Neutral Citation No. [2008] NIQB 79 | *Ref:* **WEA7228**

Judgment: approved by the Court for handing down | *Delivered:* **28/07/2008**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

_____

AN APPLICATION FOR JUDICIAL REVIEW BY
JAMIU OLANREWAJU OMIKUNLE

_____

WEATHERUP J

[1] This is an application for judicial review of a decision of the immigration authorities of 2 June 2008 declaring the applicant an illegal entrant to the United Kingdom and liable to removal from the United Kingdom. Mr Lavery appeared for the applicant and Ms Connolly for the respondent.

The applicant enters the UK on a student visa.

[2] The applicant is a Nigerian national born on 5 March 1976. By letter dated 19 December 2006 from Coventry University he was made an unconditional offer on year three of a BA in Business and Marketing with the term commencing on 24 September 2007 and the expected date of completion in June 2008. The letter of offer stated that late enrolment would be permitted up to Monday 8 October 2007 only. The applicant was also informed that he had been classed as "overseas" for fee purposes and was therefore liable to pay full tuition fees for the academic year 2007/2008. As a non EU student he was required to pay 50% of the tuition fees before or at enrolment.

[3] Having been offered a place at Coventry University the applicant applied for a UK student visa. He eventually received his visa in Lagos, Nigeria on 5 October 2007 valid to 31 January 2009. He immediately arranged a flight to the UK and departed from Lagos on 7 October 2007 arriving in London on 8 October 2007. He travelled to Coventry University the same day. As he had been informed in the letter of offer, he was informed by staff at the university that registration was closing on that day and that he would

have to pay the required fee before registration. However the applicant experienced difficulty in relation to the transfer of the required fee from his sponsor in Nigeria to a bank account in the UK. The applicant attempted to agree late registration with Coventry University but that was not permitted. In the circumstances the applicant deferred his course for one year. The applicant believed that he had been put in that position by the late arrival of his student visa in Nigeria on a Friday afternoon when registration for his course in England closed the following Monday.

[4] The applicant applied for an alternative course of study on a British Computer Society professional course at Greenwich London College and was accepted on 11 October 2007. The applicant's course involved 15 hours of study per week and he also engaged in part time work for 20 hours per week. The course of study at Greenwich London College and the hours of study and the hours of part time work are all in accordance with the requirements of the Immigration Rules.

[5] On 14 December 2007 the applicant received written confirmation from Coventry University of a conditional offer for the BA Business and Marketing commencing 22 September 2008, subject to the payment of a deposit of the tuition fees by 31 August 2008. The applicant posted an acceptance of the offer to Coventry University in December 2007 but that acceptance was not received. In the absence of any acknowledgement the applicant sent a further confirmation to Coventry University in February 2008. This acceptance was acknowledged by Coventry University on 5 February 2008. On 28 May 2008 the applicant confirmed to the university that he would be able to pay the tuition fees in June 2008.

The applicant travels to Belfast for a family christening.

[6] The applicant has a family friend living in Belfast and the family friend and his partner had a baby girl born on 5 May 2008. The christening of the baby was arranged for 8 June 2008 and the applicant agreed to act as godfather to the child. The applicant flew to Belfast International Airport on 2 June 2008 where he was stopped by immigration officials and questioned about his immigration status.

[7] The outcome of the applicant's interview with immigration officials was that on 2 June 2008 the applicant was served with a 'Notice to a Person Liable to Removal' which stated that the immigration officer was satisfied that the applicant was an illegal entrant as defined by Section 33(1) of the Immigration Act 1971. The specific statement of reasons recited - "You were silent in your statements to the on-entry immigration officer at London Heathrow as to material facts in that it is submitted that you did not intend to take up a course of study at Coventry University as per the issue of UK entry

clearance as you held insufficient funds from the outset." The applicant was also served with 'Reasons for Detention at Bail Rights' which stated that the applicant should remain in detention because his removal from the UK was imminent, that the decision had been reached on the basis that he did not have enough close ties to make it likely that he would stay in one place, that he had used or attempted to use deception in a way that led the immigration authorities to consider that he may continue to deceive and that he had failed to give satisfactorily reliable answers to an immigration officer's enquiries.

