IN THE ASYLUM AND IMMIGRATION TRIBUNAL

at Hatton Cross

KS (Allegations by respondent: proof required?) Pakistan [2005] UKAIT 00171

Heard: 02.11.2005
Signed: 02.11.2005
Sent out: 21.11.2005

NATIONALITY, IMMIGRATION AND ASYLUM ACTS 1971-2004

Before:

John Freeman (a senior immigration judge)
and
David Taylor (an immigration judge)

Between:

appellant

and:

Secretary of State for the Home Department,
respondent

Mr NA Bajwa (Bajwa & Co, Barking) for the appellant
Mr K Norton for the respondent

DETERMINATION AND REASONS

This case is reported on the question of what weight is to be given to allegations in a notice of refusal, where particulars and supporting evidence have neither been supplied nor asked for.

This is an appeal under the 2002 Act by a citizen of Pakistan against refusal of a student visa on 8 March 2004. The grounds for refusal dispute the appellant's eligibility on ability and intention to follow the course, and pay his way on it without recourse to employment or public funds. The reasons given are:

You have supplied a package of documents (bank statement; to support your application from Kotli. We have received the exact same documents in this office from over 40 applicants in the previous 2 weeks. They were in the same format and contained the same grammatical errors. I know that these documents are being produced solely for the purpose of this application. I put this to you at interview and eventually you admitted that you sought these documents from your father after you had applied for the course. You continued to insist that the documents were genuine.

This transparent attempt at forgery seriously undermine your entire application. I am therefore not satisfied that you are able to meet the costs of the course and maintain and accommodate yourself without recourse to employment or public funds.

2. No supporting evidence or further particulars were given with the notice of refusal; nor were they asked for in the notice of appeal, signed by Mr Bajwa, which reads simply "The decision is against the evidence and contrary to law and Tribunal's decisions". A bundle of documents was filed by Mr Bajwa on 29 September: they are the kind normally filed in support of applications of this kind, without any reference to, let alone dealing with the other applications which formed the subject of the entry clearance officer's allegation of forgery. In particular, the affidavit by the appellant's father (p 10) represents the normal supporting affidavit by a financial sponsor: although it refers to the maker's post at the bank, it says nothing about any documents for which he might (or might not) have been responsible.

3. The appeal came on for hearing on 4 October before Mr WP Scobbie, immigration judge: at 1500 another case was still in progress, and this one was adjourned for the entry clearance officer to produce the interview record. Nothing seems to have been said about any other details which might have been required. The interview record, as the notice of refusal had already made clear, consisted in a refusal by the appellant to admit that the documents produced had been forgeries, followed by his saying that his own father, as manager of the local branch of the National Bank of Pakistan, had been responsible for assembling them. It was duly faxed on 18 October.

4. The one real issue before us, as we established at the outset, was whether the documents originally produced in support of this application were forgeries: Mr Bajwa realistically conceded that he could not hope to succeed on this appeal if they were. The next question was how that was to be established, one way or the other, and who was to have the burden of doing so. Mr Bajwa argued that, since the Home Office had made the assertion, it was for them to prove it; and a mere assertion did not prove itself. He did not suggest, when pressed, that the entry clearance officer was obliged to give full disclosure of all the other 40 applications and their supporting documents; but he argued that a sample one should have been chosen for the purpose.

5. Mr Norton, on the other hand, argued that the entry clearance officer was not in the position of an ordinary party in a civil case, each of whose assertions required to be proved by evidence. We should have regard to his position, and assume that he would take a responsible approach to his duties, and not make allegations of forgery without any evidence to support them; in fact we should treat his allegations as evidence in themselves – though Mr Norton accepted that further and better particulars and supporting evidence would certainly need to be given if asked for.

6. The primary rule in immigration cases is that it is for the applicant (and the appellant, if he gets that far) to establish that he qualifies for admission under the relevant rule. Normally that will be a question of producing credible evidence that his personal situation complies with its requirements. This however is a case of a different kind, where the issue does not turn on the appellant's evidence in

isolation, but depends on whether it ought to be accepted as genuine in the light of the forgery allegation.

7. Mr Bajwa argued by way of example that, if the Home Office had suggested that the appellant was disqualified from admission by a previous deportation order, then it would be up to them to produce that and so establish their case on the point. This would of course be easy for them to do, and we should expect them to do it without any argument. It does not however answer the question of how the Home Office should be expected to prove their claims (if the burden is on them to do so), in a case of this kind. Clearly it would be unrealistic in the extreme for the full papers in the 40 or more other cases also to be filed in this one. One or more sample cases might have been chosen, as Mr Bajwa suggested; but filing the evidence in one case would leave any resemblances to the other 39 just as unproven as if no evidence had been filed at all. It could not however reasonably have been suggested that the case should be dealt with on appeal on the basis of its claimed resemblance to one other, without any reference to the other 39.

8. In our view, the allegations of forgery made by the entry clearance officer do have to be given some evidential value. Without particulars or supporting evidence, that value will not be a high one; but they are not mere assertions by an ordinary civil claimant, but statements by a person in an official position about something very much within his responsibilities. Whether they were borne out by the facts is of course something we should make our own independent decision on; but there is evidence of forgery before us which in our view at least required an answer on the part of the appellant. We took time to consider this question, and then told the parties our view on it, giving them an opportunity to make any representations they wished as to whether there was any answer to the forgery allegation.

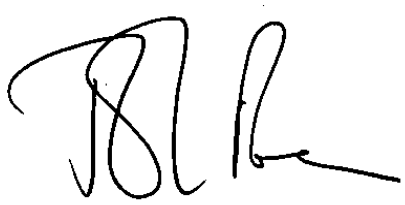
9. As we have already seen (at **2**), the documents filed on behalf of the appellant provide no answer at all to the allegation of forgery. Mr Bajwa, when pressed on this, pointed out that the interview record had only recently been received, and that the recent earthquake had made communication with Azad Kashmir (the appellant's home province) particularly difficult. He was inclined to argue that the allegation of 40 similar cases came as a surprise, and had to be reminded that it had been clearly made in the notice of refusal as long ago as 8 March 2004. The contents of the interview can have come as no surprise to anyone on the appellant's side, and we do not think any recent difficulties of communication have any real relevance to this case.

10. The central question is whether Mr Bajwa for the appellant was entitled, rather than asking for particulars or supporting evidence, or putting the Home Office to any other form of proof, simply to by-pass the forgery allegations, on the basis that they lacked supporting detail; and to allow the previous hearing to be adjourned, without making any reference to that as an additional problem. Given the implications of the allegations to anyone in the appellant's father's position, we should have expected considerable anxiety on his part to see details of them, so that the truth could be established as soon as possible.

11. The conclusion we have reached is that there is no answer of any kind, other than a reassertion (in the documents filed on 29 September) of the genuineness of the appellant's own case, to the forgery allegations. In our view that is nowhere near an adequate answer, because it does nothing to deal with the Home Office case of (to put it mildly) suspicious similarity between the documentation in this and 40 similar cases: this amounted to a serious allegation against the appellant (and a very serious one against his father, if he was who he said he was, which clearly

called for a direct answer. We do not consider that the appellant has established the genuineness of his own case on the issues between him and the Home Office.

Appeal dismissed



John Freeman
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