



Khalid and Others (Ealing, West London and Hammersmith College) Pakistan
[2011] UKUT 00295(IAC)

Upper Tribunal
(Immigration and Asylum Chamber)

THE IMMIGRATION ACTS

Heard at Field House
On 10th January 2011

Determination Promulgated

1 August 2011

Before

SENIOR IMMIGRATION JUDGE P R LANE

IMMIGRATION JUDGE R C CAMPBELL

Between

FRAZ KHALID

SALMAN ALI SYED

TAHIRA SALMAN

MAHNOOR SALMAN

SHEIKH MUHAMMAD AKMAL

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellants: No appearance

For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

1. Ealing, Hammersmith and West London College (EHWLC) has an online management and record keeping system called Centime, operated from 2003 and still in current use. This system is so detailed, well operated and robust that evidence from EHWLC based on its records to the effect that a person made no application to the college, was not enrolled on a course there and was not awarded any qualification will, in general, be cogent evidence to that effect. Accordingly, it will in general be extremely difficult for a person who does not feature in the records to demonstrate that they were enrolled at EHWLC and studying there at the relevant time.

2. Evidence of academic achievement at EHWLC, relied upon by those claiming to have studied there, including certificates, results sheets and course work claimed to have been submitted for assessment, will, in general, include a student's unique data number, assigned to him or her under the Centime system and the absence of such a number is, accordingly, likely to be an adverse factor of substantial weight.
3. Genuine postgraduate diploma certificates issued by EHWLC will include a logo showing the full name of the college rather than a single campus or a combination of sites not reflecting the full name.
4. Postgraduate courses in Hospitality Management and in Business and Management are of eighteen months duration and any work placement arranged as part of a course will begin after the commencement of studies and not beforehand; the catchment area for the 2008 course Hospitality Management course was Mumbai and the intake in that year was from that city and its environs and not elsewhere.

DETERMINATION AND REASONS

Introduction

1. The appellants, Fraz Khalid, Salman Ali Syed, Tahira Salman, Mahnoor Salman and Sheikh Muhammad Akmal are citizens of Pakistan and were born on 18th December 1978, 23rd August 1971, 15th March 1982, 27th December 2007 and 19th August 1978 respectively. The second and third named appellants are Mr Syed's dependants (his wife and his daughter respectively) and their appeals depend on the outcome of his. The first, second and last named appellants each applied for leave to remain in the United Kingdom as a Tier 1 (Post-Study Work) Migrant. In support of their applications, each submitted what purported to be a Postgraduate Diploma from Ealing, Hammersmith and West London College ("EHWLC"). Mr Khalid and Mr Syed claimed to have been awarded a Diploma in Hospitality Management. Mr Akmal claimed to have been awarded a Diploma in Business and Management. In each case, the Secretary of State found that the qualification relied upon was false and that, in consequence, each application fell to be refused under paragraph 322(1A) of the Immigration Rules. The Secretary of State also found that the appellants had failed to show that they were entitled to points claimed under Appendices A and B of the Immigration Rules and that they had therefore not shown that the requirements of paragraph 245Z(c) and (d) were met. The applications made by Mr Syed's dependants were refused as they could not show that the requirements of paragraph 319C and 319H of the rules were met.

2. In a determination promulgated on 14th August 2009, appeals brought against the adverse decisions were dismissed by a Designated Immigration Judge sitting at Hatton Cross. An application for reconsideration under section 103A of the Nationality, Immigration and Asylum Act 2002 was made on behalf of appellants. On 16th November 2009, a panel consisting of Senior Immigration Judge Storey and Senior Immigration Judge P R Lane found that the determination contained a material error of law, such that no part of the findings could stand, with the result that a fresh hearing was required on all issues (see Appendix 1). Detailed case management directions were given on 10th September 2010 and the matter came before us on 10th January 2011.

3. The appellants did not appear at the hearing on 10th January 2011. It was apparent from the case management file that each was served with notice of the hearing and directions at the addresses provided by them. There was no explanation for their absence and no application for an adjournment. We were satisfied that the appellants had been notified of the hearing and that it was in the interests of justice to proceed, as permitted under rule 38 of the Tribunal Procedure (Upper Tribunal) Rules

2008. In so deciding, we took into account the overriding objective (and the parties obligation to cooperate with the Upper Tribunal) in rule 2 of those Rules.