[8] The immigration officer who interviewed the applicant in Belfast was John Harrison. In his affidavit Mr Harrison explains that, having stopped the applicant at Belfast International Airport, he checked the UK immigration database which indicated that the applicant had been issued with his UK visa to undertake a course of study at Coventry University. The applicant was asked to explain the position in relation to his studies, as he had presented documentation establishing that he was enrolled at Greenich College from 10 October 2007. Mr Harrison concluded that the applicant had not provided a credible explanation in relation to his studies at Coventry University.

[9] The applicant contends that it is not a condition of his student visa that he attend Coventry University. Mr Harrison contends that the applicant had been issued with a UK visa to study at Coventry University and has produced a copy of the Home Office database extract. This document contains application details in relation to the applicant and describes his visa type as "multi-student". In a page headed "Sponsors" reference is made to "application sponsors" and listed below is the name and address of Coventry University. While Coventry University is listed as a sponsor to the applicant for a visa it is not apparent that the applicant's student visa is subject to a condition that he is to become or remain a student at Coventry University.

The Immigration Rules for student entry.

[10] The Immigration Rules provide for the requirements for leave to enter as a student.

> "57. The requirements to be met by a person seeking leave to enter the United Kingdom as a student are that he –
>
> (i) has been accepted for a course of study, or a period of research, which is to be provided by or undertaken at an organisation which is included on the Register of Education and Training Providers, and is at either;

(a) a publicly funded institution of further or higher education which maintains satisfactory records of enrolment and attendance of students and supplies these to the Border and Immigration Agency when requested; or
(b) ….
(c) …. and

(ii) is able and intends to follow either –

(a) a recognised full time degree course or post graduate studies at a publicly funded institution of further or higher education; or
(b) ….
(c) ….
(d) ….. and

(vi) intends to leave the United Kingdom at the end of his studies; and

(vii) does not intend to engage in business or to take employment except part time or vacation work undertaken with the consent of the Secretary of State; and

(viii) is able to meet the costs of his course and accommodation and the maintenance of himself and any dependents without taking employment or engaging in business or having recourse to public funds; and

(ix) holds a valid United Kingdom entry clearance for entry in this capacity.

"58. A person seeking leave to enter the United Kingdom as a student may be admitted for an appropriate period depending on the length of his course of study and his means and with a condition restricting his freedom to take employment provided he is able to produce to the Immigration Officer on arrival a valid United Kingdom entry clearance for entry in this capacity."

[11] The nature of a student visa was considered by the Court of Appeal in England and Wales in Zhou v. Secretary of State for the Home Department [2003] EWCA Civ 51. The applicant was Chinese and was permitted to enter the UK to study English. He had commenced his course but had left, was no longer studying and was engaged in part time employment. The hours of part-time work were within the permitted range for those holding a student visa. The applicant challenged the decision of the immigration authorities that he had ceased to be a student and had become an illegal entrant who should be removed from the UK. The Court of Appeal considered the Immigration Rules and the Immigration Directorate's Instructions. The Court of Appeal considered the ordinary meaning of the word 'student'. Lord Phillips stated the meaning which was said to have much to commend it on grounds of practicality -

> "Leave to enter 'as a student' determines an individual's student status at the moment of entry. Thereafter, for the period for which leave to enter has been granted, the basis upon which the individual remains within the country is that leave to remain here for the period in question has been given to him 'as a student'. His leave to enter is subject to the Code 2 prohibition on unauthorised employment, but that itself is subject to the standing authorisation granted to students by Chapter 4 to accept part time employment." (Para 32)

With particular reference to Rules 57 and 58 of the Immigration Rules and the IDI, Lord Phillips stated –

