



IAC-AH-SP-V1

**First-tier Tribunal
(Immigration and Asylum Chamber)**

VVT (LCPS: no post graduate diplomas) India [2011] UKUT 00162 (IAC)

THE IMMIGRATION ACTS

Heard at Taylor House

On 8 November 2010

**Determination
Promulgated**

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Before

SENIOR IMMIGRATION JUDGE PINKERTON

Between

VVT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Nasim and Mr A Khan, instructed by Malik & Malik
For the Respondent: Ms C McGahey instructed by Treasury Solicitors

This is a First-tier Tribunal determination that is reported for what has been found in relation to London College of Professional Studies namely that LCPS did not teach any non-accredited courses nor itself award or issue postgraduate diplomas in any subject. No one claiming to have undertaken such courses at LCPS can have done so without knowing that such a claim amounted to a false representation.

DETERMINATION AND REASONS

1. The appellant is a citizen of India born on 30 November 1982. He applied for leave to remain in the United Kingdom as a Tier 1 (Post-Study Work) Migrant. His application was refused by a decision dated 10 December 2009. The reasons for refusing the application include the following:-

“In your application you submitted a Postgraduate qualification in Information Technology and an academic reference from London College of Professional Studies.

I am satisfied that all the documents submitted from London College of Professional Studies were false because London College of Professional Studies has never offered a legitimate Postgraduate qualification or issued certificates in any subject. Additionally, I am also satisfied that the college have never issued internal certificates for any qualifications.

Paragraph 322(1A) of the Immigration Rules provides that leave to remain in the UK is to be refused ‘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’. As false documents have been submitted in relation to your application, it is refused under paragraph 322(1A) of the Immigration Rules.

Also, in view of the fact that you have claimed 75 points under Appendix A but on the basis of the documents you have provided you qualify for 0 points the Secretary of State is not satisfied that you have achieved a minimum of 75 points under Appendix A of the Immigration Rules.

In addition, in view of the fact that you have failed to obtain 75 points under Appendix A of the Immigration Rules Tier 1 (Post-Study Work), the Secretary of State is not satisfied that you have achieved 10 points under Appendix B to the Immigration Rules.

Therefore you do not satisfy the requirements of the Immigration Rules for this category and it has been decided to also refuse your application for leave to remain as a Tier 1 (Post-Study Work) Migrant under paragraph 322(1A) and paragraphs 245Z(c) and 245Z(d) of the Immigration Rules. For the above reasons I am also satisfied that you have used deception in this application.”

2. The decision then informs the appellant that he is likely to be refused under paragraph 320(7B) of the Immigration Rules on any future application for entry clearance or leave to enter and of the periods that such refusal would be likely to last.

3. It is further set out in the decision letter that in submitting the application the appellant made a declaration confirming that he is aware that it is an offence under the Immigration Act 1971, as amended, to make a statement or representation which is known to be false or is not believed to be true or to obtain or seek to obtain leave to remain in the UK by means which include deception. In submitting academic references and Postgraduate qualifications from the London College of Professional Studies which have been found to be false in support of the application he is warned that he may have committed a criminal offence and therefore the UK Border Agency may consider taking further action against him.

The appellant's immigration history

4. The appellant's immigration history according to the respondent is that on 7 September 2005 he was granted leave to enter the United Kingdom as a student until 31 December 2006. On 24 November 2006 he was granted further leave to remain in the UK as a student until 24 December 2007. On 21 December 2007 he was granted further leave to remain in the UK as a student until 31 July 2009.

The relevant Rules

5. Paragraph 245Z of the Immigration Rules sets out requirements for leave to remain and refers to three appendices. Paragraph 245Z(c) requires an applicant to have a minimum of 75 points under paragraphs 51-58 of Appendix A (dealing with attributes); paragraph 245Z(d) requires an applicant to have a minimum of 10 points under paragraphs 1 to 3 of Appendix B (dealing with English language) and paragraph 245Z(e) requires an applicant to have a minimum of 10 points under paragraphs 1 to 2 of Appendix C (dealing with maintenance).
6. In The appellant's case he was awarded no points other than 10 points awarded as claimed for maintenance (funds).

The appeal

7. The appellant appeals under Section 82 of the Nationality, Immigration and Asylum Act 2002 asserting that he meets the requirements of the relevant Immigration Rule, that he has never used any deception in any of his applications and that it has clearly not been proved by the Secretary of State that he has done so. If the Secretary of State alleges that he has used false documents then this needs to be proved. The documents produced are not in any way false and have been issued by the London College of Professional Studies (hereafter "LCPS"). The grounds of appeal were said to be submitted without prejudice to further detailed grounds that may follow in due course to allow the appellant adequate time to submit all available information and documentary evidence in relation to his appeal. No further grounds have followed.

