Case No: AC-2023-LON-003677
NCN: [2024]EWHC 3212 (Admin)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

The Royal Courts of Justice
Strand
London WC2A 2LL

(Heard remotely via CVP)

Friday, 5 July 2024

BEFORE:

MRS JUSTICE FOSTER

BETWEEN:

THE KING
on the application of CHAITANYA GANGAVARAPU

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

MISS J JEGARAJAH appeared on behalf of the Claimant.
MR M HOWARTH (instructed by Government Legal Department) appeared on behalf of the Defendant.

JUDGMENT

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(Official Shorthand Writers to the Court)

1. MRS JUSTICE FOSTER: This is an application for judicial review of a decision made on 7 December 2023 in which the defendant, the Secretary of State for the Home Department, determined that the claimant was working in breach of his work leave-to-remain visa conditions under section 24(1)(b)(i) of the Immigration Act 1971, which is a criminal offence, and was, therefore, liable to deportation.

2. In essence, following an enforcement visit to Budgens supermarket in Gloucester, the immigration officers on the visit state that they found the claimant working in breach of his visa conditions, namely, stacking shelves in a supermarket rather than working as a skilled worker computer and software expert as his visa permitted. The notes of the visit dated the same day indicated that he had been located initially stocking shelves, they include the following:

> "When entering the premises, the individual was on the shop floor, looked at immigration officers and tried to leave, He said he was just a customer coming in to pick things up, but had no items to hand. A worker behind the counter then stated, 'He does work here and stocks shelves and serve customers'. He then stated he works here but was just designing a website for the company but had no evidence to show that he was designing a website. He stated he was meant to start at 10 am, but we entered just before 10 am and he was trying to leave, which he then stated he was leaving to get milk for a coffee"

and

> "when officers entered IO [name withheld, that is an immigration officer] saw this male stocking shelves. As I entered a few seconds later, he had started walking towards the next aisle, circumnavigated me and walked out the front door, then started to walk really quick outside. I suspected male to be working illegally".

3. A witness said, "Has confirmed [the claimant] has been working here, not sure on the length of time. He has been serving customers and stacking shelves today" and "Upon questioning about the above individual stated he has been working here for the past three days. He does every function the same as every worker here, stacking shelves, serving customers and cleaning up".

It was also noted in respect of a search that was carried out:

> "Individual was being very evasive and tried to run from officers. The individual was in stock room with access to tools and other equipment, such as wrenches and screwdrivers. I had reasonable belief he may have these items concealed to aid escape or cause harm to colleagues or himself".

4. The claimant made an application for judicial review that he be released from detention. This was on 13 December 2023. The challenge is expressed in the statement of facts and grounds as follows:

> "(1) The defendant erred in concluding that the claimant committed an offence of working in breach of his work leave-to-remain visa under section 24(1)(b)(i) of the 1971 Immigration Act, as amended, as he was carrying out a work contract for his current sponsor/employer;
>
> (2) the defendant erred in failing to identify the evidence that was said to sustain the decision;
>
> (3) the defendant erred in concluding that the claimant committed an offence of working in breach of your work leave-to-remain visa under section 24(1) of the 1971 Immigration Act because he was permitted to do extra work;
>
> (4) the defendant erred in detaining the claimant on 7 December 2023 to date as the claimant is not an immigration offender and/or the defendant has failed to provide evidence to support the decision to detain;
>
> (5) the defendant erred in failing to provide reasons for detention: even if the claimant is an immigration offender, which is not accepted, not all offenders are detained under the immigration law".

5. Essentially, this comes down to a challenge on grounds that the decision could not be factually supported; alternatively was arbitrary. No application to amend the grounds has ever been made, but a variety of new arguments have been advanced on paper and orally to the court, which I will deal with below. The Secretary of State has produced by a statement and exhibits the gist of the evidence on which she relied to make the 7 December decision, including relevant pages from the visit report compiled on the day. Her statement explains the reasoning and conclusions reached.

The issue

6. The issue before this court is that whether or not a lawful decision was made by the Secretary of State on 7 December 2023, when she determined the claimant was working in breach of his leave-to-remain visa conditions and, since the claimant was detained following the decision, the lawfulness of that detention.

7. Release is clearly no longer an issue since he was released two weeks after his initial arrest and detention: that is on 21 December 2023. The challenge is to the immigration decision which was the foundation for the detention; namely, in support of removal as a person in breach of their visa conditions.

