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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Chhetri's Application (Harish) [2009] NIQB 23

AN APPLICATION FOR JUDICIAL REVIEW BY
HARISH CHHETRI

WEATHERUP J

[1] This is an application for judicial review of a decision of the immigration authorities made on 17 July 2008 that the applicant was an illegal entrant and was liable to removal from the United Kingdom. Mr Lavery appeared for the applicant and Ms Connolly for the respondent.

[2] The applicant is an Indian national who was born in 1980 and was in the UK on foot of a visa granted from 1 November 2007 for a period of three years. The visa had been obtained while the applicant was working in Dubai as a chef. The applicant had initially applied for employment in the UK and was offered a job as a chef with a restaurant known as Chana Catering Services in Birmingham. The employer obtained a Work Permit for the applicant, which was issued on 17 September 2007 and was valid for a period of three years. The Work Permit, issued by Work Permits (UK), on behalf of the Home Office, through an agency described as Matchworkers International, Warwickshire, specified that the period covered by the Work Permit was 36 months from the date of leave to enter the UK and specified the particulars of the applicant's employment in Birmingham.

[3] The next step was that the applicant sought leave to enter the UK and he completed a Visa Application Form and attended an interview. The Visa Application Form has a section dealing with employment in the UK in respect of those applying as a Work Permit Holder, as was the applicant, and required particulars of his Work Permit and his proposed employment.

[4] The applicant was granted the visa and he arrived in the UK on 23 November 2007 and began working for Chana Catering in Birmingham. According to the

applicant, after only three weeks, the employer explained to the applicant that there was no longer a job available for him and he ceased his employment with Chana Catering. At that time he travelled to Northern Ireland because he had identified a cousin who was living here and he came over to try and obtain employment in Northern Ireland.

[5] The applicant states in his affidavit that his Work Permit was tied to Chana Catering and he realised he could not start another job without permission. The procedure was that another potential employer had to obtain another Work Permit for the applicant for a specific job and after the Work Permit had been obtained the applicant would apply for permission from the Home Office to have his visa varied to provide for the new arrangements.

[6] On 9 July 2008 the applicant applied for a job as a chef with the Gurka Square Restaurant in Birmingham and he was offered an interview which was scheduled to take place on 18 July 2008. On 17 July he was travelling through Belfast docks, with the purpose of taking the boat and travelling to Birmingham, when he was stopped by immigration officials. He was interviewed by the immigration officers in Belfast using a Hindi interpreter over the telephone. There is a written record of the interview completed by the interviewers. John Harrison was the Immigration Officer on duty at Belfast Docks on that day as part of Operation Gull, a UK Border Agency enforcement intelligence led operation conducted with the immigration authorities in the Republic of Ireland.

[7] Mr Harrison in his affidavit refers to the record of interview which states that the interview with the applicant began at 1745 hours and lasted until 1900 hours. I refer to a selection of the questions and answers -

Q. Why was your employment at Chana Catering so short a time period?

A. They never had any job for me. I knew that the job would only be for a short time.

Q. When and how was this communicated to you?

A. It was September/October 2007 by telephone.

.....

Q. On your application form for the working permit visa how long did you state that you would work for Chana Catering Services?

A. I came to work for them for the length of the Work Permit, thirty-six months.

Q. You were aware though that your employment would only be a short period there. You were there for a couple of weeks.

A. Yes.

Q. Your employment there would never have been for the 36 month period.

A. No.

Q. Are you telling me that your sole intention for obtaining a working permit visa was in order to travel to the UK to find employment of some type within the restaurant industry?

A. Yes.

.....
Q. Where did you tell the officer at entry you would be working?

A. Chana Catering Services.

Q. How long did you state you would be working there for?

A. I think I told him three years.

Q. Did you tell the officer that your employment there would only be for a short time period and that you intended to find employment elsewhere within the restaurant industry?

A. No.

[8] In the light of their investigations the immigration authorities made the decision that the applicant was an illegal entrant and served on him a 'Notice to a Person Liable to Removal'. The reasons for the decision are stated to be that -

"You have made misrepresentations on your visa application form and in your statements to the on-entry immigration officer as to material facts in that you never intended to maintain employment as specified on your work permit and furthermore you have

remained in the UK since December 2007 without valid leave.”

[9] On further enquiries made by the immigration authorities to Chana Catering a letter was received dated 22 July 2008, which included the following words as they appear below -

“However, Mr Chhetri has declined from the position and is no longer working for myself. He left without giving my any notice. Mr Chhetri while working for my company was very incompetent, he did not have the qualifications to complete simple catering tasks and cooking as outlined in his CV. I am therefore notifying you in writing to actify you that he is no longer an employee of Chana Catering Services.”