The Documentary Evidence of the Appellants

4. Before us were copies of the applications for leave to remain in the United Kingdom, the notice of decision in each case, the notices of appeal to the First-tier Tribunal and documents relied upon in support. Short bundles were prepared in readiness for the hearings before the Asylum and Immigration Tribunal by the solicitors then acting for the appellants. In Mr Khalid's case, a witness statement and a document purporting to be an academic assignment were provided. In Mr Syed's case, a witness statement and documents purporting to be two assignments were provided. Mr Akmal also provided a witness statement and documents purporting to be two assignments.

5. In response to the case management directions given by the Upper Tribunal, Mr Khalid, Mr Syed and Mr Akmal each provided a further witness statement (dated 7th January, 6th January and 5th January 2011 respectively). The respondent provided a composite bundle, consisting of witness statements made by Victoria Charles, a course director for the Foundation Degree in Hospitality Management at EHWLC, dated 27th September 2010 and by Kathryn Vines, Head of International Operations at the same college, dated 27th September 2010. The respondent's bundle also included copies of documents provided by Mr Khalid, Mr Syed and Mr Akmal in support of their applications (including postgraduate diploma certificates, results sheets and letters purporting to have been written by members of staff at the college), sample documents provided by EHWLC, further copies of the respondent's original trial bundle and a copy of a second witness statement made by Ms Vines, on 17th June 2009.

6. Also before us were the original diploma certificates, letters and transcripts provided by Mr Khalid, Mr Syed and Mr Akmal in support of their applications for further leave. Mr Tarlow handed up the International Course Guide for 2009 and 2010 published by EHWLC and we were also provided with examples of certificates issued by Edexcel, certificates of eligibility, letters to students at the college from course directors, transcripts, results sheets and diploma certificates issued by the college.

7. The case management file included letters sent by fax from the solicitors who had previously represented the appellants, confirming that they were no longer instructed.

The Appellants' Cases

Mr Khalid

8. Mr Khalid submitted a Postgraduate Diploma in Hospitality Management. The Secretary of State was satisfied that the document was false as the signatures which appeared were not ones that would appear on a genuine diploma certificate issued by EHWLC. He also submitted a transcript and a letter, each signed by Ms Charles. The respondent found that these documents were also false and not genuinely issued by the college. In his grounds of appeal to the Asylum and Immigration Tribunal, Mr Khalid contended that he had provided genuine documents from his college and that the respondent had failed to show that they were false. He maintained this stance in a witness statement made on 22nd July 2009. He stated that the transcript issued to him included Ms Charles' signature and that his course began on 17th January 2008 and continued until 9th October that year. There were nine modules, listed in the transcript he provided and the course consisted of assignments and examinations, which he passed. He had provided genuine examples of his course work. In the witness statement he made on 7th January 2011, Mr Khalid maintained that all the documents he provided in

support of his application were genuine and that there was no evidence showing that they were false. It was evident that a certificate issued to him included Ms Charles' signature and he had no reason to doubt the document. He stated that he had learnt that the respondent had obtained a witness statement from Ms Charles, in which she denied signing it. He found this surprising as it clearly stated her name. He had no reason to believe that Ms Charles did not sign it and, even if she had not done so, this was a matter for the college to investigate. He maintained that he was a genuine student and was still in possession of some of the academic work that he had undertaken, which he had provided to the respondent. He stated that he was prepared to answer any questions in relation to his course and had not been dishonest.

Mr Syed

9. Mr Syed relied upon a Postgraduate Diploma in Hospitality Management, a transcript and a letter (the latter two signed by Ms Charles). The respondent found that the documents were false as the signatures which appeared in them were not ones that would appear in items genuinely issued by EHWLC. Mr Syed contended in his grounds of appeal that the documents were genuine. He maintained this stance in his witness statement, claiming that he enrolled on a course in Hospitality Management which began on 17th January 2008 and came to an end on 9th October that year. Mr Syed stated that there were nine modules on the course, listed in the transcript he provided. He completed assignments and passed examinations. The certificates he received were pre-signed and responsibility for them lay with the college and not with Mr Syed himself. In the statement he made on 6th January 2011, he claimed that he acted in good faith and was a genuine student at the college. He received a diploma certificate and, to the best of his knowledge, it was genuine. He had no reason to doubt that Ms Charles had signed the items which bore her name. If in fact she had not done so, this was an "internal matter for the establishment to investigate further". Mr Syed stated that he had provided some of the work he completed and was prepared to answer questions in relation to his course. He had not been dishonest.