> "The provisions that these make for the grant of leave to enter for an appropriate period 'as a student' suggest that the individual will enjoy the status of a student during that period. Turning to the IDI, to which Chapter 4 is annexed, the context in which the word 'student' repeatedly appears is not consistent with the proposition that the status of student only applies to a person admitted as a student so long as his attendance at the course is satisfactory." (Para 33)

Referring to the wording of the IDI it was further stated that -

> "These passages, together with Chapter 4 itself, leave us in no doubt that the natural meaning of the word 'student' in the IDI is a person who has been given leave to enter 'as a student'. This, coupled

> with the practical considerations considered above, has led us to conclude that Mr Zhou's first ground of challenge with the Secretary of State's decision is made good. Mr Zhou remained at all material times a 'student' for the purpose of Chapter 4. His part time employment at Waitrose was authorised. He was not in breach of any entry condition, and the decision to remove him was unlawful." (Para 34)

[12] The Court of Appeal stated that if it was considered appropriate to remove students who were not pursuing their studies then there should either be a more limited period for which they were given leave to enter and they could be removed for default or alternatively, pursuit of studies could be made a condition of entry and breach of condition could lead to removal. Neither option applies in the present case.

Illegal entrants.

[13] The approach to the issue of illegal entrants was considered by the House of Lords in Khawaja v Secretary of State for the Home Department [1984] 1 AC 74. The immigration authorities must establish to a high degree of probability that the applicant is an illegal entrant. It is not sufficient to establish that the immigration authorities had reasonable grounds to believe that the applicant was an illegal entrant but rather the Court must be satisfied of the precedent fact that the applicant was an illegal entrant. The Court will be satisfied that the applicant was an illegal entrant if he was guilty of deception in obtaining his visa or in obtaining entry to the United Kingdom. While there is no duty of candour on the part of an applicant he or she must not mislead the authorities on a material fact. A material fact is an effective but not necessarily decisive fact in obtaining the visa or obtaining entry. The Court of Appeal in Northern Ireland reviewed the position in Udu and Nyentys Applications [2007] NICA 48 and established further that the presentation of a visa granted for a particular purpose amounts to a representation that the applicant is seeking entry for that purpose and if the applicant has or may have a different or additional purpose it is an act of deception not to disclose that different or additional purpose.

[14] The respondent contends that the applicant has practised deception. There are four stages to be considered, first the visa application, second the point of entry, third the period between transfer to Greenwich London College on 10 October 2007 and arrival in Belfast on 2 June 2008 and fourth the interview with immigration officers on 2 June 2008.

- the visa application

[15] The visa application was made on 19 September 2007 and the reason for going to the UK was stated to be attendance at a one year BA in Business and Marketing at Coventry University, with the applicant stating his intention to stay at the university during the period of his visa. The respondent does not accept that the applicant genuinely intended to study at Coventry University or had the means to register as a student by the payment of the required fee. I am satisfied from the correspondence exchanged between the applicant and Coventry University that the applicant sought and was offered a place at the University for the academic year 2007-2008. Further I am satisfied that when the applicant applied for the student visa he had to satisfy the visa authorities in Lagos that funds were available to pay the tuition fee and that he did so. In addition I am satisfied that the applicant was unable to make the necessary arrangements for the opening of a UK bank account and the transfer of funds from Nigeria in the time available. The applicant did not practice deception in obtaining the visa.

- leave to enter the UK

[16] At the point of entry to the UK the respondent contends that the applicant practised deception by not disclosing that he did not have the means to pay the tuition fee and register for the course at Coventry University. I am satisfied that the applicant was not aware of the difficulty he would encounter in relation to the payment of tuition fees when he arrived in the UK but only became aware of the difficulty when he arrived at Coventry University later that day. He did not have a UK bank account and was unable to arrange the transfer of funds from Nigeria and was unable to secure agreement for late registration on the course. The applicant did not practice deception in obtaining leave to enter the UK.