Procedural History

8. It was apparent from an early stage that there were many appeals before the Tribunal arising out of refusals of applications for leave to remain involving LCPS and the alleged submission of false documents to the respondent. It was hoped that there might be a few lead cases to be heard by the Tribunal at which both appellants and the respondent would be represented and witnesses would be heard with a view to establishing facts that would be of help in deciding other appeals waiting to be heard behind the lead ones. There were Case Management Review hearings and an agreement reached that Malik & Malik, Solicitors, would represent at such lead appeals. Ultimately and for reasons that are not necessary to set out here it has not been possible to set up other lead cases, this being the only one. Various directions have been given, all with the hope of establishing the activities and status of LCPS. Delays thereafter have been because directions were not complied with and the former proprietor of LCPS, who was due to give evidence, became unwell but has now recovered and gave key evidence before me.

Documentation

9. The documents before me comprise the respondent's refusal bundle containing the decision, immigration history of the appellant and documents annexed numbered A-E, reasons for refusal letter, notice informing the appellant of the decision against which he is appealing, and the notice of appeal. The appellant produced a bundle numbered P1-P84 and a supplementary bundle served only on the morning of the hearing numbered 1-95. There is also a statement from Professor Fred Walemba with various attachments, an application for admission to LCPS, and a copy of the programme for the annual graduation ceremony for the 2007/2008 academic year in relation to LCPS.

The appellant's written evidence

10. In his witness statement dated 4 November 2010 the appellant confirms that he studied at LCPS for a Postgraduate diploma in IT (hereafter "PgDip IT"), this being a course that was offered by the college when he enrolled there. He enrolled in June 2008 and paid his fees in two instalments in cash. He did not keep the receipts to evidence payment because after receiving his certificate from the college he saw no reason to do so.
11. His course started on 1 July 2008 and ended in December 2008. Upon completion he was awarded a PgDip IT. He provided to UKBA a copy of his enrolment letter, academic transcript, course completion letter and degree certificate. The originals of those documents were retained upon refusal of his application. The course commenced at 26-28 Stuart Street, Luton where he studied until August 2008. In the first week of September 2008 the campus moved to Temple Chambers, 68-72 Stuart Street, Luton. He was told by the college administrator, Ms Preeti Gandhi, when he enrolled, that the college would be moving to the new campus in September 2008.

12. He was assessed for his course by way of assignments, one written exam and one project. He was given receipts for assignments that he submitted and he attached to his witness statement copies of those assignments that he had been able to locate. He produced a copy of his ID card.
13. Following the refusal of his application he contacted LCPS requesting them to confirm that he studied there. He received a letter dated 22 January 2010 confirming that he completed his course with them. He is aware that LCPS was sold by Professor Walemba to a new owner in December 2008. The appellant has been in touch with the new owners on various occasions regarding the allegations made against him and against various other students also. He requested that he be provided with further documents to confirm that postgraduate courses were taught at LCPS and was provided with various timetables and a copy of the enrolment form.
14. He learned that Professor Walemba had a contractual dispute with the new owners over money and this is the reason that Professor Walemba made false allegations against the college and against the students. He learned also that Professor Walemba unlawfully removed previous student records and various other databases from LCPS and a court order was made against him to return those. The appellant considers that he is a victim, as are other students, of a contractual dispute between the old owners and new owners of LCPS. He has not been convicted of any criminal offence and is a person of good character.

Oral evidence of the appellant

15. I heard oral evidence from the appellant who spoke fluent English. He confirmed as true the contents of his written statement dated 4 November 2010. He explained that he paid £2,000 in cash when he enrolled in June 2008 and a further £1,750 in the first week in September. He confirmed that he submitted assignments. They were submitted with forms as shown in the bundle. Also contained in the bundle are original assignments. When he received the refusal he went to the college and met Mr Wasey, Ms Gandhi and Mr Syed. When he asked about supporting evidence for his case he was told that many documents had been lost although they did manage to find some. The application for admission form at page 75 of the original bundle shows that Postgraduate diplomas were taught at the college. At page 77 in the supplementary bundle a Google search undertaken by his friend prior to going to the college in June 2008 at a time that they were trying to find appropriate courses also shows that there were Postgraduate diploma courses available. Ms Gandhi was one of his lecturers and she is still working with the new owner. He spoke with her to request that she come to the hearing. She was going to do so but because of a prior appointment was then unable to.

Questioning by Ms McGahey

16. In reply to questions from Ms McGahey the appellant said that his friend who undertook the internet research was called Pryank Dave who studied

for a PgDip in Business Management. He also studied at the college until December 2008 but the appellant does not know how Mr Dave paid his fees.