Mr Akmal

10. Mr Akmal relied upon a Postgraduate Diploma in Business and Management, a transcript and a letter (the latter two signed by Ms Charles). The respondent concluded that the documents were false, as they contained signatures which would not appear in genuine items. Mr Akmal maintained in his grounds of appeal to the First-tier Tribunal that the documents were genuine. In the witness statement he made on 22nd July 2009, he stated that he believed that in the absence of evidence to substantiate the respondent's allegations, he should be given the benefit of the doubt. He commenced his postgraduate course in Business and Management on 19th January 2008 and completed it on 12th December that year. His course consisted of nine modules, listed in the transcript he provided. He completed assignments and passed examinations and provided examples of his coursework in support of the application. He received a diploma certificate from the college and submitted it to the respondent. It was pre-signed and any responsibility for it lay with the college. In the statement he made on 5th January 2011, he maintained his stance that the documents he submitted were genuine. Ms Charles had signed his transcript. When he received it, he did not find it necessary to investigate whether it was signed by the correct person. He had no reason to doubt it. He stated that to the best of his knowledge, his diploma certificate was genuine. He was still in possession of some of the coursework he completed and had provided this to the respondent. He was prepared to answer questions relating to his course and had not been dishonest.

Response to case management directions

11. On 10th September 2010, detailed and precise directions were given to the parties. Mr Khalid and Mr Akmal were each to serve on the Upper Tribunal and the respondent his six-figure identification number issued by the college, or a written explanation as to why that evidence was unavailable to the appellant concerned. Mr Syed had earlier provided an explanation that he had returned his identity card to the college and could not recall the number. We consider that explanation below. The appellants (including Mr Syed) were also required to provide evidence of the sum, means of payment and date of payment of the fees said to have been paid by each for the course taken at the college. No evidence was adduced by Mr Khalid, Mr Syed or Mr Akmal on these matters and the witness statements made shortly before the hearing merely contained assertions that each was a genuine student and that the documents and examples of work relied upon were genuine. Perhaps surprisingly in view of their non-attendance, the statements they made contained the following, in paragraph 4 of each statement: "I am prepared to answer any questions in relation to my course and I respectfully request the Immigration Judge to consider my case favourably."

The Respondent's Evidence

12. The respondent's evidence included written statements made by Ms Victoria Charles on 27th September 2010 and by Ms Catherine Vines on 17th June 2009 and 27th September 2010. We heard from each witness. We have set out in detail the evidence contained in their statements and the oral evidence we heard in Appendix 2, attached to this determination.

13. In brief summary, Ms Charles and Ms Vines gave evidence that the former had not signed the transcripts and letters relied upon by Mr Khalid, Mr Syed and Mr Akmal, purporting to include her signature. Those documents were not genuinely issued by EHWLC and nor were the diploma certificates relied upon. Ms Vines gave detailed evidence regarding the Centime System in use at the college, an online management system supported by detailed paper records on each student. This provides a unique six digit data number which remains with students as soon as a completed application is received and throughout their time at the college and thereafter. The student number appears on all correspondence from the college and each piece of work submitted by students must also bear their unique number. The Centime System holds records of all students since it was installed in 2002 and 2003. The system records the student's presence at EHWLC as it is linked to the gates at the entrance to each campus, access to the college being impossible without passing through these gates. Students are issued with an electronic access card which must be presented to an electronic sensor to effect entry and exit. Mr Khalid, Mr Syed and Mr Akmal had failed to produce any documents containing their unique six digit number and searches of the college's database, using the names given in their passports (and variations on their names) revealed no record of any of them on the system. Cards linked to the Centime System, issued to students, were not collected at the end of a student's course, the college making no attempt to recover the cards as they "went dead" (ie became incapable of operating college systems) and access through the gates was no longer permitted. Should a student enrol on a new course, the system would once again recognise the card and permit access for the duration of the new studies.