8. If the court quashes the decision, it is agreed that the claimant is entitled to a declaration that he has been unlawfully detained for two weeks and he will invite the court to transfer a damages claim for those two weeks to the county court.

9. It may be seen the first ground asserts an error fact by the Secretary of State and the second that the Secretary of State has, in effect, failed to show there was any material on which the decision was based and the third that he could be permitted to do work under the rules, in any event.

10. The claimant repeats what was sought to be said at the time of his arrest, that he was working for his current designated employer – that is his sponsor, NC Microsoftware UK – named in his certificate of sponsorship and that he was doing work involved in executing a contract for that sponsor, whose client was the claimant's previous designated employer, namely, A Balaji Benzine.

11. The framework against which the decision was made is as follows.

Legal framework

12. Under section 41(1) working in breach of conditions constitutes a criminal offence. The claimant was detained under para.16(2) of schedule 2 of the Immigration Act 1971.

13. He remained detained until 21 December 2023, two weeks later. The applicable legislation is not in dispute. The Immigration Act 1971, as amended, provides relevantly, quoting section 24B, "Illegal Working",

> (1) A person ('P') who is subject to immigration control commits an offence if—
>
> (a) P works at a time when P is disqualified from working by reason of P's immigration status, and
>
> (b) at that time P knows or has reasonable cause to believe that P is disqualified from working by reason of P's immigration status.
>
> (2) For the purposes of subsection (1) a person is disqualified from working by reason of the person's immigration status if …
>
> (b) the person's leave to enter or remain in the United Kingdom – …
>
> …
>
> (iii) is subject to a condition preventing the person from doing work of that kind".

14. By Paragraph 16(2) of the second schedule to the Act, if there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under a relevant statutory paragraph, that person may be detained under the authority of an immigration officer, pending a decision whether to give directions, and pending removal in pursuance of the directions.

15. There is no dispute as to the effect of the Act and the schedule in this case, nor that there was power, if the relevant circumstances existed, for the Secretary of State to give directions and, thus, to detain the claimant with a view to his removal. The claimant's case is that he disputes there were reasonable grounds supporting the Secretary of State's decision that he had committed a criminal immigration offence.

The facts

16. The essential chronology is also a matter of agreement. Chaitanya Gangavarapu was born on 4 April 1993 and is a citizen of India. He arrived in the UK on 23 September 2019 on a Tier 4 general student visa granted on 17 September 2019, and studied for a master's in computer sciences at the University of Bedfordshire, completing it on 16 September 2021. He had previously made a failed application for a legacy Irish visa in 2015. He applied for a graduate leave-to-remain visa, which was granted and valid from 4 December 2021 until 3 December 2023. This visa required that there be no recourse to public funds at any skill level and also no further study on the student route. Importantly, for this application, on 21 November 2023, after a fast-track application on 20 November 2023, the claimant was granted a skilled worker leave-to-remain visa until 13 December 2026 with the conditions of no recourse to public funds and that his work was restricted to a named sponsor, namely NC Microsoftware UK Ltd with the job title "web design and developer". It provided:

> "Work conditions
>
> Employment allowed
>
> You are allowed to work for your sponsor in the job described in your certificate of sponsorship (including any permissible changes to the job that have been reported to the Home Office by your sponsor). The main details of this job are as follows: sponsor, NC Microsoftware UK Ltd; job title, web design and developer; salary £27,500. You are also allowed to take supplementary employment, namely, work outside your normal working hours for your sponsor of up to 20 hours per week with another employer. This must be either in a job on the shortage occupation list or in the same occupation code as the job described in your certificate of sponsorship. You are allowed to take voluntary work, as defined in the National Minimum Wage Act. You must not be paid for voluntary work except for reasonable expenses. For full details [and a website is given]. If you are lawfully working in the UK in a different job, when you made this application for leave to remain, you may work out any contractual notice period for that job.
>
> Employment not allowed
>
> You cannot work in any other employment. You cannot take supplementary employment if you are no longer working in the job and for the sponsor described in your certificate of sponsorship".