17. The appellant lived at his uncle's property in Southall when studying and travelled to the college three or four days a week. Sometimes he was able to obtain a lift in his uncle's delivery van but otherwise he would go by train. He gave the money in cash to Ms Gandhi when the college was working out of the old building at 26-28 Stuart Street. The new building was about two or three blocks away from the old one. Most of the time he studied at Temple Chambers at 68-72 Stuart Street. The money he paid was provided to him by his uncle and parents who themselves obtained income from a business back in India and the uncle's business in the UK. He was not able to obtain from the new owners a copy of the receipts that he was given originally because they said that most of the documents had been stolen by Professor Walemba.
18. He was then asked to look at Professor Walemba's statement which had various bank statements attached to it. He was not able to say why there was no record of the money he paid in cash being paid into that account and commented that he was not the right person to ask about it. He paid in cash and obtained a receipt.
19. The appellant was then asked questions about the enrolment letter dated 16 June 2008 appearing at page 5 of his bundle. He was asked why, if he paid by instalments, the enrolment letter said that the tuition fee had been "paid". He offered the explanation that the letter was in standard form and he had by that time paid £2,000. He was asked why his student ID had seven digits when other students' IDs were only six digits long as explained in Professor Walemba's statement and as is shown on the bank statement. The appellant responded that it was not he who decided if the ID numbers were six or seven digits. As to the original ID card he was not sure if he still had it but he had not brought it with him. He thought that the reason the ID card only said London College and not London College of Professional Studies and had no big black dot on it was because the photocopying was poor.
20. The appellant was then asked whether he was saying that Professor Walemba was making mischief because of the dispute between himself and the new owners. The appellant said that he thought this was so. He thought there was clear reason to damage former students of the college even though they had left by the time the college was sold. He considered that Mr Walemba would find any reason to stop the new owners doing business. He remembered Professor Walemba who was teaching health related subjects but he personally was not taught by him.
21. The appellant was asked if he agreed that the vast majority of students at the college were from Africa. He said that there were lots of them but denied that there were no students at all from India and added that "so many" came from India and Pakistan. The appellant met Mr Mohammed

and Mr Syed in the college in about December. He denied that he had paid any money to be provided with bogus documents. According to the letter of 22 January 2010 (page 68 of the bundle) the appellant commenced his course on 1 July 2008 and concluded it on 17 December 2008. That information was said to be “as per our records” and he did not obtain the records because he did not think he needed to ask for them. He just requested confirmation of his attendance at the college and the course he had undertaken. The two witnesses he hoped that would come to give evidence went to Haj on 6 November so could not attend court and Ms Gandhi is on holiday. The appellant did not ask for an adjournment because he did not know how to and he has also been awaiting an outcome of this appeal for some two years now.

22. Questioned further the appellant was then asked about the application for admission form which he produced at page 75 of his main bundle (this is a blank form), which form does not show the proposed programme of study to include a PgDip IT. The appellant said that there were different coloured application forms for different types of course so the one that he had filled out was not the same as the one shown in the bundle. That one was provided to him by his friend Mr Dave who had obtained it from the college for the course he undertook. He explained that the section showing that the courses started in January, April or September was different from the form he filled out which showed his course starting in July. He talked to the college on the phone to obtain information about the course and then went to see administration. He then filled in an application form which he handed in.
23. The attendance sheets that appear in the bundle (p70-74) were provided to him by the new owners of the college. He accepted that this showed attendance records for students in January-March 2008 in relation to a PgDip in management studies course. He accepted that there was nothing from the new owners that showed anything about a PgDip IT or with his name recorded. The Google search at p77 in the supplementary bundle showed nothing about a PgDip IT either. The appellant explained that the search had been undertaken by his friend to obtain information about courses he was interested in. His friend provided the appellant with a link to enable him to find out about the IT course for which he studied.
24. The appellant was then asked about the enrolment letter (P5) dated 16 June 2008. This shows three addresses at Luton, Reading and London. The Luton campus address is shown at 26-28 Stuart Street. Asked why the letter heading would show this address when the college did not move there until 24 September 2008 the appellant said that it moved there in early September 2008 and the college had said that it would be moving to that address soon. He thought that there must have been a delay and they had been expecting to move at an earlier date. Was the appellant aware that the London campus address shown was not available until January 2009? He responded that they mentioned three campuses when he went there but the IT campus was not in London. He did not know whose signature appeared on the 16 June 2008 letter. The appellant did not

accept that the academic transcript (P6) showed modules relating to an HND rather than a Postgraduate course. He was given the option of the HND or Postgraduate course and opted for the PgDip IT. He did not accept either that the Postgraduate diploma course was far in excess of the HND one.

25. The appellant was also asked to comment on the letter dated 19 December 2008 (P7) which bears the signature of Professor Walemba. Was the appellant aware that Professor Walemba had left the college on 5 December and yet had supposedly signed the letter some fourteen days later? The appellant confirmed that the course ended on 17 December 2008 and the letter was sent to him by post. The letter refers to a student opting to study MSc top-up programme from University of Sunderland. It was put to him that the college itself never offered top-up courses. He replied that there were various options that he would have been able to look at later on.
26. The appellant was then asked about the assignment submission form (P14) in his bundle and the student assessment feedback shown at E3 as an attachment to Professor Walemba's statement. He did not know why the forms were so different. The college stamps shown on the assignment submission forms compared with the ones shown on 16 June 2008 letter may have been different because the college was using different stamps for different purposes. The appellant denied that the assignments (P19 onwards) were HND level 3 or 4 assignments and not PgDip ones. The assignment was not work that he did elsewhere at another college. He had been checking stuff on his old computer and found the assignments. His laptop had crashed and he lost some data. He did not keep his assignments for very long.
27. He concluded his evidence by confirming that he did study at the college and he has not put forward any bogus documents. There was no re-examination.
28. I asked a few questions. The appellant said that he was at the college about four days a week and there were seven or eight teaching classrooms there with an average of probably 20 to 25 students per class. Classes would start at 9:30am and different classes would be taught starting at 1.30pm. The new premises were slightly bigger than the old.