14. The documents relied upon by Mr Khalid, Mr Syed and Mr Akmal, which were not genuinely issued by EHWLC, contained many defects. These included incorrect logos, inaccurate details regarding the Hospitality and Business Management courses, the incorrect name of the Principal at EHWLC in post at the time the documents were issued and false signatures, purporting to be those of the Principal and College Director. The assignments made available by Mr Khalid, Mr Syed and Mr Akmal as examples of work completed by them and submitted to the college included many features strongly suggesting that they were not examples of genuine work, including the absence of each

student's unique data number, the name of their tutor and the absence of tutor marks, highlighted errors or comments.

Submissions

15. Mr Tarlow made submissions on behalf of the respondent. EHWLC was a prestigious institution with a high turnover of international students. The college had received the Queen's Award and the institution was a highly trusted UKBA partner. The evidence given by Ms Vines was that the Centime system in place was the driver of the administrative and academic records and the physical presence of students within the college boundaries. Everything was driven by a data number given on application by a student. The case management directions made prior to the hearing required production of the data numbers and evidence of payment of college fees but no evidence had been provided by Mr Khalid or Mr Akmal in response. Mr Syed responded by claiming that he did not have the number issued to him because he returned his card. This claim was refuted by the evidence given by Ms Vines. Cards fell dormant at the end of the academic year but the college did not try to recover them from students. Mr Syed's suggestion was far-fetched.

16. The catchment area of the Hospitality Management course was Mumbai in India and the intake in 2008 was comprised of students from that city. Ms Vines had commented on the letterhead and certificates in the documents relied upon by the appellants. There were obvious and substantial errors. The course dates were wrong. Both Ms Vines and Ms Charles gave evidence that work placements began after academic studies had commenced and not the other way round. Both witnesses commented on the signatures in the postgraduate diploma certificates. Neither recognised "Salvi" or "Galvi" as Course Director. Both recognised Kevin Finnegan as having once been Principal but the specimens which form part of the documentary evidence showed that Mr Finnegan's real signature was markedly different from the one that appeared in the certificates. Ms Charles gave clear evidence that she would not sign certificates if she were not the Course Director for the particular programme and had not signed any of the results sheets or transcripts relied upon. An example of her true signature appeared at the end of her statement. She would use her Christian name in signing documents. The presence of Mr Finnegan's name on some of the documents was distinctly odd as he ceased to be Principal at the end of December 2007. The marking pattern and attendance rate which appeared in the results sheets were the same for Mr Khalid, Mr Syed and Mr Akmal, which was improbable. Ms Charles also gave evidence that she would not sign results sheets although her name would appear at the bottom of these items if she were Course Director on the particular programme. The appellants relied on letters addressed "To Whom It May Concern". Ms Charles said that the capitalisation and use of English in the letters were not hers. In addition, she would not have used an abbreviation for the particular qualifications referred to. It was most unlikely that the qualifications would have been issued on the very same day that the courses concluded.

17. Mr Tarlow submitted that the evidence showed that the qualifications relied upon were not in fact awarded by EHWLC to the appellants claiming to have received them. Each used the qualifications, which were not genuine, in their applications for further leave. They used them deceitfully, with the intention of misleading the Secretary of State.

18. So far as the coursework submitted by the appellants was concerned, Ms Charles' evidence was that no front sheet appeared and there was nothing to show that the assignments had been seen or marked by EHWLC. That evidence had to be weighed carefully as the appellants may have submitted non-marked copies, perhaps downloaded from their computers. However, Ms Charles' evidence on the title of the assignments did have weight. They were too wide-ranging and EHWLC would not have set

such coursework. In one case, Ms Charles had not recognised the name of the lecturer apparently supervising the work. Ms Charles was in a position to identify the areas in relation to which coursework might be set. The applications for further leave made by Mr Khalid, Mr Syed and Mr Akmal had all been refused under paragraph 322(1A) of the Immigration Rules. The Secretary of State had discharged the burden of proof upon her and had shown that the ground of refusal relied upon in each case was made out. All the appeals, including those made by Mr Syed's dependents, fell to be dismissed.