17. By an application dated 12 December 2023, the matter came before Ritchie J, sitting as the immediates judge, as a matter of urgency. By an order dated 13 December, Ritchie J required the filing of evidence by the claimant and indicated that the court would be assisted by a response from the Secretary of State for the Home Department. He ordered the matter be adjourned to be put before a judge for further consideration on the papers.

18. The application then came before Murray J and, by order of 19 December 2023, he refused the claimant's application for interim relief, namely immediate release from immigration detention. The judge noted that it was open to the claimant to apply for immigration bail, but the balance of convenience in the absence of special circumstances lay in maintaining the *status quo*; namely, detention. He observed, without pre-judging the matter, that there was no serious issue to be tried in his view: there was *prima facie* evidence before the Secretary of State that the claimant was working in violation of his visa conditions. He had been detained for the purpose of removal and that that appeared reasonable on the papers and no good reason for expedition had been advanced.

19. Thereafter, also on the papers, Sweeting J granted permission for a judicial review and also made directions. He ordered the case to be expedited to March 2024. It came before me two days ago, in fact, in early July.

The Secretary of State's decision and the evidence

20. As I have indicated, this judicial review must be decided within the parameters of the challenge made. That is to say, the evidence which is relevant to my decision is that which was before the officers at the time when the decision was made, namely, 7 December 2023. There has, however, been a flood of further materials seeking to explain or elaborate upon what was said to be observed by the officers.

21. Whilst the Secretary of State has adverted to some of the material subsequently presented, she has not been invited to, nor has she carried out, any reconsideration of the position in light of the totality of the evidence now available. It appears that the requirement for this court to judge the legality of the decision on the basis of the available material has been somewhat sidelined in the course of the claimant's

submissions and exchanges with the defendant. At one point in the past it was suggested that there should be an order for oral examination of the claimant and others and that this court carry out a fact-finding role. That inappropriate course was not pursued before me.

22. The Secretary of State's evidence was produced in the form of a witness statement of Hayley Strother, a senior caseworker at the Home Office immigration enforcement department, dated 15 December 2023. This pointed out, by reference to the contemporaneous notes and documents:

(a) The circumstances of reaching the decision communicated on 7 December, in that, on that day, the claimant was encountered at Budgens by Immigration Compliance and Enforcement Officers stacking shelves and serving customers. The conditions of the claimant's visa, however, were working as a web designer and developer for NC Microsoftware, the sponsor.

(b) there was an entitlement to take supplementary employment with another employer, if that employment was on the shortage occupation list or in the same occupation code as that of his certificate of sponsorship. Employment in any other employment was not allowed.

(c) She set out extracts from the notes made by the officer, as appears above and some of which was cited by her. When the claimant was questioned about his work, he said that he had been walking around the shop for three days checking prices for the website.

(d) He was asked to show his notes and he said that he had taken none, When asked to explain what duties he had been undertaking, he said that several times he had just been watching the prices and seeing how staff worked. He was asked why he would need to see how the staff worked in order to design a website, but could not give a reasonable answer to that question.

(e) The officers looked for work on his laptop but they noted it needed updating and appeared not to have been used for some time.

(f) When it was put to him that Budgens already had a professional website and an ordering system in place, he made no answer.

(g) The Secretary of State had relied at the time of making the decision upon the notes of the officer. They had relied themselves in part on materials from those who worked with the claimant.

(h) The detention and case progression review records the details of the visit history and notes the claimant was searched because he was being evasive and tried to run from the officers. He was in the stock room with access to tools, et cetera.

(i) The notes indicated that he had been encountered working in a shop stacking shelves, had been arrested and detained and was offered a voluntary return but had declined. His case on detention was reviewed according to policy 24 hours later and again seven days later. He has no close family ties in the UK, which might have made it likely that he would remain in one place and there were no medical issues and he had had full access to healthcare. In those circumstances, the detention had been maintained.

23. On the basis of this evidence, the immigration officers have concluded that his answers, namely that he was undertaking a shopkeeping/customer role, not permitted under the conditions of his visa, evinced an offence under section 24. It is this statement that the claimant primarily attacks as inadequate to support a lawful decision on 7 December.

24. On 14 December 2023, the claimant had sworn a statement in these proceedings. This says, materially, that

(a) he had a post-studies work visa valid until 3 December and he had worked at an establishment he refers to as Benzine Ltd from 5 November 2023 until 27 November 2023 under that visa.