The written Evidence of Professor Walemba

29. Professor Walemba provided a witness statement which is dated 1 November 2010. Summarising that statement he says that he is a Professor of Business Strategy at the University of Wales Institute Cardiff, and a fellow of the Royal Society of Arts. He is also a British citizen. He registered LCPS on 30 January 2003 as a limited company. It was set up to trade as an educational provider for overseas students, mainly from Africa, who wanted to obtain a UK degree but could not afford the fees of a mainstream university, or could not gain access to such a university. It

also provided for students who are already in the UK but whose educational provider was not providing either the standard of teaching or the support necessary to allow the student to obtain the qualification sought. He is the sole director of the company and there are two issued shares: one to his wife and one to him.

30. LCPS operated from leased premises at Temple Chambers, 68-72 Stuart Street until 24 September 2008 when it moved to 26-28 Stuart Street, Luton. The college offered a number of degree courses which were accredited to the University of Sunderland and the University of London through their external programmes. These courses were:

- (i) BA (Hons) business management (level 3).
- (ii) Master of business administration.
- (iii) BSc in applied business computing.
- (iv) BSc in international tourism and hospitality management.
- (v) Foundation degree (FDA) in international tourism and hospitality management.
- (vi) BSc in sociology (University of London).

31. Other courses were taught to allow students to obtain qualifications awarded by Edexcel. These were:

- (i) Higher national diploma business management.
- (ii) Higher national diploma business information technology.
- (iii) Higher national diploma travel and tourism management.
- (iv) Higher national diploma tourism and hotel management.
- (v) Professional development diploma in management studies.

The college had to be approved by the awarding bodies such as the University of Sunderland, University of London and Edexcel to run each of the above programmes to maintain the quality standards of the awarding bodies for their qualifications.

32. During their courses, students completed assignments and examinations. If the course was completed successfully they were awarded the appropriate certificate together with a transcript of their results issued by the appropriate accredited awarding body. Those certificates were awarded by the accredited bodies in June and December of the last year of the particular course.

33. The college kept records of all registered students in relation to fees paid, attendance, coursework completed, the marking of such work,

examination results and certificates awarded as well as records required by UKBA. The college was a listed body recognised as an institution of study and it appeared on the list which allowed overseas students to attend.

34. Professor Walemba in his statement then commented upon various documents produced by the appellant. The enrolment letter dated 16 June 2008 (P5 of appellant's bundle) bears a signature that he does not recognise. All genuine letters from the college were signed by him or his brother Elvis Walemba on his behalf if he was out of the country. The letter heading refers to a London campus at 93A-99A New Road, Dagenham but this campus was not advertised on the college letterhead until September 2008 as it was not due to come into use until January 2009. That same letter also shows the address of the Luton campus at 26-28 Stuart Street but the college did not move to that address until September 2008. The address current at the date of the letter was that on the college stamp namely Temple Chambers 68-72 Stuart Street. Although the letter states that the appellant's course began on 1 July 2008 and ended on 17 December 2008 as with many other academic institutions teaching at the college finished for the summer holidays at the end of July 2008 and teaching resumed at the new premises on 24 September 2008.
35. The PgDip IT on college headed notepaper in the name of the appellant (P8) bears what appears to be Professor Walemba's signature as director of studies. The evidence from him is that the signature is forged, firstly, because the letters in his own signature do not have the same proportions as the signature on the diploma and, secondly, because the signature on the diploma is precisely identical to the signature on the letter dated 19 December 2008 (P7) in such a way that he believes the two signatures could not have been produced genuinely by the same person signing twice. He has never used a signature stamp or stationary pre-printed with his signature. Although the diploma purports to be for a PgDip IT (level 7) at no time during his tenure at the college did it offer such a course whether accredited by another body or as an internal course.
36. The diploma also bears a reference "ID1008044" in the bottom left hand corner. That is the same as the student ID number given in the enrolment letter dated 16 June 2008 and the letter dated 19 June 2008. However, no student had that ID number. The statement explains that the numbers at the college began with "10" followed by a four digit number identifying the individual student in ascending order, such that the college's first student would have the number 100001 and the thousandth student would have the number 101000. The ID number on the documents provided by the appellant show seven digits instead of six and the college's genuine ID numbers have never reached more than about a thousand – certainly not the 8044 implied by the ID number as it appears on the diploma. Bank statements produced by Professor Walemba for the period June to December 2008 show fees paid by students to the college giving the student's name and/or student ID beside the relevant payment. However,

neither the appellant's name nor the ID on the diploma appear on the bank statements.