Findings and Conclusions

Burden and Standard of Proof

19. The applications for further leave made by Mr Khalid, Mr Syed and Mr Akmal were refused by the respondent under paragraph 322(1A) of the Immigration Rules and also on the basis that none had shown that the requirements of paragraph 245Z(c) and (d) of the Immigration Rules were made out. So far as the former paragraph is concerned, the burden of proof in showing that the ground of refusal is made out lies with the respondent (JC (Part 9, HC 395 – burden of proof) China [2007] UKAIT 00027). The standard of proof is that of a balance of probabilities, a single standard of proof (Re B [2009] UKHL 35). At paragraph 101 of the determination of the Asylum and Immigration Tribunal in NA and Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031, it was accepted that for the Secretary of State to show that she has discharged the burden of proof in the context of this type of case, where the consequences of refusal under Part 9 of the Immigration Rules are serious, evidence would need to be furnished of sufficient strength and quality and the Tribunal would need to subject it to a “critical”, “anxious” and “heightened” scrutiny. Paragraph 322(1A) is a mandatory ground available 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. In AA (Nigeria) [2009] EWCA Civ 773, the Court of Appeal held that dishonesty or deception is needed, albeit not necessarily that of the applicant himself, to render a “false representation” a ground for mandatory refusal.

20. So far as refusal under paragraph 245ZX of the rules is concerned, the burden of proof in this context lies with the appellants and the standard of proof is, again, that of a balance of probabilities.

Our findings regarding EHWLC

21. Ms Vines and Ms Charles were not cross-examined, although we put a number of questions to them where appropriate. Each gave detailed evidence in relation to the documents relied upon by the appellants, drawing on their experience and expertise as senior members of staff at the EHWLC. Ms Vines is Head of International Operations and joined the college nearly seven years ago in that capacity. Ms Charles has been Course Director on a number of programmes and currently has that role in relation to a Foundation Degree in Hospitality Management. Each gave clear and cogent evidence and was well placed to comment on the documents relied and to compare them with letters, certificates and other material issued and published by the college. We have no hesitation in finding that each is a transparently honest and credible witness and we give weight to their evidence. A number of certificates issued by Edexcel, a professional partner of the college in relation to some of the courses offered, grade transcripts, college certificates and postgraduate diplomas were produced on 10th January 2011 and enabled a comparison to be made between genuine items and those produced by Mr Khalid, Mr Syed and Mr Akmal. Copies of these documents were available to the parties.

The Postgraduate Diplomas and related items

22. We deal first with the documents made available by Mr Khalid, Mr Syed and Mr Akmal. Mr Khalid and Mr Syed each produced a Postgraduate Diploma in Hospitality Management; Mr Akmal produced a Postgraduate Diploma in Business Management. These items appear at pages B1, B4 and B8 of the respondent's composite bundle before us. Each contained two signatures at the bottom, above the words College Director on the left-hand side and Principal on the right-hand side. Ms Vines gave evidence that Mrs Paula Whittle was the Principal of the college, at the date of the awards in 2008. The signature "Kevin K" was not that of the Principal at the time. Mr Kevin Finnegan had been Principal at the college until the end of December 2007. Ms Vines' evidence was that nobody in such a senior position would use an initial for a surname when applying his or her signature. Ms Vines said that she did not recognise the signature of the College Director in each certificate, which may have been "Galvi" or "Salvi". A search of records maintained at the college from 2000 showed that nobody with this name had been employed in that capacity. So far as the Hospitality Management course was concerned, this was developed in Mumbai and students were drawn from that city. They were Christian and Hindu and there were no Muslim students on the course. A search of the college's Centime system from 2005, when the course began, showed that nobody with the names of Mr Khalid or Mr Syed had studied on the course. The diploma certificates they relied upon showed a work placement as commencing some months before the course programme and recorded the programme dates as April to July 2008, whereas the course lasted for eighteen months. Students on the course could not have taken their work placement before the programme began. The logo in the top right of the diploma was incorrect, describing the college as "Hammersmith and West London College," omitting the word "Ealing". The particular diploma was awarded in partnership with Edexcel and a genuine student would have received both a certificate from the college and one from Edexcel itself. So far as Mr Akmal's Business and Management diploma was concerned, she gave similar evidence about the signatures which appeared at the bottom, for the College Director and Principal. Neither name was known to the college. The diploma at page B8 she described as a "poor fake". The title of the college was again wrong and a genuine diploma certificate would not have shown the surname of the Principal only as an initial, in the signature applied to it. A certificate would also have been issued by Edexcel, the partner body, if a student genuinely completed the course. Ms Vines said that missing from all three diploma certificates was the Queen's Award logo. A genuine diploma certificate was made available to us and the Queen's Award logo does indeed appear in the bottom right of a redacted letter to a student recording the successful completion of a postgraduate course. It is apparent from that item that the college is described as "Ealing, Hammersmith and West London College" in the logo which appears. Ms Vines said that the Business and Management course was offered to overseas students and that only two intakes occurred. The course was developed in 2008 to two small cohorts, one a group of seven and one a group of five. Mr Akmal was not in either cohort.