[10] In response to the respondent’s evidence the applicant filed a second affidavit and the character of his case changed. The applicant’s affidavit set out his history as follows. In 2007, when he was in Dubai, a friend told him about an employment agency that got people jobs in the UK and he contacted the agency, which he named as Royal Star, and they explained that they would be able to match him up with a UK-based employer and assist in obtaining a Work Permit, which they did. The applicant then obtained a visa to enter the UK and he was told to go to the office of Royal Star and collect the Work Permit on payment of a fee of £5,000. When he balanced this charge against the potential earnings in the UK, which he believed would be £270 per week, and that the employment would last for three years, with the possibility of being extended, and the further possibility of obtaining permanent residence in the UK and perhaps bringing his family to live in the UK, the applicant agreed. He raised the £5,000 fee in about six weeks through a number of loans from his family and friends in India. The money was sent to him electronically and he referred to some cash receipts he had obtained. The applicant was told that if he had any problems he should contact Matchworkers International, which was part of the Royal Star group.

[11] The applicant’s account continued that when he got to the UK he only had employment for three weeks. He complained that he had been sacked after three weeks, that he had paid the £5,000 to the agency and he told his employers that he was going to Matchworkers International to get his money back. He was told that they had closed down, but that seems not to have been the case. His affidavit stated that “.... I had been essentially defrauded out of £5,000, however, I did not know what to do about it. I had no money and nowhere to live. I phoned my mother in India and told her. She contacted relatives and found out that my cousin was living in Belfast. I had never met him before as his family were living in Nepal and my family were living in India.” However, he then made contact with his cousin and came over to Northern Ireland. He had now been offered a job in the Archana Restaurant in Belfast and the owners had obtained a Work Permit for the applicant.

However he was unable to regularise his position by obtaining a visa as he had been declared an illegal entrant. The applicant concluded by stating that he has family members in India relying on him for financial support, he has been supporting them since he was fifteen, he had had a reasonably good job in Dubai, had paid £5,000 plus the price of his flights and given up his job in Dubai because he believed he would be better off in the UK, for almost a year he has been out of work and forced to live on the kindness of his cousin, he has not been able to provide for his family in India and he still owed his family and friends £5,000. He stated "I believe I was the victim of a brutal scam in Dubai and that my family and I have paid dearly for it".

[12] As Ms Connolly on behalf of the immigration authorities sought to emphasise, none of the above account now given by the applicant had featured when the applicant was being interviewed by immigration officials or when he was initially making his application for judicial review.

[13] The approach to the cases of illegal entry was reviewed in Kahwagi v Secretary of State for the Home Department. A number of propositions may be stated -

- i. The immigration authorities do have authority to obtain and remove a visa holder if that person is an illegal entrant.
- ii. The immigration authorities have to satisfy the Court to a high degree of probability that the applicant in question is an illegal entrant, that is the status of illegal entrant is a precedent fact to removal.
- iii. The applicant may become an illegal entrant by being guilty of deception in the application for a visa or the information furnished on entry to the UK.
- iv. The deception has to be effective in securing entry to the UK.
- v. There is no duty of candour on the part of an applicant. However, the authorities must not be misled on material facts that are effective in securing entry, whether on the visa application or in communication with the immigration officials and whether by what is said or by conduct or by silence coupled with conduct as appropriate.
- vi. In the light of the decision of the Court of Appeal in Northern Ireland in Udu and Nyentys Applications [2007] NICA 48, where a visa is obtained on specified grounds and the applicant intends to enter the UK for alternative or additional reasons, there is a duty to disclose the full grounds for entry and it amounts to deception to impliedly represent that there has been no change of circumstances to the specified grounds of entry by producing the visa for the specified purpose and not stating the true purpose.

[14] Did this applicant apply for a visa or enter the UK by deception? That is, did he know that he was only ever going to be employed by the specified employer for a short time and not for three years and thereby use inaccurate information in his visa application and withhold his true intentions from the on-entry immigration officer as a means of obtaining admission to the UK on a false basis?

[15] The evidence relied on against the applicant is contained in the interview where it is recorded that he admitted an intention not to work for the specified employer for the three years, but to only work for a short time. The record of interview is disputed as being inaccurate and the applicant denies that he knew that he would only be employed for a short time. The recording of inaccurate answers is attributed to misunderstandings that it is claimed must have arise in the translations that were required over the telephone between the immigration officer, the translator and the applicant. Secondly, there is now the evidence that was not before the immigration officers at the time of the decision where the employer states in correspondence that the applicant elected to leave his employment. The employer's version is also disputed by the applicant, who asserts that he was dismissed on the basis that there was no work.

