Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/25577/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 19 April 2018	**On 04 May 2018**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

MUHAMMAD JUNAID AHMAD
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Z Mian of Counsel instructed by Diplock Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Pakistani national born on 12 November 1982 who appealed the decision of the respondent dated 24 June 2016 by which she refused to grant Tier 4 leave and set directions for his removal under s.47 of the Immigration, Asylum and Nationality Act 2006. On 1 December 2017 the matter came before me at a hearing at Field House and, on 5 December 2017, I set aside the determination of the First-tier Tribunal Judge Walters.

2. The application had been refused because the respondent considered that the appellant had relied on a false letter and CAS from West City College and because the appellant's new sponsor was not listed on the sponsor register when checks were made in June 2015. The appellant failed to attend the hearing but the judge was satisfied that the Notice of Hearing was sent to him on 30 August 2016. The judge noted that the appellant had failed to comply with a direction for further evidence made by a judge on 25 May 2016. He found that the respondent had failed to provide any evidence to show that the supporting documents were false but as there was no valid CAS with the application, he dismissed the appeal. The appellant was notified of the decision on 7 October 2016.

3. On 8 December 2016, the appellant instructed Diplock solicitors. In an undated letter to the Tribunal (received on 12 December 2016) they put themselves on record and maintained that the appellant had not received the notice of hearing or determination. A copy was then sent to the solicitors on 21 December 2016.

4. On 4 January 2017, an out of time application for permission to appeal was filed and a copy of a CAS covering a course from 6 January 2014 – 6 January 2015 was attached. The grounds argued that the judge had wrongfully considered the CAS letter from West City College rather than the new sponsor, London College of Business Management and Technology. It is maintained that the course at the latter institution covered the period January 2015-January 2015. It is argued that the appellant did not receive notification of the re-listed hearing and that had he done so he would have attended and provided relevant documentary evidence. The judge was criticized for proceeding in the appellant's absence. The grounds also argued that the appellant should have been given 60 days to find a new sponsor.

5. Time was extended by First-tier Tribunal Judge Osborne but he refused the application on 9 August 2017. The application was renewed to the Upper Tribunal and permission was granted by Upper Tribunal Judge Hanson on 2 October 2017 on the CAS issue.

6. The matter came before me on 1 December 2017 and, as stated, I set aside the decision on the basis that the judge had failed to consider whether the 60 day policy applied to the appellant. Directions were issued and the matter came back before me for the resumed hearing on 15 February 2018. On that occasion, the respondent adduced fresh documentary evidence purporting to show that deception had been used in an earlier application. It was admitted but as the appellant had not had time to consider it, I adjourned the hearing.

7. The Hearing

8. At the commencement of the hearing on 19 April 2018, Mr Mian submitted that the Tribunal did not have jurisdiction to consider the issue of false representations. He criticized my admission of the further evidence. He

submitted that as the respondent had not filed a cross appeal on that issue, she could not argue it at this time.

9. Mr Wilding submitted that this matter had already been resolved. As Judge Walter's decision had been set aside, and as the Tribunal was remaking the decision, further documentary evidence was admissible.

10. I confirmed to the parties that the matter was already settled at the last hearing and invited Mr Mian to proceed.

11. The appellant was in attendance and gave oral evidence in reasonable English. He adopted his witness statement and confirmed his personal details. He stated that he had submitted two documents with his application; a CAS and an enrolment letter. He had relied on several "proofs" that he was a genuine student and he obtained leave on that basis to attend a course of studies at West City College. On his return to the UK following a visit to Pakistan in November 2012, he was stopped at the airport and checks were made of the college which confirmed he witness statement enrolled there.

12. The appellant stated that the college licence had been revoked at the time the college sent its email to the respondent and he did not know who had sent it. He stated that despite having leave until June 2014, he had paid £500 for an enrolment letter in September 2013 because he had decided to change his sponsor. This was because his college had not been serious about lessons; there were no proper arrangements and no teachers at classes. He then went to the London College of Business Management and Information Technology. He was issued with a CAS in December 2013 and he then submitted an application for leave that was refused in June 2015.

13. The appellant said that he had completed his studies at the new college. He achieved a level 7 diploma and marketing. He obtained a degree in 2015. That completed examination in chief.