37. There is a seal on the diploma. The genuine college seal is in quite different form as shown at E2 of his statement. The college never used rosettes for its seals unlike that shown on the forged diploma. Although the diploma is said to have been signed by him as "director of studies" he never used that title as his correct title was principal and chief executive.
38. The academic transcript shown at P6 for the period 1 July 2008 to 17 December 2008 bears two addresses for the Luton campus of the college: the one shown on the letterhead at 26-28 Stuart Street and the other at 68-72 Stuart Street as shown on the stamp. The units on the document he considers have been copied from a level 5 qualification (and an HND) although the document purports to relate to a level 7 qualification at postgraduate level. The college did not issue transcripts in that form.
39. Professor Walemba then turns to the letter dated 19 December 2008 (the statement refers to 19 December 2009 but this is clearly a mistake). The letter confirms the appellant's completion of the PgDip IT and bears what purports to be Professor Walemba's signature as principal and chief executive. However his evidence is that the college never issued letters of this nature and the signature on the letter is forged and identical to that on the diploma. He signed no documents after he sold the college on 5 December 2008 and his passport shows that on 19 December 2008 he flew to the United States of America. Although the letter states that the appellant could study an MSc top-up programme from the University of Sunderland the course mentioned in the letter was not one of the courses approved by that university.
40. Professor Walemba has a list of all students who attended the college before 5 December 2008 and the appellant's name is not on the list. Also between July and December 2008 the college had no students from India. He usually recognised college students by face and often by name as they are often relatives of people he knows. He has never heard of the appellant.
41. He has seen a copy of the Tier 1 application form dated 28 March 2009. In the form the appellant names Ms Preeti Gandhi as his personal tutor. In fact she was a personal assistant and IT tutor but she did not teach at postgraduate level at the college since she only had a Masters degree and would have required a PhD to teach a postgraduate course. It is a requirement that tutors must be qualified to a higher level than the course they are teaching. However, IT was not taught at the college at postgraduate level. Moreover there were no personal tutors at the college, only group tutors. Ms Gandhi assisted in small group tutorials but did not take classes, owing to her imperfect command of English.
42. The assignment submission forms (P10-P17) produced by the appellant are totally different from those used by the college during the period

covered by the forms produced by him. Furthermore the college stamp on the forms is not genuine as it never had a stamp in that form even while at the address indicated on the stamp. The actual stamp was in the form of that used on the letters dated 16 June 2008 and 19 December 2008 although those letters are also forgeries. Although Ms Gandhi did not teach the units referred to on the assignment forms she sat at reception and may have signed for them in that role. He refers in the statement to a copy of the genuine college assignment submission form attached to his statement at "E3".

43. His further written evidence is that the purported identity card produced is not genuine. It is different to that annexed to Professor Walemba's statement at E4, which is a genuine identity card.

The oral evidence of Professor Walemba

44. Professor Walemba adopted his witness statement and also the statements that he made to the police appearing in the respondent's bundle at C2 and following. The application form for admission (at P75 and following) was the only type of application form used and the proposed programme of study courses mentioned on the forms were the only ones that were offered. One of the courses, the BSc (Hons) in Applied Business Computing, was a three year course. The first two years of the course consisted of an HND in Business Information Technology and students could then top up and study for the BSc (Hons) in Applied Business Computing. That degree was awarded by the University of Sunderland. The HND courses were awarded by Edexcel. The PgDip in Management Studies was a short course which could then be topped up to an MBA which was again awarded by the University of Sunderland. The PgDip in Project Management could be topped up to an MSc Project Management by a further period of study.
45. Prof Walemba went on to say that while he was in charge LPCS did not award any qualifications in its own right. He has never heard of the appellant's friend Mr Dave and he is sure that he was not a student at the college. The reason Professor Walemba is sure is because he taught on the PgDip in Management Studies and if Mr Dave had been on that course he would have known him. Furthermore Professor Walemba was the lead internal verifier at the college. As for The appellant's assignments attached to his statement he assessed that the work was level 4 or possibly level 5 but certainly not postgraduate level.
46. Turning to payments made the college did accept cash payments and if a student paid by cash he or she would have been given a receipt. The cash was then put in the bank with the student ID and/or name identifying from whom the money came. It was normal for students to pay up front. They were expected to pay 50 percent of the fees when they enrolled although the balance could then be paid in instalments. Money was always lodged at the bank in this way and none was put in without some form of reference. The money would be collected either by Professor Walemba

himself, his brother Elvis, or Ms Gandhi. An entry on 10 June 2008 showed a correction to a cash entry having been deposited.

47. Although the appellant says that he joined up at the college with his friend Mr Dave and that his friend studied for a PgDip in Business Management this was not correct because they did not run that course although there was a course run at the college which led to a PgDip in Management Studies. He then named several teachers in that subject. Professor Walemba himself taught one module, that of strategic management. These were small classes of perhaps twelve to fifteen students and as stated previously he was the lead internal verifier.
48. The college had about 200 students at any one time at the Luton and Reading campuses and he knew most, if not all, of them. Although the appellant said that there were lots of students from India and Pakistan there were not. Indeed there were very few of them. He then identified those students. He recognised the names of one Bangladeshi student and one from Pakistan. Virtually all the students came from Africa. He knew this because most had studied at one of his centres abroad and came to the UK to complete their degrees.
49. Professor Walemba then produced what he identified as the graduation ceremony programme for the academic year 2007/2008. The ceremony took place on 1 December 2008 and was an annual event only. If the appellant had been due to graduate then his name would appear on the list. Applications for admission were to courses starting in January, April and September. None started on 1 July 2010.