- from entry to the UK to detention in Belfast

[17] In relation to the period from registration at Greenwich London College to detention in Belfast the applicant was not a student at Coventry University. I am satisfied that it was not a condition of his student visa that he should become or remain a student at Coventry University. I am satisfied that his registration as a student at Greenwich London College did not affect the validity of his student visa. Zhou v. Secretary of State for the Home Department establishes that an entrant on a student visa does not become an illegal entrant if he discontinues his studies on the course that was proposed when the visa was granted. Similarly I am satisfied that, where an applicant gains entry to the UK on a student visa but fails to register as a student at the location proposed on the grant of the visa, the applicant does not thereby become an illegal entrant. Thus a person who has been given leave to enter the UK on a student visa for a specified period, and has not practised deception in

obtaining the visa or the leave to enter, does not become an illegal entrant during the tenure of the visa by failing to register for, or remain on, or complete satisfactorily the proposed course of study. Nor is there any obligation to notify the immigration authorities of a change of course. The applicant did not practice deception in failing to register with Coventry University or in registering with Greenwich London College or in failing to inform immigration of either event.

[18] The position of an entrant to the UK on a student visa who was refused an extension of the visa was considered by an Asylum and Immigration Tribunal in ML v. Secretary of State for the Home Department [2007] UK AIT 00061. The applicant was from Mauritius and was granted a student visa in the UK. She did not complete her course and applied for an extension of her leave as a student, which extension was refused because she had failed to show satisfactory progress on her course of study. This brought into play Immigration Rule 60 which deals with the requirements for an extension of stay as a student -

> "The requirements for an extension of a stay as a student are that the applicant:
>
> (iv) can produce satisfactory evidence of regular attendance during any course which he has already begun; or any other course for which he has been enrolled in the past; and
>
> (v) can show evidence of satisfactory progress in his course of study including the taking and passing of any relevant examinations."

[19] The Tribunal concluded that Zhou had established that the leave given to a student is not tied to any particular course of study, although necessarily the decision whether to grant leave does require consideration of the course of study for which leave is sought. The issue before the Tribunal was the meaning of the phrase "course of study" in Rule 60(v) and the Tribunal decided that it was the course of study for which the individual had most recently been granted leave. The Tribunal stated the Lord Phillips' comments in Zhou must be seen in context, namely that they related to the legality of the individual's existing immigration status in the UK, which was the sole issue before the Court of Appeal. It was stated that Zhou said nothing about whether, having given up a course of study, an individual should or would be able to satisfy the requirements for an extension of leave under Immigration Rule 60.

[20] ML does not speak to the applicant's present position but to the matter of an extension of a student visa. It may foreshadow later difficulties that the applicant may encounter in relation to an extension of the present student visa

to enable him to undertake the proposed course of study at Coventry University. However that does not affect his present status.

[21] Since the hearing of this application for judicial review the Court of Appeal in England and Wales delivered judgment in GO and Others v Secretary of State for the Home Department, Times Law Report (23 July 2008), stating that the grant of clearance to enter the UK as a student did not confine the entrant to a single course of study. Further the meaning of Rule 60 (v) was that a student who wanted an extension of stay must be able to produce evidence of satisfactory progress, whether on the course named in the application for entry clearance or on another recognised course that he had undertaken.

- interview by immigration officers

[22] At detention on 2 June 2008 the applicant was interviewed by immigration officers. The immigration officers formed the view that the applicant had no intention of taking up his course of study at Coventry University as he did not have sufficient funds. I am satisfied that the immigration officers proceeded on the mistaken assumption that attendance at the course at Coventry University was a condition of the applicant's student visa. For the reasons set out above I am satisfied that that was not the case.

Conclusion.

[23] It has not been established that the applicant practiced deception in obtaining the student visa, or in gaining leave to enter, or in not reporting his change of course of study or in his interview with immigration officers. I am satisfied that the applicant is not an illegal entrant. The 'Notice to a Person Liable to Removal' served on the applicant on 2 June 2008 will be quashed.