



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/24719/2015

THE IMMIGRATION ACTS

Heard at Field House
On 2nd May 2018

Decision & Reasons Promulgated
On 23 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR SANJAYA MAHESH SURANJAN YAPAHU GEDARA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Childs, Counsel, instructed by VMD Solicitors

For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Sri Lanka, appealed to the First-tier Tribunal against a decision of the Respondent to refuse his application for leave to remain in the UK as a Tier 4 (General) Student. First-tier Tribunal Judge Fletcher-Hill dismissed the appeal in a decision dated 27th March 2017. The Appellant now appeals with permission granted by Upper Tribunal Judge Allen on 23rd March 2018.

2. The background to this appeal is that the Appellant's application for leave to remain as a student was refused on the basis that no Confirmation of Acceptance for Studies (CAS) had been submitted. It was further considered that the Appellant had not demonstrated that he had sufficient funds. The application was further refused under paragraph 322(1A) of the Immigration Rules as the Secretary of State was satisfied that the savings account passbook and bank letter submitted from the Commercial Bank of Ceylon PLC were false because the Secretary of State had received written confirmation from the Commercial Bank of Ceylon confirming that they did not issue the documents. The Secretary of State considered that the Appellant had used deception in this application and refused it under paragraph 322(1A) of the Immigration Rules.
3. The First-tier Tribunal Judge noted that due to the date of the decision (17th June 2015) the appeal was considered on the basis of the Immigration Rules. The judge set out the evidence before her and concluded that the 30 points claimed for the CAS and the 10 points for funds should not be awarded. The judge considered the document verification request and was satisfied that this document could be relied upon. The judge found on the balance of probabilities that the documents from the bank were forged. The judge concluded that the Appellant had not discharged the burden of proof and the reasons given by the Respondent justified the refusal.

Error of law

4. The Grounds of Appeal can be broken into two main areas. It is firstly contended that the judge erred in her assessment of the Document Verification Report and the letters from the Appellant's father's bank. The second main ground is that the judge erred in failing to consider the appeal under Article 8 of the ECHR.
5. In granting permission to appeal on a renewed application to the Upper Tribunal, Upper Tribunal Judge Allen considered that it was arguable that the judge had erred in failing to consider human rights issues which had been identified in the skeleton argument before the First-tier Tribunal.
6. I firstly deal with the issue of the Document Verification Report and the evidence from the Appellant's father's bank. At the hearing before me Ms Childs submitted that it appeared that the Document Verification Report (DVR) was only served on the day of the hearing. She submitted that that is why it was not dealt with at length in the skeleton argument and was dealt with in terms of oral submissions. However, that is not apparent from the decision. Further, there was no application for an adjournment so that the Appellant could have an opportunity to address any evidence produced later. It is not apparent from any submissions that there was any issue of late submission of documents by the Home Office in relation to this issue.
7. A number of issues are raised in the Grounds of Appeal in relation to the timing of emails between the Secretary of State and the bank and the time difference and raising issues in relation to the reliability of the verification report in this context. However, these were not issues taken in the First-tier Tribunal. Further, no

submission was made that these were obvious issues that the judge should have considered.

8. The judge dealt with the Document Verification Report at paragraph 45 where she said:

“In his submissions on behalf of the appellant’s representative (sic) stated that the email of 24 June 2014 could not be relied on because much of the information was redacted, however, the verification request number of:- 100200817847 did appear in the redacted email and did correlate with the other correspondence where the same verification request number also appears. I am satisfied that the documents relied on by the respondent can be relied on and I have seen no evidence on the part of the appellant to indicate otherwise.”

9. In her submissions Ms Childs submitted that there were a number of issues with the DVR. She referred to the email purporting to come from the bank at page 9 of the Respondent’s second bundle and submitted that that email did not state that the documents submitted were forged. She submitted that the burden of proof was on the Respondent in relation to the allegation of forgery and the onus was on the judge to look very carefully at that email as that was the only evidence put forward by the Secretary of State. She submitted that a lot of information in that email had been redacted including the name of the branch. In her submission, given that the name of the branch was not redacted in the request for information from the document verification report, there were concerns about why that would have been redacted in the response. She submitted that the Secretary of State had drawn an inference that the documents were false but it was up to the judge to say why she found the documents to be reliable. In her submission the judge had failed to take account of the evidence put forward by the Appellant. She referred in particular to the letter at page 6 of the Appellant’s bundle from the Commercial Bank dated 17th October 2016, which stated that the Appellant’s father had maintained a savings account at the Kiri Bathguda branch since 7th September 2010. She referred also to the letter from the bank dated 13th June 2014. Ms Childs referred to the submissions made on behalf of the Appellant at paragraphs 39 and 40 of the First-tier Tribunal Judge’s decision, submitting that the email relied on by the Home Office was unreliable. In her submission the judge should have said why she preferred the Document Verification Report over the two letters provided by the Appellant.
10. However, I accept Ms Willocks-Briscoe’s submission that the letters, in particular the second letter purporting to come from the Commercial Bank in October 2016, do not attempt to deal with the Secretary of State’s criticism and assertion that the branch had not issued the previous letter and passbook. The Presenting Officer made that submission in the First-tier Tribunal as recorded at paragraph 31. However, it is clear from the judge’s consideration of this matter at paragraph 45 that she considered the Document Verification Report and considered the reference number of the request and the response to the report. Whilst the Appellant had produced a letter of October 2016 purporting to be from the bank, that letter did not deal with the issues raised in the Document Verification Report. In my view it was therefore open

to the judge to conclude that she had seen no evidence on the Appellant's part to indicate that the email produced by the Respondent could not be relied upon.