Questioning by Mr Khan

50. In reply to questions from Mr Khan, Professor Walemba was asked why he described himself as a Professor of Business Strategy at University of Wales Institute in Cardiff when his name did not appear on the list of staff there. He responded that he is a visiting professor at the university and denied that he was trying to deceive by describing himself in the way that he did.
51. The bank statements that he produced showed a gap between 3 July and 4 August at a time when the appellant said that he had paid some of the money in cash. Professor Walemba denied that he was being selective in producing particular bank statements. The statements shown were those relating to the business account. He did not treat the account as a personal one. The debit card payment to "Just Tyres" for £1,000 on 27 June 2008 was in relation to purchasing tyres for the company car. It was his habit to take drawings from that account. It was put to him that there were eighteen deposits in the period covered by the bank statements where no deposit reference was shown. He responded that the reference would be marked on the bank deposit slips which he could find if necessary.

52. Professor Walemba was asked also why he still has in his possession an original application for admission and related documentation for one student considering that the court order in relation to the civil proceedings between him and successors to the college required that he return all documents. He responded that those documents were in his possession before the college was taken over, he had not seized them, and therefore they were not part of the order requiring that certain items be returned. He added that UKBA said that he should keep hold of such documents and he then named the person who told him to do that.
53. He was then asked about a student that he had contacted via Facebook demanding that fees be paid to him and informing her that he would keep her degree certificate until she paid off the fees. Professor Walemba said that the student contacted him. She knew that the University of Sunderland was issuing the degree and he never received the money even though she did agree to pay. He accepted that any contract was between her and the college and not with him because by 5 December 2008 he had nothing further to do with it. However, he then commented that by a verbal agreement he had paid for her at university because she asked him to do so. This was not an arrangement he had with any other students. He denied that he lied in the affidavit that he swore in the civil proceedings about what documents he had removed from the college. He also denied that he had tried to destroy the college since leaving it because of the monetary dispute.
54. He agreed that there were about 100 students at the Luton campus. The graduation programme showed the names of 307 students. This was explained by LCPS being part of a group with students graduating from Reading, and also from the Gambia and Eritrea. All graduating students from abroad were invited to the graduation ceremony but most did not attend and they graduated in absentia. The names of those graduating in absentia are set out in the programme. There was no re-examination.
55. Ms McGahey and Mr Khan made submissions. I made a full note of them and I have taken them into account in arriving at my decision.

Burden and Standard of Proof

56. The burden of proving compliance with the relevant substantive Immigration Rule or Rules is on the appellant and the standard of proof is the balance of probabilities.
57. Where there are general grounds for refusal under part 9 of the Immigration Rules –rule 322(1A) in this appeal where leave to remain in the UK is to be refused if proven - the burden of proof falls on the respondent. As discussed at paragraphs 98-102 of **NA and Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031** having regard to **Re B (Children) [2008] UKHL 35** there is but a single civil standard of proof in appeals of this nature which is that of the balance

of probabilities, but in the light of the possible serious consequences of refusal under part 9 the respondent needs:

“...to furnish evidence of sufficient strength and quality and he (and the Tribunal) would need to subject it to a ‘critical’, ‘anxious’ and ‘heightened’ scrutiny.”

(Paragraph 101, **NA and Others**).

Findings

58. Mr Khan in his submissions, as in his questioning of Professor Walemba, attacked his credibility. It is said that Professor Walemba is not a man who comes to the Tribunal with clean hands. He described himself as a professor at UWIC but now says that he is a visiting professor. He removed materials from the college at the time of sale which did not belong to him and returned them only when injuncted to do so. Further evidence had been produced today to show that he had not returned documents. It is clear that he has been trying to attempt to destroy the college and those within it and that students harmed by his actions would merely be viewed as “collateral damage”. The letter to the student who apparently owed the college (not him) money was tantamount to blackmail since she would not receive her degree certificate unless she paid the money.
59. I have considered these and all the other points raised and I have done so with considerable care. To describe himself as a professor at UWIC is, to an extent, misleading and an exaggeration of his true position, which is that of a visiting professor. Nevertheless in my finding such a statement does not fundamentally undermine his credibility. I accept that he is a professor but he should not have described himself in the way that he did without qualifying the statement to clarify that is a visiting professor at UWIC.
60. It is unfortunate that he did not produce all the bank statements in sequence. If he had done so he would have dealt with the suggestion that he was being selective in what statements he did produce and that he did that for a reason. Nevertheless, he did produce statements for the period that the appellant said that he made his first cash payment so I think the point is a minor one in the circumstances. Although no payment is shown in the account from the appellant during that period I don't find that is very significant. For instance, there must be a possibility that having paid in cash the money was simply then pocketed or placed in another account. If that happened it would not be shown in the college bank account. What is apparent is that a number of payments throughout the period covered by the bank statements were made into the account of "the directors London College of Professional Studies UK Ltd" and that those payments were identified by the names of students and/or ID numbers.

