) that was contained within his papers.
4. The appellant appealed that decision on March 31, 2014. Permission to appeal was granted on May 1, 2014 by Judge of the First-tier Tribunal Levin on the basis he accepted it was arguable there had been a procedural unfairness.
5. There was no Rule 24 response from the respondent.
6. The matter was listed before me on the above date and the appellant was in attendance.

SUBMISSIONS

7. Mr Kumar submitted that neither his firm nor the appellant had received notice of the hearing because if they had he would have either attended or written to the Tribunal setting out his client's position. He submitted he had provided further evidence from the bank dated March 12, 2014 and he also noted the phone number on the DVR was different to the phone numbers on the letters. The latest letter confirmed that the original bank statement was genuine and that the manager had not been contacted by anyone and there was no record of any such contact on the file.
8. Mr Saunders accepted letters can go astray but the chances of both letters going astray were improbable. He also submitted that there were serious questions to be raised about the new

letter itself. The hearing had been on March 11th and the decision was promulgated on March 18, 2014. The grounds of appeal referred to the decision being received on March 21, 2014 and the grounds indicated the appellant immediately contacted the bank and they issued the new letter. However, the bank letter was not only dated “in type” March 12, 2014 but the signatory to the letter had also written in the date “in hand” next to his name. No credible explanation had been given for this apparent discrepancy in the timeline or how the bank would have issued such a letter when they were not contacted until nine days later. Regardless of these issues the details of the DVR were in the refusal letter and no explanation had been provided to explain what steps had been taken when the refusal letter was received. The document verification officer had no axe to grind and the only submission that could be made was he had fabricated the DVR and that lacked credibility. He submitted that even if there had been a procedural unfairness then it was not material.

9. Mr Kumar responded to these submissions and accepted the respondent had a point about the date but his instructions were that this was the letter received from the bank. The respondent’s bundle also appeared to contain an application from a person with the same name but it was not the appellant.
10. I retired briefly to consider the submissions.

ERROR OF LAW DECISION

11. The court file contained a copy notice that referred to the hearing date and the persons who were supposedly served were the respondent, appellant and his solicitors. Their addresses were correct. The solicitors made it clear that they had never received a notice and I accept Mr Kumar’s submission in this regard particularly because he had not advised the Tribunal whether he would be attending. I was not so persuaded that the appellant had been served but in the interests of fairness and justice I accepted he had not.
12. I was satisfied this was material error because Mr Saunders’ arguments on the documents is an evidential issue that should be dealt with at a substantive hearing. In finding an error I make no criticism of the way the FtTJ dealt with it. He dealt with it on the basis the notices had been served correctly and there had been no appearance.
13. I did consider remitting this decision back to the First-tier Tribunal but Mr Kumar indicated he was content for the Upper Tribunal to deal with this matter. In the circumstances I agreed

especially as the issue was limited to whether the appellant had submitted a false document.

EVIDENCE

14. The appellant was called to give oral evidence and he adopted a statement that had been submitted on June 9, 2014. He maintained the bank statement of April 1, 2012 was genuine and that the bank had sent him the letter dated March 12, 2014 and it was they who had dated the letter incorrectly. He confirmed under cross-examination that he had called the bank about the letter and statement but he was unsure whether this was on either March 19th or March 20th. He recalled speaking to his solicitors who told him what to do. He struggled to explain how if he only spoke to the bank on the 19th or 20th March that he could receive a letter dated March 12th but he reiterated the document was genuine. He was unsure if he had retained the envelope that the documents arrived in but he believed it was some two to three days after his call. He further stated that although he was aware of the reason for refusal in late October 2013 he had not contacted the bank because his solicitor had said there as no need until a hearing date had been given.
15. I then questioned him about who had obtained the letter because his oral evidence was that he had called the bank but as this was his father's statement I asked whether this was the case. He told me that he had spoken to his father and it was his father who had called the bank and it was his father who had sent him the document.
16. I have also before me the original bank statements, two letters from the bank dated December 15, 2011 and March 12, 2014 as well as the respondent's bundle.

SUBMISSIONS

17. Mr Saunders relied on both the refusal letter and his earlier submissions where relevant to the bank documents. He invited me to accept the DVR and to accept the checks were made. The respondent had provided sufficient evidence to satisfy the evidential burden placed on her. He submitted the remedial action taken was at best confused and little weight should be attached to the new letter that contained an incorrect date. He invited me to dismiss the appeal.
18. Mr Kumar adopted his earlier submissions and invited me to find the appellant met the Rules. He had explained why no response to the refusal letter had been obtained in October

2012 and he had clarified who had obtained the letter in March 2014. He also submitted it was possible that the author of the letter had mistakenly dated the letter incorrectly in two places. I was invited to accept the bank statements as genuine and to allow the appeal.


FINDINGS ON THE EVIDENCE

19. The appellant's application to extend his leave would be allowed if he satisfied the maintenance requirement. The issue in this appeal is whether he had satisfied paragraph 245ZX(a) of the Immigration Rules.
20. Two bank statements were submitted along with a letter from the bank dated December 15, 2011. The respondent carried out a spot check with the bank and the information provided to her was that the account details were correct but the balances were not. The respondent refused the application under paragraph 322(1A) HC 395.
21. Where a claimant seeks to rely on a document then, in the normal course, the burden lies on the claimant to show that it is a document that can be relied on. It does not follow, however, from this exercise that the document is a forgery. There will need to be strong evidence before a Judge makes a positive finding that a document is forged. It is one thing to decide that, as a piece of evidence, a document merits no real weight and is unreliable; quite another to decide that it is a forgery. In contrast, a finding that an appellant has actually submitted a forged document may seriously taint the general credibility of the appellant. In Re B(Children) 2008 UKHL 35 the House of Lords said that in fact "there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not". The respondent therefore bears the burden initially when forged documentation is alleged.
22. To support her claim the respondent relies on the document verification report. This report, contained in the respondent's bundle, confirms that an officer contacted the bank concerned and sent the letter and statement. The bank indicated the balances on the statement were incorrect but the details of the account holder were correct. The officer concluded that both the statement and letter were "non-genuine".
23. The appellant gave oral evidence today and relied on the new bank letter dated March 12, 2014. If this letter had merely contained the typed date on it then Mr Kumar's submissions may have carried more weight but the fact the signatory of the letter not only purportedly signed the document but also wrote

the date against his name as 12.03.2014 undermines the argument there has been a typing error.

24. The fact the letter pre-dates the date the appellant became aware of the original decision is a hurdle he has not addressed. He was uncertain about his dates but this in itself is not a matter I make a negative finding on. However, I do have regard to the evidence he gave about how he came to obtain the letter. In cross examination he made it clear on at least two occasions that he had called the bank whereas in questions posed to him by myself he altered his account, when challenged as to why the bank would speak to him when he was not the account holder, and said he had called his father who had then contacted the bank and it was his father who sent the letter to him.
25. Having considered all the evidence I am satisfied the respondent has met the test set out in RP (proof of forgery) Nigeria [2006] UKAIT 00086 and has proved the dishonesty by evidence. I accept the findings contained in the DVR report and based on the findings set out above I do not accept the appellant's evidence or any of the bank documents in so far as the maintenance requirement is concerned.
26. I am satisfied this appeal that should be refused under paragraph 322(1A) HC 395.

DECISION

27.  There was a material error of law. I have remade the decision and I dismiss the appeal under paragraph 322(1A) of the Immigration Rules.
28. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. No order has been made and no request for an order was submitted to me.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT

I make no fee award I dismissed the appeal.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

SKA