



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

Appeal Number: IA/13190/2013

THE IMMIGRATION ACTS

Heard at Field House

On 19 June 2014

Determination

Promulgated

On 26 June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

RAJKUMAR MANI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Smeaton Counsel instructed by KTS Legal Solicitors

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India and his date of birth is 20 May 1987. On 28 September 2012 he made an application to vary his leave to remain in the United Kingdom as a Tier 2 (General) Migrant. His application was refused by the respondent in a decision of 9 April 2013. The reason for the refusal is that according to the respondent the appellant submitted a

false certificate from the University of Gloucestershire. The respondent had received confirmation from the University of Gloucestershire that it has no record of the appellant having studied there. The appellant appealed against the decision and his appeal was dismissed by Judge of the First-tier Tribunal C Greasley, in a determination which was promulgated on 29 January 2014 following a hearing on 22 January 2014. The appellant was granted permission to appeal by Upper Tribunal Judge Storey in a decision of 13 May 2014. Thus the matter came before me.

2. The matter was listed initially on 14 November 2013 before Judge of the First-tier Tribunal Blum. At that hearing the appellant submitted evidence which supported his case that he had never claimed to have studied at the University of Gloucestershire. He had initially started his studies at E-College (also known as Eden College) and the awarding body was then the University of Bolton. The course that he was studying was then transferred to LSME (London School of Management Education) which was affiliated to the awarding body of the University of Gloucester.
3. The matter was adjourned in order for the Secretary of State to consider the appellant's. The matter came before Judge of the First-tier Tribunal Greasley on 22 January 2014. At that hearing the respondent produced an e-mail of 6 December 2013 from the University of Gloucestershire to a caseworker at UKBA. The author of the e-mail confirms that the University of Gloucestershire has never accredited forces with Eden College or E-College. It is further stated that the appellant applied to study with the University of Gloucestershire in April 2013 and was rejected in June 2013 after receiving no further communication or response from the appellant.

The Findings of the First-tier Tribunal

4. The Judge went on to make findings at paragraphs 19-25 of his determination as follows:

“19. I am satisfied that the respondent has established the facts upon which it sought to rely in relation to the production of a false certificate through deception, and I so find, having applied the high standard of proof required as set out by the Court of Appeal in **A v SSHD [2010] EWCA Civ 773**. I find the appellant has acted dishonestly.

20. After the November adjournment, on 4th December 2013 the UKBA wrote to the University regarding the appellant's studies. On 6 December 2013 the University wrote to the respondent stating that they had never accredited courses with Eden College or eCollege. Records showed that *'the appellant had applied to study with the University in April 2013 but was rejected in June 2013'*. No further communication was received from him.

21. The respondent's file notes that an email dated 20th December 2012 was written to the University of Gloucestershire requesting confirmation that the appellant had '*studied at the University of Gloucestershire*' and has been awarded the qualification as stated. By the same date, an email responded stating that an official had spoken to the colleagues who had checked records and who found '*no trace of the student*'.
22. Miss Smeaton submits that the respondent did not contact eCollege, London or the London School of Management Education, to confirm the appellant's attendance at either establishment, and that they had asked the wrong question of the wrong college, but I find this does not avail the appellant. He claims that the University of Gloucestershire was the degree awarding body, (whichever college the appellant had attended) but the University say that they have never accredited courses with either Eden College or eCollege, and it is the eCollege which the appellant claims he attended and which transferred him for completion of his dissertation. The University also state that '*...the appellant applied to study with them in April 2013 but was rejected*'. This information is something which the appellant has never mentioned at any stage in the appeal process. I find this revealing information serves to further damage the appellant's credibility and suggests that he is not being candid and forthright in this claim.
23. Furthermore, the appellant has not produced one single item of coursework, timetables, schedules, or indeed his actual dissertation. I find it likely this would have been retained on modern computer storage facilities, or that a copy of it, together with other items of coursework, could have been obtained or produced from a college. No such evidence has been forthcoming. He has had ample opportunity to do so. All of the items of correspondence referred to in the appeal bundle pre-date the refusal decision. All of the items of documentary evidence contained in the appeal bundle are photocopies. Nor has an original degree certificate been produced.
24. Miss Smeaton submits that the respondent did not ask the right questions relating to the attendance at the London School of Management Education and that solicitors had written to eCollege on 25th September and 30th October 2013, copies of which were in the appeal bundle, seeking confirmation of the appellant's studies, but that, according to Ms Smeaton, there had been no replies. The letters threatened proceedings if there was no reply. These letters bear no recorded deliver markings, and assuming they have been sent, I cannot be sure that they have been received. They appear to have been copied to interesting parties such as the affiliated colleges and the University of

