



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

Appeal Number: DC/00012/2015

THE IMMIGRATION ACTS

Heard at Field House

On 11th May 2016

**Decision & Reasons
Promulgated
On 3rd June 2016**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**AMEER HAMSA MOHAMED JAMALUDEEN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer
For the Respondent: Mr N Jeganathan, instructed by Acculegal Solicitors

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State in relation to a Decision of the First-tier Tribunal, Judge Oakley, promulgated on 8 February 2016 after a hearing at Hatton Cross on 11 January 2016. The circumstances by which this came to the First-tier Tribunal are that the Sri Lankan Appellant was appealing a Decision of the Secretary of State to remove his British citizenship. The Secretary of State had taken the

decision on the basis that she believed the grant of Indefinite Leave to Remain, which formed the basis of his grant of citizenship, was fraudulent. She believed so because a verification stamp on the letter was, it was claimed, not in use after July 2004 yet the date on the letter was March 2005. After the decision, the Appellant, who denied any fraud, contacted the Secretary of State asking for Ms Curtis's signature, which appeared on the letter, to be verified. The Secretary of State did nothing about that.

2. When the appeal came before the First-tier Tribunal, all the evidence the Secretary of State adduced was a witness statement from a Mr Richard John Anthony Jeal. It was his evidence that the stamp was no longer in use at the date of the letter granting Indefinite Leave to Remain. However, as the Judge pointed out, that witness did not attend and was not available to be questioned. On the other hand there was evidence from CID, the Secretary of State's computer system, indicating a grant of Exceptional Leave to Remain to the Appellant, which the Secretary of State said was a mistake. There was evidence, also from CID, that the Appellant had no restrictions on his leave, which would indicate a grant of Indefinite Leave to Remain. The Secretary of State was relying therefore upon a statement from a caseworker who was not present in court and on the absence of any documentation in her files indicating a grant of Indefinite Leave to Remain.
3. The Judge in his Decision noted those matters and quite simply preferred the evidence adduced and argued on behalf of the Appellant over that on behalf of the Secretary of State. I can find no error of law in that. Certainly it was not a perverse finding; it was open to the Judge on the evidence in front of him. In such cases the burden of proof rests with the Secretary of State and in this case there was a very serious allegation of fraud which if proven could have led to criminal proceedings and the incarceration of the Appellant concerned. That is not to say that the criminal standard of proof applied in this case; it was the balance of probabilities but nevertheless the burden of establishing even on that basis rests with the Secretary of State and she had signally failed to adduce satisfactory evidence to cross that threshold. The Appellant had quite clearly set out his story in terms of the basis upon which he was defending the case. He specifically asked for verification of the signature. The Secretary of State chose to ignore that completely whereas it would have been a simple matter for Ms Curtis to have made a statement with regard to the signature. If the Secretary of State wishes to win appeals of this nature then she needs to put the evidence forward in order to do so.

Notice of Decision

4. The Secretary of State's appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date 1st June 2016

Upper Tribunal Judge Martin