(b) he said that he had had the offer of a job with NC Miscrosoftware, starting 30 November under a certificate of sponsorship. He had a skilled worker application granted on 21 November;

(c) he says he "convinced Budgens to develop their website" on an unnamed date, and "created the service agreement to build a website from 30 November until 29 February 2024"; and

(d) produced a contract for services dated 30 November 2023 between the sponsor, NC Microsoftware, and Balaji Benzine Ltd, which he said was, in fact, the Budgens shop. Under it, NC Microsoft appeared to promise to work for Balaji Benzine through Mr Chaitanya, who will provide "web development deliverables" between the dates set out at a rate of £200 a day payable by Balaji Benzine to NC Microsoftware.

25. As to the events of 7 December, the statement states that, on the 7th, he entered at 9.15 to the Budgens store to "carry out his duties" and "get some further information regarding the website". Five minutes later, he saw the immigration officers and he did not want to have any problems, so he went outside and called the owner.

26. The officers were suspicious of him working in the shop and he started to panic. They cross checked with the staff who told them he worked there. He says the staff did not realise that officially he did *not* work there. He had left that job on 27 November to carry out his duties for NC Microsoftware. He says that he told the officers he came to the shop to "analyse how the business is doing and I am no longer a staff there". He said that some of the reason was he felt it would be confusing for them to understand his previous involvement with the company and his visa statement and he thought they would misunderstand him, saying "I do not have the best of communication skills". He said that he felt under pressure. It was difficult to process and he found it difficult to prove to the officers in the moment that he was doing as he stated. He accepts they asked him to show them the findings of his analysis and he could not. He also said that he is a previous employee and he has done nothing wrong. He produced a payslip that showed him to be an employee at Budgens, the Balaji Benzine Ltd, as at 30 November 2023, with total tax payable for the year of some £12,600, but he denied that it was ongoing at the relevant time.

27. Further materials were put in the court bundle. No application was made at the time – that is to say early March – but an application was made that these three extra

statements should be submitted a few days before the hearing before me. It appears that no decision was reached upon that and it is not clear whether it was served on the defence. In spite of what appears to be a blatant breach of the rules without an obvious excuse, I looked through the materials, as invited by the claimant.

28. The Secretary of State submits that none of this material is admissible on the propriety of the decision of 7 December. No application for a reconsideration was made and the court is concerned only with the decision of that date and this material cannot help on the issue at stake.

29. The Secretary of State has pointed out what she says are serious discrepancies within this evidence, in any event, but I need not explore those in detail here. In brief, the materials include a sworn statement from a director of the sponsor, NC Microsoftware, Mr Sivaram Guda; a further statement dated 2 March from Mr Talari, a director of Balaji Benzine, the company that owns the Budgens store; and the second statement dated 3 March from the claimant himself. The gist of these further documents was generally to the effect that Mr Guda says that he has had a sponsor licence since 2021 and said that he needed a new web design developer for his company and, through his friends, the claimant was recommended because he had previously worked for Budgens. He says he gave them an opportunity to develop a website for them. He said he "sent Chaitanya to Balaji Benzine to carry out his duties" and then got the call about the Home Office visit.

30. Mr Talari is the director of Budgens and also, apparently, of another company called Techno Crafts. He says he had first employed the claimant in August 2020, when a student, and had then decided to hire him full time. He was told that the claimant was going to work for NC Microsoftware in October 2023 and then, apparently, gave him a new contract transferring him to another company, so he worked for him on 5 November, leaving there on the 27th. He seeks to explain why, although Budgens/Balaji Benzine Ltd had a website, the company needed a new one and wanted to develop their own. He says a contract was entered on 30 November 2023. He seeks to explain the evidence given to the immigration officers, namely, that the claimant worked at Budgens. He says the two staff who had spoken with the immigration officer had only joined them a few days before and did not really know that Chaitanya had moved to the new company. This material is, of course, I observe,

not inconsistent with an immigration officer seeing him actually working as a shelf stacker in Budgens at the time of his discovery. The reasoning at the time was supported by the uncertainty of the claimant's answers, together with his attempt to leave and the failure to substantiate any work product and what he was said to be actually doing for two to three days without any evidence of it on the computer (which appeared not to have been recently used), together with his inability to give satisfactory answers. I observe that the actual contract of employment or statements of intention do not of themselves prove the contrary. It was what he was actually doing at the time that would have been of importance.