14. In cross examination, the appellant agreed he had submitted the letter of 20 September 2013 with his application. He confirmed that he had seen the email from the college to the respondent. He was asked to comment on the assertions by the college that it did not issue the letter, that the registration number was wrong, that the course number was wrong and that the college stamp differed. The appellant replied: "there were two different persons when I got my CAS". He was reminded that this was the enrolment letter and not the CAS. He stated that it had been previously accepted by one Jawad Hassan that he was a genuine student.

15. The appellant was asked again for his comments on the college email. He replied that it was a genuine letter. He was asked to look at the registration number which differed from that on another document. He did but had no comment. He was asked about the different course dates. He said they changed the dates. He was asked about the different stamps. He agreed they were

different but suggested that the college had changed the stamp. He then said that the registration number may have been misprinted. He maintained the letter was genuine. He obtained it from the college. He stated that when the college emailed the respondent, the licence had been revoked. He was asked why that made any difference. He replied that he was a genuine student. That completed cross examination.

16. In re-examination Mr Mian produced the applicant's original student card showing his registration number as 299. This was seen and returned to the appellant. He was asked whether he had noticed that the registration number was incorrect on the letter. He said he had not; if he had, he would have asked the college to correct it. He did not know who had signed the letter. It had not been signed in his presence. He did not know if the college had more than one stamp. That completed the oral evidence. There were no other witnesses.

17. I then heard submissions. Mr Wilding relied on the decision letter. He submitted that the burden was on the respondent to show that the appellant has used deception by relying on a false document. He pointed out that there was no such thing as a higher balance of probabilities as had been argued in the skeleton argument. He submitted that the case was straightforward. The appellant had applied to attend another college. He had no valid CAS at the time. He argued that he should have been given 60 days to obtain a CAS but he had submitted the document of 20 September 2013 with his application and that transpired to be a false letter according to information received from the college itself. Although the appellant had studied there, the college pointed out three problems with the letter. That evidence was sufficient for the respondent to show that a false document had been relied on. Nothing in the appellant's evidence resolved the issue.

18. Mr Wilding submitted that if it were found that the letter was false, then that was the end of the matter. The rules provided for a mandatory refusal even if the appellant was not aware the letter was a forgery.

19. Mr Wilding said that he had not seen the letter from the receptionist relied on by the appellant. he submitted, however, that it was not the respondent's case that the appellant had never studied at that college. The issue was that he had relied on a false letter. The appeal should be dismissed. Should the Tribunal disagree with those submissions, then the respondent had no defence to the criticism that the 60-day policy had not been applied.

20. Mr Mian relied on his skeleton argument. He submitted that the DVR was dated 28 January 2014 and the decision was made in August 2015. He submitted that had the respondent been confident about the response from the college, she would have made her decision in January 2014 and the appellant would have been in a better position to show whether or not the letter had been genuinely issued.

21. That completed the submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

22. <u>Conclusions</u>

23. I have regard to Mr Mian's submissions on my decision to admit the respondent's further evidence. When adjourning the hearing on the previous occasion to allow the appellant time to consider that evidence, I observed that although this evidence could and should have been adduced at an earlier stage, it could not be right that the appellant should benefit from deception, if there had been any, simply because of the respondent's inefficiency. I note that this is strongly resisted by Mr Mian for the appellant but he had the opportunity to consider the evidence and to provide evidence of his own to rebut it in the two months that have passed since the adjournment. Moreover, if he has nothing to hide then he should not be worried.

24. I would emphasise that I am not revisiting the findings of the First-tier Tribunal Judge in respect to the deception issue. On the evidence, or rather the absence of evidence, before him, he was entitled to make the finding he did and I have upheld that part of the determination. However, on remaking the decision, I am obliged to look at all the evidence before me and there is now evidence from the respondent that a false letter was allegedly relied on. Pragmatically, I cannot overlook that evidence and send the matter back to the respondent to apply her policy as with the evidence she has the appellant could not expect to succeed in a future application. It seems to me, therefore, that I must consider the evidence before me and I am satisfied that the appellant has had ample opportunity to respond to that evidence.