11. Accordingly the conclusions at paragraph 45 were open to the First-tier Tribunal Judge. Whilst not lengthy the judge has given adequate reasons for concluding as she did that she preferred the evidence in the Document Verification Report to the subsequent evidence produced by the Appellant in relation to the Appellant's father's bank account.
12. The grounds of appeal to the First-tier Tribunal raised the issue of Article 8 where it was submitted that the Appellant had established a private and family life within the UK under Article 8. In the First-tier Tribunal skeleton argument it was submitted that a person who is admitted to follow a course that has not yet ended may build up a private life that deserves respect, and the public interest in removal before the end of the course may be reduced where there are ample financial resources available. It was submitted there that if the Appellant is unable to complete his studies it will amount to a breach of his private life. It is recorded at paragraphs 34-36 of the decision that submissions were made that the First-tier Tribunal Judge should consider Section 117A and 117B of the Nationality, Immigration and Asylum Act 2002 and should find that the Appellant's private life rights will be infringed if he is required to return to Sri Lanka without completing his course.
13. In her submissions Ms Childs pointed out that it was clear from paragraphs 37 and 40 of the First-tier Tribunal Judge's decision that the Appellant was seeking a period of 60 days to pursue an application and acquire a new CAS and an English language certificate. She submitted that the Appellant was seeking a short period of leave to make a fresh application in order to obtain compliance with his right to private life. She pointed out that he was not asking for discretionary leave for a longer period but just an opportunity to continue his studies in the UK and to remain in the UK lawfully whilst he pursued that application. She pointed out that this was a reasonable request, particularly in light of the fact that he ended up in his situation due to unfortunate timing rather than any fault on his part. She submitted that it was open to the Secretary of State to grant a short period of leave where circumstances such as these were outside the Appellant's control. Therefore she submitted that the judge should have considered the Appellant's claimed private life under Article 8 and considered these factors in her proportionality submission. Although she submitted that there was an error in the judge's assessment of deception (which I have not accepted) she accepted that the issue of deception would have been weighed against the Appellant as would any associated issue in relation to funds. However, she submitted that the lack of a proportionality assessment is material because it was raised in the skeleton argument and the Appellant was asking for a short period of leave only.
14. I accept that the Appellant did raise the issue of private life in the skeleton argument and that the judge did not consider that ground in the decision. However, in my view this was not a material error. This is because on the basis of the evidence before her this part of the appeal could not have been allowed. Although it was not clear on

the evidence before the judge, I accept, as Ms Childs pointed out, that the Appellant's application form at page 29 of the Appellant's bundle indicates that the Appellant has been in the UK since 2009. By the time of the hearing the Appellant had therefore been in the UK for almost eight years. It is not entirely clear from the evidence what the Appellant has been doing since arriving in the UK. It is not clear what studies he has undertaken to date. However, on the basis of his length of residence I accept that he had developed a private life in the UK. As noted by the judge at paragraph 34, there is limited evidence of the nature and extent of any private life said to have been developed by the Appellant during that period. However, it is likely that the Appellant's removal would interfere with any such private life.

15. In considering proportionality the judge would have attached very significant weight to the fact that the Appellant had practised deception in connection with his application in relying upon bank account documents which were not reliable. Given the findings in relation to the DVR and the financial evidence submitted by the Appellant the Appellant could not demonstrate that he was financially independent. Given that he had not obtained his English language certificate it could not be demonstrated that he could speak English. Any private life developed by the Appellant was developed while his immigration status was precarious. In these circumstances and given the significant weight which would have been attached to the public interest I find that the Appellant could not have succeeded in any appeal under Article 8.
16. Ms Childs submitted that the Appellant was simply seeking a short period in order to regularise his application for leave to remain as a student, but, given the findings in relation to the Document Verification Report, any further application would have been hampered by that finding. In these circumstances an assessment by the First-tier Tribunal Judge under Article 8 in relation to the Appellant's private life could not have made a material difference to the outcome. In these circumstances I find that the judge did not make a material error of law.
17. In advance of the hearing in the Upper Tribunal a further bundle of evidence was submitted on the Appellant's behalf. No application was made to admit these documents under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. In any event these documents, which relate to the Appellant's claimed family life with an EEA national, were not before the First-tier Tribunal and cannot be considered in light of the fact that I have found no material error of law in the First-tier Tribunal Judge's decision.

Conclusion

18. The First-tier Tribunal Judge did not make a material error of law.
19. The decision of the First-tier Tribunal shall stand.
20. No anonymity direction is made.

Signed

Date: 20th May 2018

Deputy Upper Tribunal Judge Grimes