



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/16296/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 19 December 2016**

**Decision & Reasons
Promulgated
On 16 October 2017**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

**MUHAMMAD ASADULLAH UMAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam of Counsel instructed by JJ Law Chambers
For the Respondent: Mr S Staunton, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant in this case is a national of Pakistan who was born on 27 February 1984. He entered this country as a student in 2011 and his permission to remain was extended until 3 May 2014. On 3 May 2014, that is the day on which his leave expired, he applied for further leave to remain in order to study for a diploma but on 21 December 2014 the respondent informed him that the college at which he intended to study had had its licence revoked but he was provided with a 60 day period in order to obtain a new Certificate of Acceptance for Studies. An extension

was granted to produce this but the respondent when granting this extension informed the applicant that if he did not provide a Certificate of Acceptance for Studies by the extended date consideration would be given to the application on the basis of the material which the respondent then had. There were apparently difficulties in connection with the appellant's passport which it seems he had allowed to expire and so he asked for a further extension of time, but it is the appellant's case that this application was not considered. The respondent considered the application on the basis of the material which was before her and refused it for reasons which are given in the decision letter which is dated 13 April 2015.

2. The appellant appealed against this decision on the very narrow ground that following the decision of the President of this Tribunal in *Sultana and Others (rules: waiver/further enquiries; discretion)* [2014] UKUT 0540 it was incumbent on the respondent following a request to exercise discretion at the very least to give reasons if she decided not to exercise discretion in the appellant's favour, why this was so. Reference was made during the hearing before the First-tier Tribunal to the decision in *Sultana*, and in particular to what was said by the President at paragraph 20 as follows:

"Furthermore, in the event of an invitation to exercise discretion being refused, one would expect a brief explanation to be given. For the avoidance of doubt, we take this opportunity to emphasise that an adequate, intelligible explanation for any discrete refusal of this kind should always be provided by the ECO."

3. Accordingly, the argument advanced before the First-tier Tribunal was that because no explanation had been given as to why discretion would not be exercised in the appellant's favour, the decision was not in accordance with the law.
4. The appeal was heard before First-tier Tribunal Judge Row sitting at Birmingham Sheldon on 25 July 2016 but in a decision which is dated 27 July 2016 and promulgated on 8 August 2016 the appeal was dismissed. The appellant now appeals against this decision with permission granted by a First-tier Tribunal Judge on 8 November 2016, the sole ground being that the judge ought to have considered the failure to grant a further extension of time in light of the President's decision in *Sultana*; it is the appellant's case that the judge's failure so to do was a material error of law.
5. What is interesting about not just the grounds of appeal and the skeleton argument prepared in support of the appeal (by Counsel previously instructed) but also in the reasons given for granting permission to appeal is that nowhere in any of these documents is there any reference to what was the main reason why the application was refused which was that the appellant had submitted false documents within his application. The application was not just refused because of the failure to submit a Confirmation of Acceptance for Studies (which also led to the appellant

being awarded no funds for maintenance) but it was also refused on general grounds as follows:

“As part of your application, you submitted an official transcript and letter, titled Leyton College, with reference number AC1091809VB. This document has been confirmed as false by the issuing authority. You have therefore used deception in this application and it is refused under paragraph 322(1A) of the Immigration Rules.”

6. By paragraph 322(1A) of the Rules it is provided that

“Where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant’s knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application”

leave to remain or variation of leave is to be refused. This is a mandatory ground of refusal.

7. As the judge noted within his decision (at paragraph 19) the appellant had had since 13 April 2015 to answer the allegation of dishonesty (which is set out at paragraph 18) but “the appellant did not give evidence orally or in a witness statement” and “has given no explanation or denial of the allegations made. His notice of appeal is silent on the matter”.

8. Although at paragraph 9 of his decision the judge notes that “on the deception grounds it was argued that the respondent had not satisfied the burden of proof that the appellant had used deception”, at paragraph 18 it is recorded that the respondent had produced copies of the two documents in question and an email from Leyton College which said that the documents had not been issued by them and on this basis the judge was satisfied (as he states at paragraph 19) that “there was a case to answer”.

9. This aspect of the decision has never been challenged and in light of it, it is in my judgment surprising that permission to appeal was granted but I have to consider whether or not there was a material error of law on the basis of the material which I consider.

10. I do not need to embark on any detailed analysis of the effect of the decision in *Sultana*, because even though it may have been desirable for the respondent to state briefly why it was not considered appropriate to grant any further extensions of time the appeal would have been bound to fail in any event because of the failure to make any effective challenge to the finding of dishonesty. Accordingly, any error there may have been with regard to the failure to explain in terms why a further extension of time would not be granted could not have been material to this decision because, as already stated, it had to fail in any event.

11. It follows that this appeal must be dismissed and I so find.

Decision

There being no material error of law in the decision of the First-tier Tribunal, the appellant's appeal is dismissed.

No anonymity direction is made.

Signed:

A handwritten signature in black ink that reads "Ken Craig". The signature is written in a cursive style with a long, vertical tail on the letter 'g'.

Upper Tribunal Judge Craig
January 2017

Date: 25