



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

Appeal Number: IA/09135/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27 March 2015**

**Determination Promulgated
On 28 April 2015**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

ASHWINDER SINGH ARORA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr M Matthews, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, who is a national of India, appeals with permission the decision of First-tier Tribunal Judge Majid who, in a determination of no real length, dismissed the appeal against the Secretary of State's decision dated 30 January 2014 refusing the appellant further permission to stay as a Tier 4 (General) Student and to remove him.
2. The Secretary of State contended that a bank statement submitted by the appellant with his application had been proved to be false and thus refused the application on the basis of deception under paragraph 322(1A) of the Immigration Rules. The appellant had failed to meet the

requirements of paragraph 245ZX(a) as he had been refused under one of the general grounds for refusal set out in paragraph 322. Furthermore as a false document had been provided in support of the application the appellant had failed to meet the requirements of paragraph 245ZX(o) which required him to be a genuine student.

3. Although the appellant indicated that he and his representatives, Lewis Kennedy Solicitors, would appear at the hearing of his appeal in the First-tier Tribunal, neither did so and the judge proceeded in their absence.

4. The substance his decision is in the last two paragraphs of his determination as follows:

“6. I cannot ignore the relevant legal provisions of under the Immigration Rules, HC 395 (as amended). In this case the appellant had to persuade me that he was wrongly accused of ‘deception’. Thus, without cogent rebutting evidence on this and other issues this appeal cannot succeed.

7. Accordingly, bearing in mind that the burden of proof is on the appellant, I find the respondent's decision to be sound in law and it stands.”

5. As with the First-tier Tribunal, the appellant did not appear before me. Mr Mathews needed little persuasion that the judge was plainly wrong in his self-direction.

6. The grounds of challenge correctly identify the relevant decision; *RP* (Proof of forgery) Nigeria [2006] UKAIT 00086. It is argued that the judge had seen “independent evidence” which supported the allegation of deception. The judge made no reference to independent evidence and this aspect of the grounds is misconceived.

7. The grounds also seek to rely on *MH* (Respondent’s bundle: documents not provided) Pakistan [2010] UKUT 168 (IAC) in support of the contention that the Secretary of State had failed to provide supporting evidence. This ground, too, is misconceived as the bundle before me contains:

(i) A statement from ICICI Bank in respect of account number ending 5515;

(ii) A letter from ICICI Bank dated 12 October 20123 referring to that account and;

(iii) A “Document Centre Overseas Request Form” which includes details of the steps taken to check the authenticity of the statement in question.

8. By way of conclusion the grounds argue that the bank statement submitted is genuine and they remind the reader that the burden of proof

had shifted to the Secretary of State who had provided nothing in support of the allegation.

9. Section 12 of the Courts and Tribunals Act 2007 gives me a discretion whether to set aside a decision where an error of law has been made. Mr Matthews addressed me on the materiality of the error and argued that the evidence before the judge was sufficient to establish a prima facie case of deception and that it was open to the appellant to produce evidence by way of rebuttal.
10. I conclude that if the judge had set about the task that was before him with a correct approach as to the standard of proof, he could only have come to the conclusion that the Secretary of State had established on the balance of probabilities that a false document had been relied on. Although the document verification report has some redaction of the parties involved, in particular the individual spoken to, the following matters are evident:
 - (i) A request for verification of a bank statement/bank letter in respect of account number 049901515515 in the name of Ashwinder Singh at ICICI Bank was sent by Jackie Bradshaw to the Fraud Team on an unknown date after the application had been made on 23 October 2013.
 - (ii) According to a report subsequently provided, a visa support assistant working in a department known as DVU-Visa spoke to a senior officer at ICICI Bank, Nurmahal Phillaur in Hindi.
 - (iii) ICICI Bank has a core banking facility which means that it as a centralised computer system. The bank maintains a centralised record of all their account holders thus irrespective of where the account is held it can be checked at any of the branches.
 - (iv) The senior officials is stated to have confirmed that the account in question (identified with reference to the appellant's name and the above account number) belonged to an individual whose name has been redacted as the son of another individual whose name similarly has been redacted, the address stated to be Solan Himachal Pradesh. The official confirmed the date of birth as 6 July 1991. These entries are followed by an endorsement:

“Applicant’s father's name, address and date of birth, given on Proviso, does not match up with the bank records, thereof, verified as False.”
 - (v) The statement of account with ICICI Bank provided by the appellant records his name as Mr Ashwinder Singh, house number - 679, Sector-13. U,E, Dist: Karnal, Haryana. The account is described as a savings account with a balance of 10,20,000,09 rupees.

(vi) The above statement was accompanied by a letter from ICICI Bank dated 12 October 2012³ addressed to the appellant with the above details and records the account as a saving account with Mr Ashwinder Singh as the authorised signatory.

11. Mr Matthews pointed out that the date of birth of the account holder provided by the senior official at ICICI Bank was 6 July 1991. Accordingly it appears that not only was the name of the account holder (and that of his father) different from the information appearing on the bank statement the appellant had produced together with the accompanying letter, but in addition the date of birth is different.
12. In his grounds of appeal the complaint is made by the appellant that nowhere was it mentioned in the document verification report that the “verifier” had contacted the authorised manager of the bank. It is also argued that the designation of the person the verifier had spoken to had not been given. Both these assertions are incorrect.
13. It is also argued that in the Home Office bundle there was no independent evidence from ICICI Bank confirming the document was false. The material provided to the appellant indicates that the information was given orally by the senior official.
14. In his grounds of application for permission to appeal the appellant asserts that the bank document was genuine for the reasons given. Those reasons identify a failure by the respondent to provide any independent evidence in support of the allegation and that the only documents before the judge had been the verification report. Thus the sole basis of the appellant’s challenge has been the process undertaken by the respondent.
15. The grounds of appeal to the First-tier Tribunal indicated that the appellant still sought to rely on the financial documents that had been submitted with the application and that nothing further needed to be adduced as the Secretary of State had failed to provide any independent evidence from the bank proving the documents were false. No human rights grounds were advanced. On any reading of the evidence the Secretary of State has discharged the burden on her. Without any rebuttal evidence from the appellant it is inevitable that any appeal is bound to fail.
16. My conclusion is that although infected by error the decision of the First-tier Tribunal need not be set aside. Accordingly the appeal is dismissed.

NOTICE OF DECISION

This appeal is dismissed.

Signed

Date 27 April 2015

A handwritten signature in blue ink, appearing to read "Busson", with a horizontal line extending to the right.

Upper Tribunal Judge Dawson