31. The claimant's further statement of 3 March, headed "Claimant's response", takes issue with the Secretary of State's materials and critiques the statement saying, broadly, that the statement he was stocking shelves contains a contradiction from the officer, that there is an inconsistency in the paragraphs of the statement, and he takes the opportunity to reassert that he was carrying out his sponsor's duties on 7 December and obtaining further information for the website. He explains that at the time he was starting to panic, hence his reaction.

Consideration of the claimant's case

32. As I have set out, the statement of facts and grounds asserts the claimant was offered a job as a web designer and made a skilled worker visa application and that is what he was working under the day he was seen in Budgens; in other words, the claimant asserts a different factual scenario from that found by the officers on their enforcement visit. He says that he had a contract to build the website, as I have set out, although it does appear, as the Secretary of State has noted, that Balaji Benzine Ltd has a different address and, further, a different registered address from the Budgens shop.

33. The claimant describes Budgens, however, as the premises of Balaji Benzine and states that he was working for his current designated employer under the certificate of a sponsorship. In any event, he also stated at that point that he was allowed to do the extra work in addition, because the job was in the appendix of shortage occupations list; alternatively, it was the same occupation code. It is in fact not now suggested,

nor could it be, that stacking shelves in a supermarket is of the same description as a skilled worker in software for the purpose of the Immigration Rules.

34. By her skeleton argument, Miss Jegarajah for the claimant, sought to raise a different set of challenges which were to the following effect, which I will deal with in turn,

(a) that there was no evidence from the decision maker or explanation about why there was no evidence, including a failure to state what material the immigration officer had when the decision was taken; and

(b) there is no evidence that the claimant's leave had, in fact, been cancelled and relevant material, such as the notice of liability to removal had not been disclosed to the defendant and that represented a breach of the duty of candour. Alternatively,

(c) such evidence as had been given was inadequate; the relevant rules stated a breach must be of sufficient gravity and cancellation of leave should not take place where it would be disproportionate.

(d) under the heading "No reasonable grounds for interview nor arrest", it is asserted that there is a duty to disclose guidance under the duty of candour, including publicly-available guidance, (although this ground was not advanced with vigour orally);

(e) an apparent claim that the Secretary of State was under a duty to identify why the immigration officers attended the premises and interviewed the claimant and that they needed "grounds to a reasonable suspicion" and, by extension, had an obligation to disclose them; likewise, the name of the arresting immigration officer;

(f) that there had been a search and it is asserted that the relevant legislative provisions were not identified;

(g) criticism was levelled against the nature and content of Ms Strother's witness statement. It was criticised as "cryptic" and that matters had been omitted in the

statement and there was an absence of evidence concerning the decision-making process;

(h) it was further objected that in an exhibited extract from the immigration officer's contemporaneous report the names of the officers had been redacted and there was no good reason for this. The court should attach no weight to the document as a result.

35. In respect of these points, lettered above, my conclusions are as follows:

(a) as to the first criticism, it is not the case that there was no evidence, the detail of the decision was disclosed when statements were sworn and the extract from the actual minute made by the immigration officer was exhibited, not merely an explanation given in the body of the statement;

(b) there was evidence that the leave had been cancelled; the appropriate notices were served upon the claimant, they are produced to the court.

(c) the submission that the evidence was insufficient to found the decision that there had been a breach is part and parcel of the reasons/unreasonableness challenge. The word "arbitrary" was also used in submissions. I reject it. This was, in essence, a simple case. The claimant had permission to stay in the UK and to work in a particular capacity. He was, if working in Budgens, serving customers and filling shelves, not working in the capacity for which he had permission. This was a breach. One of the officers actually observed him filling the shelves. Officers spoke to persons who worked in the shop who said that he also worked in the shop. The claimant's behaviour on the arrival of the immigration officers aroused suspicion. This was a reasonable reaction: he was evasive, he left. He gave untrue and some incredible answers to the questions he was asked. I observe that this was strong, cogent evidence on which to base the decision of 7 December 2023;

(d) The guidance to which the claimant refers is readily available. Had it not been found, requests for it which could have been made. There is no illegality or procedural unfairness that taints the decision of 7 December. The real issue is that the claimant was caught "on the hop" and seen carrying out a job which put

him in breach of his visa conditions. The claimant seeks to explain his unsatisfactory answers by reason of the fact that he was flustered and he is a poor communicator. That does not explain, nor does he seek to, the fact, that he was seen by an officer stacking shelves.