Gloucestershire. Had these letters been received I find it likely that either the eCollege, or the University of Gloucestershire, or both, would have responded to these letters, and possibly through their own legal representatives. The absence of replies, to my mind, damages the appellant's credibility further as there is no supporting documentary evidence from the colleges to support the appellant's claims.

25. I therefore do not accept that the appellant has successfully completed his MBA course and been awarded a degree by the University of Gloucestershire. I find that he has used deception or provided false documentation in his application. I find that the respondent's evidence does not, as Ms Smeaton indicates, fall short of the necessary standard to justify a refusal arising under paragraph 322(1A) and accordingly I reject the appellant's claims that he did not provide a false document; having regard to the high evidential standard. I find the respondent has established the facts upon which it seeks to rely relating to false documentation."

The Grounds Seeking Leave to Appeal and Oral Submissions

5. The grounds seeking leave to appeal contain five grounds. The main ground of appeal is that the Judge misdirected himself on the evidence and reached a perverse conclusion. Ms Smeaton expanded upon this in oral submissions. Ms Holmes indicated that in her view the grounds seeking leave to appeal made sense and it appeared to her that the First-tier Tribunal erred in law.

Conclusions

6. In my view the Judge made a material error of law because he did not engage with the appellant's evidence as set out in his witness statements or the arguments advanced by Ms Smeaton orally and in her written skeleton argument prepared for the hearing on 22 January 2014. The appellant's case was and is that he studied latterly at LSME which was affiliated to the University of Gloucestershire which was the awarding body. I set aside the decision to dismiss the appeal and remake the decision. It was agreed by both parties that I could remake the appeal without the need for a re-hearing.
7. Paragraph 322(1A) of the Immigration Rules is a mandatory ground of refusal and reads as follows:

"Where false representations have been made or false documents 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.”

8. The respondent received the certificate from the appellant which was awarded by the University of Gloucestershire and they made enquiries about this with the University. However, their initial enquiry was whether the appellant had studied there which had never been the appellant's case. The second enquiry was generated a response which was that the university had never accredited courses with Eden College E-college. The appellant's case was that the course he studied was at LSME. It was on the basis of these enquiries that the respondent concluded the certificate was false. There was no evidence before the First-tier Tribunal that LSME was not affiliated to the University of Gloucestershire or that the University of Gloucestershire has never accredited courses with LSME. One may have expected the University of Gloucestershire to be able to verify the certificate of award which was submitted by the appellant with his application and to confirm the authenticity of it. However, this must be considered in the context of the questions that they were asked by the respondent.
9. I was referred by Ms Smeaton to the evidence that was before the First-tier Tribunal in the appellant's bundle at pages 39-45 which strongly support the appellant's case. I bear in mind that the burden of proof rests on the respondent and in my view the respondent has not established on the evidence submitted that the certificate submitted by the appellant is not genuine and on this basis the appeal is allowed under the Immigration Rules.
10. In my view the respondent has not established on the balance of probabilities that the certificate submitted by the appellant with his application, namely a certificate which indicates that it was awarded by the University of Gloucestershire to the appellant was not genuine. For these reasons the appeal is allowed under the Immigration Rules.

Signed Joanna McWilliam

Date 24 June 2014

Deputy Upper Tribunal Judge McWilliam