



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/28041/2015

THE IMMIGRATION ACTS

Heard at Field House
On 5th February 2018

Decision & Reasons Promulgated
On 22nd March 2018

Before

DEPUTY JUDGE FARRELLY OF THE UPPER TRIBUNAL

Between

MR Mhd MAHMUDUL HASAN MAHMUD
(NO ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M I Hossain of Chancery Solicitors

For the respondent: Mr T Melvin, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The appellant applied for leave to remain as a Tier 4 student. This was refused by the respondent on 22 July 2015. It was believed the English language certificate submitted had been fraudulently obtained with any test being taken by proxy. A notice of appeal was lodged dated 7 August 2015. The appellant's representative was Mr M I Hossain of London Law Associates, 130 Whitechapel Road.

2. The appeal was struck out on the basis of the appeal fee had not been paid. There was a dispute over this and a further notice was issued dated 16 November 2016 to the appellant and his representatives stating that the appeal could not proceed until the fee was paid. The matter progressed and was listed. A notice of hearing for the 18th April 2017 was served upon the appellant and his representative on 16 March 2017.
3. The appeal was heard by First-tier judge Skehan on the 18th April 2017 and was dismissed. There was no appearance on behalf of the appellant or his representative. The judge checked that the hearing notice had been issued and proceeded on the basis of rule 28. In the absence of any evidence in support of the appeal the judge adopted the refusal. The tribunal decision was promulgated on 24 April 2017
4. Application for permission to appeal to the Upper Tribunal was made on 7 May 2017. This was on the basis the appellant had instructed a new representative, Chancery Solicitors, on 13 April 2017. It stated that on 13 April 2017 his new solicitors requested an adjournment by fax stating the appellant was not fit to attend and enclosed a 5 page medical report. It states the Tribunal office had been closed from the 14th to the 17th April 2017 because of the Easter holidays. It was also stated that his representative telephoned the customer service manager on 19 April 2017 about the appeal. It states that a customer service assistant called Amanda confirmed the Tribunal had received the adjournment request and that no decision had been made in the appeal.
5. Permission to appeal was granted on the basis it was arguable an adjournment should have been granted.

The Upper Tribunal

6. Mr Hussain of Chancery solicitors attended on behalf of the appellant. He said that he was instructed on 13 April 2017 and advised the Tribunal office immediately of the change of representative and sought an adjournment on the basis the appellant was unwell.
7. The Presenting Officer submitted that the change of solicitors were a delaying tactic by the appellant. It was now almost three years since the refusal letter and still no appeal bundle had been lodged.
8. I asked Mr Hussain why had not attended on the 18th April 2017 instead of assuming an adjournment would be granted. He explained that his was a small firm and that he employed paralegals and Counsel. He said that his offices are in Whitechapel which would be relatively near to Taylor House where the appeal was listed.

Consideration

9. It was when preparing the decision appeal then I realised the claim by Mr Hossain of a change of solicitors was misleading. The original Notice of Appeal was submitted by a firm trading as London Law Associates with an address at second floor, 130 Whitechapel Road, London. The grounds

of appeal are dated 7 August 2015 and the representative is named as MI Hossain. I note the from the Application for Permission to appeal Chancery solicitors are based on the second floor 130 Whitechapel Road, London and the contact is MI Hossain. It was highly misleading to suggest there had been a change of solicitors and it seems permission to appeal has been granted under false pretences. Para.4 of the application refers to 'a new legal representative 'and that his representative 'submitted medical report (5 pages)'. The application would suggest that the new firm had taken over conduct of the appeal whereas the reality is it is the same individual in charge of the appeal with the same address. The only difference is apparently a name change for the firm. At the hearing in the Upper Tribunal Mr Hossain never indicated any prior involvement.

10. I agree with the presenting officer that the appellant has, with the connivance of his representative engaged in delaying tactics. The fax receipt suggests it was sent on the 12th April 2017 with a covering letter dated 13 April 2017. It refers to 5-page medical report. What was submitted was a standard sick note issued by a GP dated 11th April 2017 stating the appellant should refrain from work for two weeks because of back strain. There is nothing to indicate he was unable to attend the hearing.
11. I find no material error of law in the judge proceeding. It was presumptuous of the appellant's solicitor to take for granted an adjournment would be granted. The parties were notified of the hearing and it was up to them to make sure either an adjournment had been granted beforehand or a representative attends.
12. The judge's decision adopted the reasons for refusal letter and referred to the absence of any contrary argument. The documents in the papers indicate that the respondent had discharge the evidential burden. Not only where there the generic statements commonly used but also the screen print showing the cancellation of the test from Elizabeth College. The presenting officer indicated this college was involved in widespread abuse.

Decision.

No material error in the decision of First tier Judge Skehen has been established.

That decision, dismissing the appeal shall stand.

Francis J Farrelly
Deputy Upper Tribunal Judge 20th March 2018