



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

Appeal Number: IA/05897/2014

THE IMMIGRATION ACTS

Heard at Newport

**Decision and Reasons
Promulgated**

On 18 December 2015

On 1 March 2016

Before

**MR C M G OCKELTON, VICE PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE PHILLIPS**

Between

SAIFUL ISLAM KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Sharma, instructed by M A Consultants (London)

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant, a national of Bangladesh, applied to the Secretary of State for further leave to remain as a student. He was refused on the ground that a bank statement he had produced in support of the application was false. He appealed to the First-tier Tribunal. He was represented by Mr R Ugoh, a solicitor, acting as agent for M A Consultants, his representatives on record. Judge Page considered the evidence before him and dismissed

the appeal. The appellant then, by his representatives, sought permission to appeal to this Tribunal, on the ground that there was no Document Verification Result before the judge and, in the circumstances, he was not entitled to find that the Secretary of State's allegation had been made out. Permission was refused by First-tier Tribunal Judge Nicholson, who pointed out that the judge's note showed that the Document Verification Result must have been before the judge. The application for permission was renewed to the Upper Tribunal. The application is completed and signed by Mr M Afzal of M A Consultants. The grounds were repeated. In addition, in manuscript on the application form, Mr Afzal has written as follows:

"Also we wish to confirm that no attachment to the DVR has ever been served on us or the appellant"

2. Permission was granted, specifically only on the basis that the appellant had not seen a copy of the Document Verification Result. There was a response from the Secretary of State saying that the full Document Verification Result was submitted by the Home Office Presenting Officer at the First-tier Tribunal; that the appellant and his representative had an opportunity to look at it and did not object to its late submission.
3. There have been substantial delays in this case. The hearing before the First-tier Tribunal was on 17 July 2014. His decision was sent out at the end of the month. Judge Nicholson's decision was on 18 September 2014. The renewed application for permission was received on 6 October 2014 and determined on 19 January 2015. The response under Rule 24 is dated 26 February 2015. There was then a delay of nearly ten months until the hearing before us.
4. At that hearing, Mr Sharma withdrew the ground of appeal on which permission had been granted. He had taken instructions from the appellant, who had confirmed that it was indeed correct that the Document Verification Result had been produced at the hearing before the First-tier Tribunal. We expressed our concern, not in any way about Mr Sharma's conduct (he having been instructed only the previous evening) but about the previous conduct of the appeal. We have since received a letter from Mr Afzal.
5. It is clear that the assertion of fact upon which the grounds of appeal were twice based, and which was made again in the manuscript addition to the application to the Upper Tribunal, was wholly untrue. It is also clear from Mr Afzal's letter that it was made without his receiving any information from either his agent Mr Ugoh who had appeared at the hearing for him, or from the appellant himself. It is further apparent that Mr Afzal did not have any effective contact with the appellant at any time after the hearing before the First-tier Tribunal. Although Mr Afzal was clearly put on notice that his statement was untrue, both in the refusal of permission by Judge Nicholson, and in the Rule 24 reply from the Secretary of State, he evidently made no attempt to see whether what he had said

was the truth or not. That remains a matter of considerable concern, and a copy of this determination is being forwarded to the office of the Immigration Services Commissioner, who is responsible for Mr Afzal's professional standards.

6. So far as concerns the ground upon which permission was granted, as it has been withdrawn, we need say no more about it.
7. Mr Sharma asked for permission to amend the grounds, to add the ground that a reading of the determination suggested that the judge had not taken into account submissions made on behalf of the appellant. After hearing Mr Sharma's submissions on that point, we refused permission. The reasons are twofold. First, there was no explanation for the delay in advancing this new ground. The appellant has been represented throughout, and the ground is one which falls to be identified on the face of the determination itself. There is no reason why the application to amend could not have been made at any time in the previous fourteen months. Secondly, the new proposed ground would take the matter no further. Although a judge is of course bound to take relevant submissions into account, he is under no obligation to record them in a determination. His notes (which, if the amended ground had been available earlier, might well have been disclosed to the parties) show that he had the submissions in mind, and indeed it is clear from the determination that he was primarily concerned with the weight to be attached to the relevant items of evidence before him.
8. The appellant's appeal is dismissed.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 2 February 2016