23. Ms Charles' evidence was to similar effect. She is Course Director for Hospitality Management programmes in the business division but has never been a Course Director for a postgraduate diploma in Business. Between January and December 2008, she was not a Course Director on any of the college's postgraduate programmes, including the courses described in the documents relied upon by Mr Khalid, Mr Syed and Mr Akmal. The dates which appeared in the diploma certificates relied upon by Mr Khalid and Mr Syed made no sense as they suggested that the work placements began before the start of the course. Ms Charles has been at the college for eight years and has not known a College Director with the name "Salvi" or "Galvi". Mr Kevin Finnegan was once Principal but he left at the end of December 2007 and his name would not have appeared in diplomas issued in the following year. The signatures in the results sheets or transcripts were not hers. A sample of her true signature

appeared at the end of her witness statement and she usually applied her Christian name rather than an initial. She would generally not sign results sheets although her name might appear at the bottom of such a document. The logo appeared strange, suggesting that the document came from the Hammersmith site and not the college as a whole. The logo for the Sixth Form Centre also appeared, but Ms Charles had not seen any document from EHWLC with that mix of logos. If the results were given on proper college headed notepaper, the name would include Ealing as well.

24. The letters provided by Mr Khalid and Mr Syed, addressed "To whom it may concern", included a logo, although the full name of the college did not appear in it. Missing were addresses and telephone numbers, as one would expect on genuine EHWLC headed notepaper. The qualification was abbreviated to "PGDHM" whereas it would appear in full in a genuine item. The date of the conclusion of the course, 9th October 2008, was the same as in the results sheets. However, the Examinations Board would meet one or two months after a student finished his or her course, so that marking and cross marking could be considered. After that, a student might receive a results sheet but the postgraduate diploma certificate would not arrive until later. Ms Charles' evidence was that the phrasing and capitalisation in the letters were odd and inappropriate and that "DIUS Listed Body" was an abbreviation she had not seen in genuine letters from the college. The signatures which appeared in the results sheets and the letters above her name were not hers.

25. So far as Mr Akmal is concerned, the diploma certificate described the programme as running from January to December 2008. Ms Charles' evidence was that it would start in September or October and finish in May and June the following year. She made the same comments about the signatures in the document, the logo, the absence of addresses and telephone numbers, as she had in relation to the other diploma certificates. The signatures which appeared in the results sheet and the letter addressed "To whom it may concern" were not hers. Ms Charles has never been Course Director on the business and management diploma programme and so would not have issued a results sheet or transcript. The phrasing, capitalisation and abbreviation in the letter were unusual and not hers. Mr Akmal's letter showed that his course ended on 12th December 2008, the same date as appeared in the results sheet. Ms Charles' evidence was that EHWLC would not mark work, agree those marks and make an award all on the same day as the course ended.

26. The diploma certificates, the results sheets and the letters purporting to have been signed by Ms Charles all omitted a data number, the unique signifier given to each student at the college and which would appear in all genuine documentation. A salient feature of the results sheets provided by Mr Khalid, Mr Syed and Mr Akmal was that the grade pattern and attendance rate were identical in all three.