(e) There is no general duty on the Secretary of State to disclose the operational intelligence/information analysis and reasoning behind an unannounced immigration visit to a premises. Indeed, there may well be good reasons of enforcement and public policy why such details should not be revealed. No authority or practice statement or guidance was referred to so as to suggest such a general duty exists. In my judgment, it does not. No good reason was suggested why, in this particular case, the Secretary of State should have told the claimant or his advisors the reasons for their attendance at the Budgens on the relevant date.

(f) Given new procedural challenges raised in the skeleton argument, the Secretary of State disclosed the immigration officer's full document from the visit, which showed the fact of the search being made, on the basis that the claimant had retreated to an office with tools and heavy items, as I have set out. I find it impossible to see how the disclosure of this document, in fact, helps the claimant. It makes firmer in my judgment, the evidence on which the Secretary of State based her decision. There can be no criticism, as was sought to be made, that the whole document relating, as some of it did, to others, should have been disclosed *in toto* to the defendant at the start. As I say, it supports, not diminishes, the defendant's case. There is no basis for a criticism of the process and the attempts to find some procedural peg on which to unpick the decision-making exercise of 7 December 2023 fails in my judgement.

(g) The Secretary of State's deponent is a senior caseworker within the Home Office immigration enforcement department. She explains she is authorised to make it on behalf of the Secretary of State. She provides technical advice to others within the Home Office with respect to individuals who are liable to be removed and are in detention. At the date when she swore the statement, namely 15 December 2023, the claimant had been detained for a week. She assists the court by explaining the terms of the visa, what it required and why it was

cancelled, citing from the exhibits and the officer's note. She encapsulates other parts of the evidence, explaining how, on the basis of what was seen in the answers given, the claimant was considered to be carrying out a shopkeeping/customer service role with his visa conditions. The statement explains the effect of this and the reasons for detention under para.16 in order to enforce return. There is, in my judgment, nothing inadequate, surprising or untoward in the statement. It is not "cryptic", it is clear and explanatory. The remainder of it explains that reviews had taken place at regulation intervals and detention was maintained in the face of the 12 December 2023 application for permission. This was because it was still possible, it was thought, that the matter might be concluded swiftly. I would add, as is now known and following the orders made since, that that was not possible and the claimant was released as recorded above. The statement from Ms Strother acknowledges that the claimant has provided a copy of a service agreement, which appeared to show he had been commissioned by his sponsor for Balaji Benzine as the owner of Budgens. The Secretary of State, through this deponent, indicates that she is unpersuaded that the credibility issues in the claimant's account are answered by the existence of this document.

(h) The name of the individual officer was not an issue of relevance in this case and its non-disclosure did not prejudice the claimant. Whilst there may well be circumstances in which it is relevant to name an officer, there are, in my judgment, good reasons in the context of immigration enforcement proceedings for anonymity to be the norm. No application was made at any stage that the names be disclosed, nor any reason given for requiring such disclosure. It would have been wholly inappropriate in this case. No issue arises either on the search and the reasons for which were given, as I have set out earlier.

36. In oral submissions, Miss Jegarajah sought to develop the case and was criticised by Mr Matthew Howarth, on behalf of the Secretary of State, as, again, being unpleaded. I record here, nonetheless, the submissions made by her and I heard her development of them, in any event, although I have come to the clear conclusion that, neither the pleaded case nor the subsequent elaboration of it in the skeleton argument, as assisted by oral submissions, provides grounds to quash the Secretary of State's decision of

7 December 2023, which I judge on the material available to the decision maker at the time.

37. The further oral criticisms made in support of the skeleton argument case expanded on the fact that the Secretary of State's deponent had extracted two pages only, which she said were relevant, from the full decision record of the immigration officers' visit. There was no indication, it was said, of the basis for the officers attending and the Secretary of State had failed to justify the need for the detention of the claimant and this was an actionable breach of the duty of candour which supported the contention that there was no justification for the decision made. The decision maker had not explained why the rest of the document was not exhibited and the immigration officer, and not the Home Office official, ought to have sworn the statement. There is nothing in these criticisms. I have dealt with most above.