61. It is not for me to examine in any depth the dispute between Professor Walemba and those to whom he sold, or perhaps intended to sell, the college for a sum of money in late 2008. I have noted that there is a copy of an interim injunction in the appellant's bundle which appears to show that Professor Walemba was required to return all the documents that had been removed by him from the Luton campus at the beginning of April 2009. This would appear to leave open the question of whether he should have handed over all documents etc in his possession, not limited to those that he seized in April 2009 but also those from an earlier date and prior to the sale. Such documents etc would not seem to be covered by the injunction but perhaps are covered by the agreement on sale. The difficulty arises as to whether the sale agreement terms have been breached by either or both parties but that is not a matter for me to decide. It suffices for me to say that I do not find that Professor Walemba's credibility is damaged by being in possession of the documents that he produced at the hearing.
62. One matter about the behaviour of Professor Walemba that does not impress me is that relating to him contacting a former student at the college seeking payment of fees owed by her with him informing her that he would keep the degree certificate until the fees are paid. Even allowing for the fact that Professor Walemba gave evidence that the student concerned had apparently contacted him and he agreed to pay for her at university it does seem to me an unwise e-mail to have written. Nevertheless it is not suggested that the fees were it not in fact owing and therefore to describe the e-mail as tantamount to blackmail is putting it far too high. Viewed in that light I do not find that it damages Professor Walemba's credibility in relation to the central issues in the appeal.
63. Overall, and bearing all the above in mind I have been struck by the consistency of Professor Walemba's evidence in relation to matters that can be verified and have been verified by documents that have been produced. I have found him generally to be a witness of truth. He gave his evidence in a straightforward way and was precise about his role at LCPS and that evidence was wholly supported by the documentation that he produced.
64. I have found particularly persuasive the production of the annual graduation ceremony programme which wholly supports his testimony. This was referred to in the witness statement dated 29 April 2009 given to UKBA. The programme is said to have marked the largest passing out ceremony of 307 graduates in six different categories from 21 countries. The students graduating are all named whether attending the award ceremony or graduating in absentia. However, the name of the appellant is not shown, nor that of his friend Mr Dave.
65. The programme sets out of the order of proceedings for the day which is described as the annual graduation ceremony 2007/2008 academic year held on Monday 1 December 2008 at Chiltern Hotel, Luton. The order of proceedings is followed up by a welcome which includes the following:-

"This year we mark the largest passing out ceremony of 307 graduates in six different categories from 21 countries. However today we have 100 present and the rest will be graduating in absentia.

87 HND Business Management,

42 HND Business Information Technology,

3 HND Travel and Tourism Management,

14 HND Tourism and Hotel Management,

1 BSc Sociology,

23 BA (Hons) Business Management,

25 BSc (Hons) Applied Business Computing,

93 Professional Development Diploma in Management Studies,

19 Master of Business Administration."

The welcome extends to one page and is followed with information about LCPS which includes the following:-

"The college prides itself on offering top quality tuition in a warm, caring and stimulating environment. This emphasis on quality is demonstrated through the host of certifications and accreditations that we have. These include London College of Professional Studies being:

- an approved Edexcel centre through its partners - corporate resource development institute;
- an accredited tutor support centre for the University of Sunderland;
- a tuition provider to undergraduate and postgraduate courses by the University on (sic) London external programmes."

66. I note also that it is said there that the college has continued to grow and will open a third campus in London in the next academic year.

67. I find that it is almost inconceivable that the graduation ceremony programme would not include mention of those awarded a PG Dip IT if the college had ever taught that subject. It would be possible, I suppose, for none of the students who studied for that subject to have graduated in it and hence their names would not appear in the programme but of course that is not the appellant's case. He has given evidence that not only did he study for it but he successfully completed an approved course of study

and was awarded a diploma which has been produced and which is dated "December 2008".

68. There is another matter. The course is supposed to have ended on 17 December 2008 and therefore I assume he must have been awarded the diploma on or after that date. I have to ask myself why the college would have a graduation ceremony on 1 December 2008 for those graduating in other subjects leaving The appellant and any others graduating at the same time as him missing out on that ceremony with none other in sight until possibly the following December. I reject what the appellant says took place.
69. I find that I accept also Professor Walemba's evidence regarding student ID. The student identifications in the bank statements are wholly consistent with the evidence on the point showing student identification numbers as six numbers and not seven and the last four digits being either side of 1,000. This fits entirely also with the claim in the graduation programme that "we have to date seen over 1,000 students graduate in a number of disciplines...". The one student card produced by Professor Walemba indicates the student number also of six digits being the student number 523. As a result of all this I reject that the appellant had a student ID number of 1008044.
70. The enrolment letter of 16 June 2008 refers to three campuses. I can understand that the appellant might be confused about the two addresses at which he allegedly studied when asked about it at court - by reason of nervousness - but there is no reason for him to be confused when he gave his written statement. I prefer the evidence of Professor Walemba that the college was originally at Temple Chambers and did not move to 26-28 Stuart Street until September 2008. I am able to understand why the Luton campus was shown in June 2008 at 26-28 Stuart Street because, perhaps, the move had been delayed but reject that a genuine letter heading would include the address of the London campus at that time when the campus was not due to come into use until January 2009. There is a further matter relating to that letter. I do not accept that a tuition fee would be said to be "paid" as per the letter if it had not been paid in full. Even the evidence of the appellant is that he had not paid in full by that stage but in cash by two instalments. I therefore reject that the letter of 16 June 2008 is genuine.
71. The student assessment feedback form produced by Professor Walemba dated 30 August 2008 appears genuine. The assessment feedback on the form is much as one might expect from a tutor to a student and it is interesting to note that it shows the same name as a person who received a Diploma in professional development in management studies in the graduation programme in December 2008. The assignment submission forms produced by the appellant are in common form and show the student number that I have decided did not exist. There is no feedback on the forms. It is possible that there were different forms being used at the same time by the college and that feedback was given in the way