[16] In relation to the interview notes, Mr Lavery, for the applicant, relies on the Operations Enforcement Manual to contend that the record of the interview should not be accepted as there was non compliance with some of the provisions of the Manual. The Manual deals with the issue of interpreters in Chapters 38 and 39. It is there provided that when an interpreter is used, where the interview is not taped, the interpreter must complete a record of the interview on a specified form in the appropriate language, while the immigration officer completes the same record in English. That, of course, cannot be done if the interview is being conducted by telephone contact with the interpreter, which is what happened in this case, although the immigration officer may complete the form in English, which is what happened.

[17] Further the Manual provides that at the conclusion of the interview the person should be invited to read through the record in his own language and confirm it is correct by signing his initials at the end of each reply and signing his name in full in the line immediately below the last line of writing. In this case the applicant did initial the questions and sign the form in the English version completed by the immigration officers in the interview room. That exercise is of little value because the applicant and the immigration officer together in the interview room do not speak each others language and the interpreter is at the other end of the telephone. It is not known whether or not at the end of the interview the immigration officer read out the questions and answers to the interpreter as they had been recorded, and then they were translated back to the applicant by the interpreter, with the applicant signing the English version as pointed out to him by the immigration officer. That would seem to be a very clumsy and unreliable process, if that is what actually happened.

[18] The Manual also provides that where the person being interviewed considers the record to be inaccurate, a note of any corrections should be made in the margin of the form. The interpreter should certify that the English version is a true record of the interview at the end of the form. Again that could be achieved if the interpreter were to be present, but not when the interpreter is not present.

[19] The provisions of the Manual referred to above contain guidance only. Non compliance with those provisions does not invalidate the record of interview. When an interpreter is engaged by telephone, rather than being present at the interview, it is not possible to comply with the aspects of the guidance outlined above. There would be practical difficulties in securing the presence of interpreters at such interviews. I expect that many interpreters, including Hindi interpreters, are not readily available in person in Belfast and that, to avoid delay in dealing with those being questioned, interviews with those who only have a foreign language will be completed by telephone contact with interpreters. However, while non compliance with the provisions of the Manual does not invalidate the record of interview, there remains the issue of the reliability of the record.

[20] The present system of recording an interview by note-taking has frequently given rise to disputes about the accuracy of the record. The process of judicial review, dealing primarily with evidence on affidavit, is not best suited to deal with the resolution of factual disputes of this kind. It would obviously be desirable that there should be tape-recording of these interviews. Tape-recording does take place if the person concerned is interviewed at the police station, where the police will have the facilities. I do not suppose that it is beyond the capacity of the immigration authorities, where they appear to have an almost permanent presence at the sea ports and airports, to set up some sort of recording system that would permit the recording of the interviews, including the telephone contribution of the interpreters. Where disputes arose the tapes could be transcribed, including the translation of the exchanges between the person concerned and the interpreter, so as to provide a more reliable record.

[21] The applicant claims that he has been caught up in a scam whereby he was enticed to seek three year employment in the UK on payment of a £5,000 fee but then found that he was put out of his job. I have no evidence about this agency and do not know whether it has been investigated, but if it is conducting activities in the manner that this applicant describes then one might have thought that some investigation by the appropriate authorities should be undertaken. Nor do I know the role of the employer in Birmingham or the nature of the relationship between the employer and the agency or whether there has been any investigation in that regard. The allegations made by the applicant cast doubt on the letter that has been received by the immigration authorities. There are a number of aspects of this case that require further investigation. The circumstances of the recording of the interviews with the use of an interpreter on the telephone raise doubts about the record. If the applicant is to be believed he did pay a substantial sum of money, he gave up a job in Dubai and came to the UK for promised employment, he paid a very high fee for

his entry to the UK and it seems unlikely that he would have done so without some kind of assurance about employment. Or would he merely pay this amount to get into the country and thereafter fend for himself?

[22] Judicial review is not an appropriate mechanism for resolving all the issues that arise or launching an investigation of all the issues. The immigration authorities have to satisfy the Court to a high degree of probability of the precedent fact that the applicant is an illegal entrant. The applicant's account may be untrue, but it is possible that it is correct. I have not been satisfied to a high degree of probability that the applicant practiced deception. There are too many issues that have been left unresolved by these proceedings for the conclusion to be drawn that this applicant is an illegal entrant. Therefore, I propose to quash the decision of the immigration authorities.