



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

Appeal Number: IA/43643/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 25 November 2015**

**Decision Promulgated
On 3 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

v

MR BIGYAN HAMAL
(NO ORDER FOR ANONYMITY MADE)

Respondent

Representation:

For the Appellant: Mr I. Ali, Everest Law solicitors

For the Respondent: Mr Staunton, Home Office Presenting Officer

DECISION & REASONS

1. The Appellant is a national of Nepal, born on 30th December 1991. On 28th August 2014, he applied for further leave to remain in the UK as a Tier 4 (General) Student Migrant. This application was refused on 21st October 2014 with regard to paragraph 245ZX(c) and the Appellant was awarded 0 points for his CAS because the document provided by Swarthmore College on 3rd June 2014 has been verified as false and the course for which his CAS has been assigned cannot be verified as representing academic progress. The application was also refused with reference to paragraph 322(1A) of the Rules on the basis that a document submitted has been confirmed as false.

2. The Appellant appealed against this decision and his appeal came before First Tier Tribunal Judge Cohen for hearing on 8th May 2015. In a decision promulgated on 20th May 2015, he dismissed the appeal on the basis that the Respondent's refusal was correct and he rejected the Appellant's claim to be married to a British citizen.

3. The Appellant made an in-time application for permission to appeal to the Upper Tribunal on 1st June 2015, on the basis that the Judge erred materially in law: (i) in wrongly concluding that the underlying issue in the refusal was submission of a false CAS whereas it was not the CAS but a letter from Swarthmore College, upon which the CAS was based, that was impugned because the College had verified that all the information in the letter was correct but the person signing the letter was not the Examination Officer. This was outwith the Appellant's control and the Judge's conclusion at [13] that the Appellant deliberately sought to rely on a document containing a false signature is a material error of law; (ii) in his assessment of the Appellant's credibility in that he is genuinely married to Dibya Chand since 9 June 2014 but did not provide evidence in support of this fact because it was not part of the refusal letter.

4. Permission to appeal to the Upper Tribunal was granted on 7th August 2015 by First Tier Tribunal Judge Simpson on the basis that in appeals in which dishonesty or deception is alleged the starting point should be the Court of Appeal judgment in AA (Nigeria) [2010] EWCA Civ 773 that the reference to "false" means "dishonestly" false, however, the Judge's decision is silent as to dishonesty and it was arguable that there has been a material error of law. It was also arguable that the Judge ought not to have rejected out of hand the fact that the Appellant is married to a British national which must give rise to Article 8 issues but none of the recent cases have been considered and the Judge's findings at [19] arguably cannot be maintained.

5. At the hearing before me, Mr Ali relied upon the grounds of challenge. He submitted that Judge Cohen had misdirected himself in the manner in which he considered the CAS, which is a requirement whereas the letter from Swarthmore College is intended to show academic progress. The CAS is genuine, whereas the letter is signed by someone not entitled to sign it. He referred me to 27-30 of his bundle, which contained the DVR and a copy of the letter and he submitted that everything is correct about the letter except the person who has signed it. That is the basis for the finding that the document is false and the alleged deception by the Appellant. The Appellant was not cross-examined as to how he obtained that letter. He submitted that deception was not proved by the Respondent. In respect of the issue of the credibility of the Appellant's evidence and the issue of his human rights, he submitted that the Appellant is married to a British citizen and has a British child, but previous representatives had not advised him to produce any documents and his wife was not present at the appeal hearing. Judge found damaged credibility.

6. In response, Mr Staunton relied upon the Respondent's Rule 24 response at [3] to [5]. He submitted that the Appellant had been cross-examined [9] and had nothing to prove that the CAS was genuine. It was clear the Respondent

has discharged the burden of proving false documentation and it had been fully open to the Judge to make these findings in the absence of evidence to refute the false document. In respect of the Article 8 findings, he submitted that there had been no evidence from or about the Appellant's wife and it had been fully open to the Judge to find the Appellant was attempting to bolster a weak claim. He submitted that dishonesty had been proved and the Judge had been correct in finding that deception had been used. It was clear what the Judge was stating in the determination.

7. Mr Ali then sought to rely on a further line of argument, which was in fact a repetition of his first line of argument, as to the evidence that the Judge treated the letter from Swarthmore College as a CAS and he drew my attention to [3] line 3 and [9] which refer to the CAS when it should be the letter. The whole issue of academic progression not raised by the Judge. He questioned how a letter could be false, just because it had been signed by a different person. [7]. He submitted that it was not the Appellant's fault and should not undermine his credibility. He drew my attention to the decision in Pokhriyal [2013] EWCA Civ 1568 at 31-37 and submitted that the Respondent had accepted the Appellant's submissions regarding 120b of Appendix A. He submitted that the Appellant had not been properly represented as this should have been the key point before the Judge and consideration should have been given to the importance of the letter itself; who should have conduct of the investigation into the letter and how far it should be conducted. He further submitted that given that it was not the Appellant's fault, it did not matter who issued the letter.