The claims to have studied at Ealing, Hammersmith and West London College and to have submitted coursework

27. Mr Khalid and Mr Syed claimed that they commenced their studies at EHWLC in January 2008 and completed them on 9th October that year. Mr Akmal claimed that he began his course in January 2008 and that it ended on 12th December that year. Each provided coursework in support to their claims to have been genuine students at the college. Ms Vines gave detailed evidence regarding the college's Centime system and examples of genuine student identity cards were before us. Students are given a unique data number once an application is completed and the same number is retained as the student enrolls and begins his or her studies. The system was introduced even before Ms Vines arrived some ten years ago. A card is issued to a student once fees have been paid and enables access to the college's four campuses by means of "swiping" at each entrance. Each card also includes, in

addition to the data number, a seven-digit number which records, amongst other things, the issue number of the card, whether the student is taking a first course and information regarding examination passes. Every time an assignment or piece of work is handed in, the student must provide the data number and staff would not accept coursework without that number being present. The unique data number given to each student is important not least because assignments might go to external bodies for assessment and marking. The number would appear on every page of an examination book and a student would not be allowed into an examination or any building without the number identifying him or her. Ms Vines' evidence was that about half of the students leave EHWLC each year and their identity cards become redundant at that point. They are unable to enter any of the college's buildings or sites. If, however, they join another course, the same number would be retained and the card reactivated. Importantly, EHWLC makes no attempt to collect cards because the system "goes dead" (the cards cannot be used to gain access to any of the sites) at the end of the academic year or the end of the course. The system begins again in the following academic year or when a new course is started. The system is in place at all four campuses and there is one, central database.

28. As each student is given a unique data number and an identity card to gain access to the college, it might reasonably have been expected that Mr Khalid, Mr Syed and Mr Akmal would have made mention of this essential feature of college life in their statements and that the documents they relied upon, including the diplomas, the results sheets and the letters giving details of awards would have included the unique number given to each of them. None was able to provide his data number and no such numbers appear in any of the documents they relied upon. Mr Syed's explanation, in response to directions given in September 2010, that he returned his own card and could not remember the number, is not remotely satisfactory in the light of the clear evidence given by Ms Vines that the college makes no attempt to recover cards and her description of the extensive use made of each student's data number in college documents. A genuine student at EHWLC would have no difficulty at all, we find, in producing evidence of his or her unique data number, perhaps in the form of the identity card itself, or in making available at least some documentation properly issued by the college, showing the number.

29. So far as coursework is concerned, Mr Khalid, Mr Syed and Mr Akmal each produced what were claimed to be examples of genuine coursework. Ms Charles gave evidence on the items submitted. In Mr Akmal's case, she noted that no assignment top sheet had been attached, which would contain the student's name, data number and the name of his or her tutor. There would also be space for the tutor to enter grades and comments. At that time, assignments were marked by hand and one would have expected highlighting of errors and comments by tutors. Neither of the two pieces of work submitted by Mr Akmal showed any of this. The titles of the two assignments were very broad and general and the college would have asked for something more specific. Ms Charles made similar comments about the work assignment submitted by Mr Khalid. This too had no top sheet, grading grid, no tutor marks and the title was rather strange for a piece of work on a hospitality management course. It invited discussion of instrumental stakeholder theory. She said that that would not be the sort of thing EHWLC would ask their hospitality management students to write about. Moreover, nowhere in the assignment was it clear which module on the course it related to. Ms Charles said that she could not see how work on stakeholder theory would fit in with any of the modules on the course. Mr Syed produced two pieces of work. Ms Charles said that there was nothing to show that the work had been submitted to the college, no mention of the module each assignment related to and no marks from a tutor. The first piece of work concerned the impact of working practices and patterns on individual and business performance but this was not something that the college would have set as an assignment. EHWLC would have related the assignment to the hospitality industry. In addition, the

level of English was very good compared with what one would expect from most overseas students. Ms Charles said that it was unusual to see that level of English, so early in the course, the date of the first assignment being 14th April 2008.

Our Assessment of the Evidence

30. The evidence adduced by the respondent is clear and cogent, in relation to both the documentary evidence relied upon by the appellants and their claims to have been genuine students at the college. The witness statements made by Mr Khalid, Mr Syed and Mr Akmal contain assertions that each completed his studies successfully but there is a marked lack of detail, in stark contrast to the accounts given by Ms Vines and Ms Charles of the practical, day-to-day administration of student life at the college.

