



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/23880/2015

THE IMMIGRATION ACTS

Heard at Field House
On 23 October 2017

Decision & Reasons Promulgated
On 24 October 2017

Before

UPPER TRIBUNAL JUDGE SOUTHERN

Between

MOHAMMAD SAKIB MAHMUD

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Razzaq-Siddiq, of counsel
For the Respondent: Ms Z. Ahmad, Senior Home Office Presenting Officer

DECISION

1. The appellant, who is a citizen of Bangladesh, arrived in the United Kingdom in September 2009 and was admitted as a student. He has been granted permission to appeal against the decision of First-tier Tribunal Judge Morris who, by a determination promulgated on 10 November 2016, dismissed his appeal against refusal of an application for further leave to remain as a Tier 1 (Entrepreneur).
2. In support of his application for leave to remain as a Tier 1 (Entrepreneur), the appellant submitted a letter and bank statement said to be from a bank in Bangladesh called Brac Bank Limited. This related to an account in the name of Mr Ahmad Fazlul Kabir and was provided by the appellant as evidence that this person was to make available the £200,000 required to meet the requirements of the

applicable immigration rules. Explaining why the application was refused, the respondent said:

“I am satisfied that the documents were false because Brac Bank Limited have confirmed that the bank records indicate that this account does not exist.

As false documents have been submitted in relation to your application, it is refused under paragraph 322(1A) of the Immigration Rules.”

3. The difficulty that arose is that although the respondent did produce a communication from Brac Bank Limited confirming that an account did not exist, that communication did not relate to the account of Mr Kabir, relied upon by the appellant, but to a different account altogether that had no relevance to the application being made by the appellant. Recognising this, the judge said:

“Taken in isolation, this document is not sufficient to raise that possibility (that the bank document submitted by the appellant was a false one) because, the e-mail correspondence produced by the Respondent does not relate to the Appellant... This was clearly an error, as pointed out by the Appellant himself and which was acknowledged by the Respondent’s representative at the hearing. Had the matter stopped there, it is arguable that the Respondent would not have succeeded in discharging the evidential burden incumbent on her.”

4. But the judge did not take that matter in isolation and did not leave it to rest there. She went on to point out to the appellant and his representative three cogent reasons for concluding that the document was, on its face, plainly a false document and then gave the appellant an opportunity to address those issues in evidence.

5. The three points made by the judge about the bank documents were these:

- i. The bank statement carried a printed title “Transactins Inquiry”. As this was a template document that would be used constantly for customers of this well-established bank, it was not credible that such a “fundamental spelling mistake” would have been left uncorrected;
- ii. The account opening date was said to be 29 January 2012 yet the “Last Purge Date” was said to be the day before the account was opened;

- iii. It can be seen from the copy of this document in the appellant's bundle that it was taken from a web page on 12 April 2012 yet the statement records transactions between April 2012 and October 2012, after the date upon which the statement purports to have been produced and printed.
6. Despite this being pointed out by the judge, the appellant had no answer to offer. The judge recorded:

"The Appellant attended the appeal hearing with his Legal Representative. The anomalies in the documents outlined above were put to him, but he did not give a satisfactory explanation for them."

Which led the judge to conclude:

"In view of the anomalies which appear on the bank statement in question, I am satisfied that notwithstanding the fact that the wrong e-mail correspondence had been included in the Respondent's bundle, the Respondent has discharged the evidential burden incumbent on her, and that sufficient evidence had been adduced to raise the existence of the fact at issue. The burden therefore switches to the Appellant."

7. Although, in the assessment of the judge, the appellant offered no viable explanation for the difficulties that had been identified with the bank documents, he was not silent. He relied upon what he said was a subsequent letter from Brac Bank Limited dated 6 September 2016 signed by a person identifying himself as the bank manager of the branch of Brac Bank Limited concerned. In this letter it is said that the bank statement and letter that had been submitted by the appellant with his application were "genuine and authentic". This letter asserted also that it was "quite impossible" for an "Associate Product Manager" to provide verification of the authenticity of an account so that there "must have been a massive gap or misinterpretation within the verification process if any".
8. The judge explained why she did not accept that the appellant was at all assisted by this evidence. Whether or not the official who had dealt with the verification enquiry produced by the respondent was authorised to do so took the appellant no further at all because it was common ground and agreed between the parties that the verification communication did not relate to the account relied upon by the appellant. Secondly, this new letter was produced a year after the date of the refusal letter and no explanation was offered as to why the appellant or the account holder who was providing funds waited so long to secure it. Thirdly, there was no evidence, written or oral, from Mr Kabir, the holder of this account.

9. In short, the appellant had not addressed the difficulties identified by the judge and so she found that he had not discharged the evidential burden facing him so that the judge was satisfied that a false document had indeed been submitted by the appellant which meant that the appeal against refusal of leave fell to be dismissed.

10. There was before the judge also a ground of appeal to the effect that refusal of his application for further leave to remain would bring about an impermissible infringement of rights protected by article 8 ECHR. That was also rejected by the judge.

11. On behalf of the appellant, Mr Razzaq-Siddiq advanced two brief submissions. First, that once the judge found that the respondent had failed to discharge the evidential burden facing her, the judge should have enquired no further and simply allowed the appeal. Second, the reasons given by the judge for finding that the appellant had submitted a false document were not the reasons given by the respondent for refusing the application. It was not, he submitted, the task of the judge to supply reasons that were not provided by the respondent.

12. In my judgment, neither submission is remotely arguable. The task of the judge was to decide, on the admissible evidence the parties chose to put before her, whether this was an application that met the requirements of the applicable immigration rules and so should have been granted. The issue was not simply whether the respondent had provided the correct evidence to support her conclusion that the appellant had submitted a false document but whether it was established to the standard required that it was a false document. If it was, this was an application that could not possibly succeed. The approach taken by the judge cannot be faulted. The appellant and his representative were put on notice of the concerns entertained by the judge. There was no application for an adjournment to consider the matter. The appellant and his representatives were not taken by surprise. Not only was it they who had pointed out the error in the verification document but the evidence relied upon by the judge was evidence that the appellant himself had submitted. The judge did not, as is asserted in the grounds, ignore the subsequent letter produced by the appellant. She considered that new evidence carefully and explained why it did not assist the appellant.

13. Put another way, it is entirely clear from a reading of the determination why the judge dismissed the appeal and she has given clear, cogent and legally sufficient reasons for having done so.

14. Even now, the appellant has made no attempt to engage with or explain away the three points put to him by the judge that led her to conclude that this was a false document. It is entirely clear that it was open to the judge to dismiss the appeal for the reasons given and that in so doing she made no error of law, material or otherwise.

15. Realistically, Mr A. Razzaq-Siddiq did not seek to pursue in oral submissions any challenge to the decision to dismiss the appeal on article 8 grounds. He was plainly correct not to do so. This was a completely hopeless article 8 claim that had no prospect whatever of succeeding and it is impossible to identify any legitimate basis upon which it could succeed and it is hard to see what rational outcome was open on the facts other than to reject it.

Summary of decision:

16. First-tier Tribunal Judge Morris made no error of law and her decision to dismiss the appeal is to stand

17. The appeal to the Upper Tribunal is dismissed.

Signed



Upper Tribunal Judge Southern
Date: 23 October 2017