8. I reserved my decision, which I now give with my reasons. In respect of the first ground of appeal, I do consider that First Tier Tribunal Judge Cohen erred in law, however, for the reasons I give below I do not consider that his errors were material for the following reasons:

8.1. At [12] of his decision he directs himself that the burden of proving that the decision of the respondent was not in accordance with the law and the relevant Immigration Rules rests upon the appellant. Whilst that is the case in respect of the decision under paragraph 245 ZX(c) of the Rules, it is not the case with regard to the paragraph 322(1A) decision, where the burden of proving that a false document has been submitted is upon the Respondent: see Shen (Paper appeals; proving dishonesty) [2014] UKUT 00236 (IAC) at [25].

8.2. The judgment of the Court of Appeal in AA (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 773 is authority for the proposition that: "*Dishonesty or deception is needed, albeit not necessarily that of the applicant himself, to render a "false representation" a ground for mandatory refusal*" per Lord Justice Rix at [76].

8.3. On the facts of this case, the document in question is a letter from Swarthmore College dated 3rd June 2014 which was provided to the Appellant at his request to support the issuing of a CAS by his new college, East End Computing & Business College, Swarthmore College having been closed down. This document was verified in the form of a DVR as a false document in that

Swarthmore College confirmed in an email to the Home Office of 12th October 2014 that the authorized signature on the letter is not genuine as it is not the examining officer's signature. The definition of "false document" set out at page 9 of the Modernized Guidance on "General Grounds of Refusal" last updated on 1.9.15 is a:

- genuine document which has been altered or tampered with
- counterfeit document (one that is completely false)
- genuine document that is being used by an imposter
- genuine document which has been fraudulently obtained or issued
- genuine document which contains a falsified or counterfeit visa or endorsement

It is clear and I find that the letter from Swarthmore College dated 3rd June 2014 is a false document within the meaning of the guidance.

8.4. In these circumstances, whilst Judge Cohen did not direct himself correctly following AA (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 773 as to the requirement of dishonesty or deception, it is clear that dishonesty or deception were employed in respect of the letter, which resulted in the wrongful issuing of a CAS. The Appellant's case was that there was no dishonesty or deception on his part but this was not accepted by Judge Cohen who found at [13] that he "*deliberately sought to rely on a document containing a false signature in respect of the present application.*" Paragraph 322(1A) is in mandatory terms and expressly states that that "*where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application*" [emphasis added]. Therefore, whether or not the Appellant was unaware that the document was false, this matters not for the purpose of paragraph 322(1A). The false document was used to support his application for a CAS and for an extension of his leave to remain as a Tier 4 student and thus the Respondent was entitled to refuse the application on this basis and Judge Cohen was correct to uphold that decision.

9. That leaves the second ground of appeal, which was that the Judge erred at [14] in rejecting the credibility of the Appellant's claim to be married to a British citizen. There was no written evidence to support the Appellant's oral evidence that he was married to a British citizen and his wife was not present at that hearing. There is no reference to his wife in his witness statement before the First Tier Tribunal. The grounds of appeal against the Respondent's decision of 21 October 2014 state simply that the refusal infringes the Appellant's right to family life under Article 8 and refers to the Appellant having established a private and family life in the UK but no details are provided. At [14] Judge Cohen states that the Appellant "*raised for the first time a claim that he was married to a British citizen*" and placed weight on the fact that this had not been raised in his witness statement, no marriage certificate had been

submitted and his wife was not in attendance at court nor had provided a letter of support. In these circumstances and in the absence of any corroborating evidence at all, it was open to him to reject the credibility of the Appellant's claim in this respect. Therefore, he did not err materially in law in so doing.

10. It follows that the Appellant's appeal to the Upper Tribunal is dismissed and the decision of First Tier Tribunal Judge Cohen is upheld. However, I am bound to observe that the Appellant's wife was present in court at the hearing before me and the Appellant's new solicitors produced evidence in support of his assertion to be married to a British citizen. Whilst in light of my finding that there is no material error of law in the decision of First Tier Tribunal Cohen I cannot take this evidence into consideration, it is open to the Appellant to make an application to the Home Office for leave to remain on the basis of his marriage.

Deputy Upper Tribunal Judge Chapman

26th November 2015