



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

Appeal Number: IA/26787/2015

THE IMMIGRATION ACTS

Heard at Field House

On 08 January 2018

**Decision & Reasons
Promulgated
On 13 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**MR SAZZADUR RAHMAN
(NO ANONYMITY ORDER)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karim, instructed by E1 Solicitors

For the Respondent: Mr Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

The appellant and proceedings

1. The appellant is a citizen of Bangladesh born in 1982 who appealed the respondent's decision of 14 July 2015 refusing him leave to remain in the UK as an entrepreneur because he had relied on a false Cambridge College of learning certificate in an earlier application and a false Janata bank statement in this application. The appellant applied via his representatives the day before for the matter to be disposed of on the papers on the basis that he had been served with the respondent's

bundle. That application was not dealt with before the hearing. Neither the appellant nor the representative appeared. Judge Onoufriou noted that the respondent's bundle had been served on 05 January to the correct e-mail address, he heard the appeal, and in a decision promulgated on 30 January 2017 dismissed it.

The appeal to the Upper Tribunal.

2. The respondent appeals with the permission of the First-tier Tribunal (Judge Robertson), granted on 16th August 2017. In summary the grounds are:
 - (a) Respondent's bundle: The judge was in error to take into account the respondent's bundle when the appellant's representatives had made it clear that they had not been served with the respondent's bundle and were asking for the judge to determine the appeal without oral representations from the respondent's representative, and on the basis of the appellant's bundle only.
 - (b) Forged Janata bank statement: The judge failed to apply the correct standard of proof in the context of the allegation of forged documents. The judge should not have placed any reliance on the DVR because the appellant had not received the bundle, and so had not had the opportunity of providing his explanation. The assertion in the refusal letter is that the respondent contacted the bank who informed them that the account had been closed. Given that the application was made in March 2012 evidence that the account had subsequently been closed is insufficient to establish the submission of a false document. The DVR did not meet the standard in respect of the allegation of forged bank statements.
 - (c) In respect of the false postgraduate diploma certificate from Cambridge College of Learning the appellant has denied any involvement in the fraud and asserts that any wrongdoing was at the college.
 - (d) The judge failed to adequately reason the article 8 dismissal.
3. At the hearing before me Mr Karim concentrated on the challenge of procedural fairness arguing that it was simply unfair for the judge to proceed given that the appellant nor his representative had been served with the respondent's bundle. It transpired from the email correspondence provided by the respondent to the judge that the bundle had initially been wrongly served on the appellant's previous representative. The email correspondence also showed that the bundle had subsequently been correctly served on the appellant's current representatives on 5 January 2017 and so in good time in the context of the standard tribunal directions that such bundles should be served by the parties no later than 5 working days prior to the hearing. The hearing in this case had been set down for 24 January 2017. Mr Karim categoric

response was that email service was not permitted under the procedural rules. I'm grateful to Mr Wilding for taking him to the relevant procedure rule authorising such service. Mr Karim conceded that the Home Office has served the correct email address as revealed on the solicitor's correspondence. The point fell away.

4. Mr Karim complained that the judge should have looked beyond the issue of service because in requesting a paper disposal of the case the solicitors had reiterated that they had not received the bundle which would indicate, as the letter was written after 5 January 2017, that something had gone awry. The judge could have investigated further and entertained the possibility that the email had not in fact been received, as emails did sometimes go astray, or the judge could have considered whether it had been mislaid by the firm. I find there is no merit in this gloss. The judge was entitled to find on the evidence of the respondent's email that the bundle had been served. The speculative position put forward by Mr Karim reveals no error of procedural unfairness in the judge's approach. The appellant's solicitors were advised by the tribunal in correspondence dated 30 November 2016 that there was a respondent's bundle. Knowing this bundle was in existence any competent immigration representative would not have made a late application the day before the matter was listed for an oral hearing that had been notified many weeks previously. The application to proceed on papers, seeking to deprive the respondent of the oral submissions of her representative could have little prospect of success at that late stage, and nothing short of fanciful to submit that the judge should have proceeded without considering the respondent's bundle. There was no basis upon which the representatives could expect a simple assertion of lack of service would be determinative. It was apparent the bundle would be available at the hearing. The representatives could have applied for an adjournment had they found anything in the bundle which warranted more preparation time. For the appellant and his representative to fail to appear was at best an incompetent misjudgement. For reasons only known to himself Mr Karim persisted before me in refusing to view the bundle. In circumstances where the directions made clear that in the event that of finding there was an error it was anticipated that I would be in a position to remake the decision, and with the appellant being present, so that an application to provide oral evidence could have been forthcoming, I could make no sense of his stance.
5. Any difficulty with the judge's formulation of the standard and burden of proof in respect of the respondent's reliance on fraudulent documentation cannot succeed in the context of the jurisprudence on Cambridge College of Law (NA and others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031 which established that a business management certificate from that college is false. As such the burden on the respondent was plainly met when the appellant failed to provide any credible explanation. That was sufficient to ensure the appellant lost his appeal. However, in this case the evidence did not stop there, there was a 2nd allegation of dishonesty in respect of the bank documentation submitted in support of the application made. The judge was entitled to conclude on the basis of

the DVR that respondent had provided evidence specific to the documentation relied upon by the appellant sufficient to show substantial grounds for finding that the document was false, and it was for the appellant to bring forward evidence to support his contention that the document was not false. He singularly failed to do so.

6. The grounds also asserted that the judge should have dealt with the appellant's article 8 claim, however the bare assertion of the witness statement that having been in the United Kingdom for 12 years "following the law of the land", asserting a loss of connection with Bangladesh so that the appellant has no option of being able to return there, and complaining that he had invested a lot of money in time for his studies and business here, is an entirely unmeritorious article 8 claim which requires no additional reasoning beyond that provided by the FtT set out in [19] and [20] explaining that those assertions are insufficient to show that there are any significant obstacles to him and his wife returning to Bangladesh or any exceptional circumstances otherwise warranting leave to remain under article 8 of ECHR.

Decision

7. The decision of the First-tier Tribunal dismissing the appeal on all grounds reveals no material error of law and stands.

Signed
Deputy Upper Tribunal Judge Davidge

Date 03 February 2018