38. The challenge made was to the factual basis for the immigration officer's decision which necessitated exposing the notes made at the time, which the deponent did. It meant showing the reasoning which was not, on these facts, complex and this statement did so.

39. In my judgment, the manner in which the challenge was articulated in the grounds read strictly does not disclose a ground for quashing the decision, but, rather, asserts a contrary factual background. However, I was prepared to read the submission and understand it as a challenge to the effect that a decision that the claimant was in breach of his visa conditions was not open to the Secretary of State properly directing herself on these facts.

40. The Secretary of State's evidence, understandably, therefore, deals with the fact basis of the decision made and shows the relevant parts of the document in which it was contained. There is no breach of any duty of candour in failing to say more or not disclosing more. In any event, in light of the service of the skeleton argument, the Secretary of State did disclose all of the document, erroneously, in fact, at first, including those parts over which it wished to claim privilege which were irrelevant and/or dealt with matters that were of some sensitivity and unrelated to this case. Quite properly, as the Secretary of State acknowledged, the claimant's advisors immediately indicated the over disclosure and destroyed the full copy and were

provided with a suitably reduction version. I say "suitably redacted", because, as stated above, I do not accept the further criticism of Miss Jegarajah that redaction was unlawful or unfair in this context.

41. Miss Jegarajah also submitted that it was relevant to the decision made on 7 December that the Home Office had contacted the sponsor and were investigating the propriety of his sponsorship. These events occurred after the decision was made and, whilst they may be relevant to any application for a full consideration on the later facts, none has been made, they cannot impugn the process of 7 December. In this regard I was sent after the hearing had concluded, but before reading out this judgment, materials on behalf of the claimant, which indicated, by very recent correspondence, that the Home Office is not intending to prosecute the sponsor in respect of unlawful workers.

42. The Secretary of State indicated by email response that this material does not go to impugn the decision which is under challenge for which permission was granted. I agree.

43. Further points were raised in argument to the effect that that there was no "evidence" of what the officer had said in her statement, namely, that the claimant had been observed stacking shelves over the course of three days. In fact, the full document does show further materials evidencing this point. At one point, Miss Jegarajah submitted that the court should be careful that there was no presumption that her client had not been telling the truth just because he was a migrant. Further, he was well educated. It should be said, so that all are clear, there is no suspicion whatsoever of the HO operation itself or of those involved being animated by any improper motive. Indeed, the racial origin of those who carried out the immigration visit is neither known nor in issue.

44. It was also suggested that, on the basis that the immigration officers had asked for access to the CCTV, but the claimant had refused it, the Secretary of State was somehow in breach of duty in not herself obtaining it. The submission goes nowhere, since the evidence is that this claimant was himself in charge of the materials, but refused access to them. She further submitted that the operation was a large one. This claimant was not the target of it and it is unfair that he should suffer as a result

when others were targeted, but he was found, allegedly, in breach of his visa conditions. This submission is ill founded. The issue is whether or not the officers had a proper basis for the conclusions they reached which led to the decision under challenge. He, himself, was found to be working, apparently, in breach of his conditions. It was the officers' duty to act upon this information.

45. In spite of Miss Jegarajah's ingenuity, this was, in essence, a very simple case. She described at one point the position as "the evidence is barely there". This is demonstrably not the case. The factual basis of the decision of the Secretary of State is plainly sufficient for the conclusion that this claimant was working in breach of his conditions.

46. Finally, it is trite and well-established law – and the position is not disputed – that the court is very disinclined to entertain a rolling judicial review. In this case, there has been no later decision by the Secretary of State taking into account all the later produced materials upon which the claimant sought to rely, as it were retrospectively, to challenge the 7 December decision. No application was made to amend the original claim, but new grounds were sought to be advanced by way of the skeleton, as I have indicated.

47. I do not dismiss the judicial review on the technical basis that the arguments were not pleaded, nor that the defendant had little, if any, notice of them. The arguments are not, for the reasons given, good ones. I have dealt with them, in any event. As I have stated, it is the case that there is nothing here that could impugn the 7 December decision-making process and I say again that it remains the position that there has been no request for a reconsideration of the decision, taking account of all the materials said to support the claimant's case that he ought not to be regarded as working in breach of his visa or, in any event, to persuade the Secretary of State of a different outcome, but this challenge must be rejected.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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