described by The appellant but I prefer the evidence of Professor Walemba on the matter

72. Whereas I accept that it cannot have been easy for The appellant to face lengthy questioning from experienced Counsel and whilst accepting also that he undoubtedly has been to one or both of the college campuses at Luton because he was able to provide sufficient information about them, beyond that his evidence was seriously wanting.
73. Although there were matters about which he could perhaps not be expected to comment authoritatively, such as the addresses appearing on the headed notepaper and the ID number, he has been wholly unsatisfactory in dealing with other matters. He had the benefit of Counsel (two of them at the hearing) but no witnesses to assist, nor even witness statements from them – on matters of importance. Furthermore, although he was able to produce evidence that apparently was obtained by his friend who was studying at the college on a course of interest to him he was not able to produce any equivalent evidence about the course that he, the appellant, allegedly studied there.
74. It is remarkable also that in the letter dated 22 January 2010 there is reference to the appellant commencing his course on 1 July 2008 “as per our records”. If indeed the college had those records there was no good reason not to produce them or for those advising the appellant to attempt to obtain them which would help prove his case. If in fact the records were part of those that were seized by Professor Walemba then the letter could not accurately state that the information was given “as per our records”. The appellant is an intelligent young man who, I find, would have realised the importance of producing the records. The letter of 19 December 2008 and the postgraduate diploma bear signatures that to my untrained eye are identical but I place no great weight on that observation. As I believe Professor Walemba I find that neither document was signed by him. There is a witness statement from Margaret White who is a consultant graphologist. She made a report dated 4 March 2010 but no reliance can be placed upon the report because it refers to exhibits which are not in fact exhibited. In any event the expert was not called and was not available to be cross-examined.
75. I accept the submission on behalf of Professor Walemba that there was no good reason that he would wish to harm a genuine student at the college. He would have every wish to deal with bogus students because his reputation matters to him. I cannot see what possible reason he could have for damaging a genuine student. I reject the argument which appears to be to the effect that he would take any measures to attempt to destroy the college and anyone associated with it he would attempt to destroy their reputations as well. He is or has been embroiled in litigation with his successors at the college and may have every reason to be as awkward as possible with them but I do not find that this battle at all likely to extend to attempting to destroy the future and reputation of The appellant and others who may be in a similar position to him.

General conclusions

76. After a thorough review of all the evidence in this appeal it is possible to state two general conclusions with regard to LCPS until December 2008 when the College was or was intended to be sold.

(i). LCPS did not teach any non-accredited courses nor itself award or issue postgraduate diplomas in any subject.

(ii). If a student ID number consists of 7 digits the number will not be genuine. Genuine student IDs consisted of 6 digits. However, the mere fact that a student ID number comprises 6 digits does not of itself define a genuine student.

Conclusions in this appeal

77. In the light of the above I find that the respondent has discharged the burden of proving on the balance of probabilities that LCPS never ran a PgDip IT. I have found that the evidence furnished is of the quality to which I have previously referred.

78. It follows from this finding that no-one claiming to have undertaken such a course at LCPS can have done so without knowing that such a claim amounted to a false representation. It is quite apparent from the evidence given by the appellant that he knew of the diploma and its accompanying documents and what they purported to show. I am satisfied also that the letters that the appellant produced dated 16 June 2008, 19 December 2008 and 22 January 2010 are false and that he knew them to be false. The refusal letter includes a paragraph saying that the respondent considers that the appellant used deception. It was confirmed at the hearing that it is the respondent's case that the appellant did not make false representations or submit false documents unknowingly but he did so deliberately and that satisfies the test for a finding of deception. I agree. For these reasons I am satisfied that the appellant used deception in his application.

Paragraph 245Z

79. The decision to refuse has been based on both general and substantive grounds. Having found that the appellant was properly refused under paragraph 322(1A) it is not strictly necessary for me to decide his position under paragraph 245Z. It is for the appellant to show that he can meet the requirements of paragraph 245Z. In my finding he has patently failed to prove that he does meet those requirements and that is for the same reasons as are set out in the refusal letter. The appellant properly fell to be refused under paragraph 322(1A) and thus was bound to fail under paragraph 245Z.

Decision

80. For the above reasons, this appeal is dismissed.

Signed

Date

Senior Immigration Judge Pinkerton
(Judge of the First-tier Tribunal)