25. It is accepted by the respondent that the appellant attended West City College (WCC) although it is difficult to see how he can maintain he was a genuine student when by his own evidence, there were no teachers at classes and no proper arrangements. However, that aside, it has not been alleged that he did not attend that institution and the confirmation from Mr Hussain and from the college itself (in correspondence with the respondent) that he was registered there does not advance matters.

26. The appellant relied on a letter of enrolment from West City College dated 20 September 2013 when he made his application for leave. The respondent made enquiries of the college and on 24 January 2014 received this response from WCC: "***... After detailed analysis of the provided letter, we can confirm that the letter provided is fake and is not issued by the college***". The college went on to confirm that the appellant had studied at the college and that the course matched college records. However, the registration number was incorrect and the signature and college stamp had been fabricated.

27. The respondent also points to the differences between the course dates on the enrolment letter (21 January 2013 – 27 June 2014) and the CAS (13 August 2012 – 28 February 2014). Neither fits with the issue of the student card on 15

November 2012 and expiry on 31 May 2013. The appellant maintained that the course had started late but there is no evidence of this and the appellant does not provide the amended dates in his witness statement.

28. Mr Mian's skeleton argument refers to the email of 24 January 2014 as being "purportedly" from the college. I have no reason to disbelieve the respondent when she maintains the correspondence came from the college and I note the college email address in the correspondence. I do not accept the inference, if that is what is intended, that the respondent concocted this evidence. I also have regard to the fact that the author of the email was clearly able to check the college records and to confirm that the appellant had studied there and to confirm the course he had taken. That demonstrates that the person who sent the email had access to college records even if the licence had been suspended by that time. I note in passing that I have not seen any independent evidence of when the college ceased to operate.

29. A further point made in the skeleton argument is that the email does not clarify which letter (the enrolment or the CAS) s said to be fake. That is, however, obvious. As the registration is only incorrect on the enrolment letter (209 instead of 299), it is plainly *that* document which is in issue. Mr Mian's own submission (at paragraph 14) that a CAS document cannot be forged because it requires access to the sponsorship management system, only reinforces my finding that the enrolment letter is the one deemed to be a forgery.

30. I find no merit in the submission that the respondent would have made a refusal decision in January 2014 had she been confident of the college response. The reply was received on 24 January 2014. It would be extremely unusual for this to have been considered with such speed as to lead to a decision within a matter of days. I cannot speculate on why it took time to issue a decision but given the extent of student refusals that this Tribunal has seen in recent years, pressure of work may be the simple reason for the delay.

31. Going back to the letter said to emanate from WCC, the evidence clearly shows that it bears a different registration number to that on the CAS and on the student card. This is unexplained. It is also the case that the college stamp differs from that on the CAS. The appellant suggested that it may have changed and in re-examination Mr Mian asked the appellant if there was more than one stamp. Neither explanation overcomes this problem: the college maintains the stamp was a forgery and surely it would know whether there was more than one stamp in use or whether the stamp had changed.

32. No explanation is provided to address the college confirmation that the principal's signature was a forgery.

33. The appellant does not explain how he was able to track down the college administrator, Mr Khalid, in 2017 given that by his own evidence the college ceased to operate in 2013. Nor is it explained how that gentleman is able to

recall events from several years ago when the appellant was one student amongst many. Nor does Mr Khalid seek to engage with the difficulties arising from the college enrolment letter. His letter is therefore of limited value.

34. For all these reasons, therefore, I find that the respondent has discharged the burden upon her to show on the balance of probabilities that the appellant relied on a false document when making an application for leave. It follows that refusal under paragraph 322(1A) is mandatory and that the appellant cannot benefit from the respondent's failure to apply the 60-day policy.

35. In reaching my decision I have had careful regard to all the evidence. No questions were put to the appellant as to his claims to be married to an EEA national and/or engaged to a Pakistani woman contained in the respondent's notes (pp 61-69 of the appellant's bundle) but these matters are not directly relevant to the issue of whether or not a false document was relied on. I also note that at the first hearing before me Mr Mian confirmed that the appellant wished to leave the UK and was simply waiting to clear his name. Plainly then, there is no matter of private/family life to consider and indeed no submissions have been made in this respect.

36. Decision

37. The appeal is dismissed.

38. Anonymity

39. No request for an anonymity order was made and I see no reason to make one.

Signed

Upper Tribunal Judge

Date: 30 April 2018