31. EHWLC has an online management and record keeping system, Centime, operated from 2003 and still in use at the date of the hearing. A record is created as soon as a completed application is received from a potential student, who is then assigned a six digit number which remains unique to the individual throughout their time at the college. We find that the Centime System is so detailed, well operated and robust that evidence from the college based on its records, adduced by the respondent, to the effect that a person made no application to the college, was not enrolled on a course there and was not awarded any qualification will in general be cogent evidence to that effect. Accordingly, it will in general be extremely difficult for a person who does not feature in the records to demonstrate that they were enrolled at EHWLC and studying there during the relevant time.

32. We find that the postgraduate diploma certificates relied upon by the appellants are not genuine and do not relate to any studies undertaken at EHWLC. The certificates omit the unique data number which would be present in genuine items. The signatures at the bottom of each, purporting to come from the College Director and Principal, are not those of any genuine office holder. The programme and work placement dates do not reflect any genuine enrolment or placement, suggesting as they do that the work placement pre-dated the beginning of the course programme, in Mr Syed and Mr Khalid's cases. The logo which appears in each item is inaccurate and there is an omission of the full addresses and telephone numbers that would be expected in genuine documents. We find that the results sheets are, similarly, not genuine documents at all. Ms Charles' name appeared in each as a Course Director, although she did not hold such a post on any postgraduate programmes at EHWLC in October and December 2008, the dates of the results sheets. The signature which appears above her name in each document is not hers. Each results sheet contains an identical range of marks and attendance rate, which is a remarkable coincidence and a logo different from the one which would appear in genuine items. In the lower right of each results sheet the name of the Principal is given as Kevin Finnegan, although he ceased to be Principal at the end of the previous year. We find that the letters addressed "To Whom It May Concern", purporting to have been signed by Ms Charles as a Course Director, are not genuine documents emanating from her or from anyone else at the college.

33. We accept Ms Vines' evidence regarding searches made of EHWLC's Centime system. This was supported by documentary evidence including the series of emails appearing at pages C4 and C5 of the respondent's bundle. There is no record of the college ever having received money, or payment for fees, from any of the appellants and no record of any of them having attended EHWLC or enrolled on courses there. The assignments they produced were unaccompanied by any top sheet, which might be the case if a document were downloaded from an individual's computer, in the form it took before the top sheet was applied. However, the absence of any evidence of marking, or indeed of receipt by the college of these pieces of work, weighed with all the evidence before us, leads us to conclude that

they are not genuine pieces of work undertaken as part of postgraduate diploma courses taken by Mr Khalid, Mr Syed or Mr Akmal.

34. In summary, we find that the evidence shows that Mr Khalid, Mr Syed and Mr Akmal were not at any time genuine students at EHWLC. They neither enrolled on postgraduate diploma courses there nor completed them. Each sought to rely upon diploma certificates, results sheets and letters purporting to describe their qualifications, knowing that the documents were not genuine and were wholly unreliable as evidence of real achievement. We reject the claim made by each that their diplomas were genuinely issued to them and that any difficulty appearing on the face of the documents is a matter for the college. We find that each has sought to rely upon coursework in the form of assignments knowing that these were not genuine items produced as part of real studies.

35. To assist judicial fact finders in appeals concerning claimed studies at EHWLC and qualifications purportedly issued by the college, we have set out at Appendix 3 a table setting out details of the particular documents relied upon in these appeals and the defects or errors in them, revealed by the evidence.

36. We find that the respondent has discharged the burden of proof upon her and has shown that the ground of refusal under paragraph 322(1A) of the rules is made out. So cogent is the evidence adduced by the respondent in these appeals, and so relatively insubstantial the appellants' cases in contrast that we find that the ground of refusal relied upon would be made out even if the standard of proof were higher than the ordinary civil standard.

37. The respondent's conclusion that false representations had been made or false documents submitted led to adverse findings in relation to paragraph 245Z(c) and (d) of the rules. Reliance upon the diploma certificates and other items, being false documents, led to no points being awarded to Mr Khalid, Mr Syed and Mr Akmal in relation to their qualification, institution of study, immigration status in the United Kingdom during their period of study, the date of obtaining their awards and English language requirements, all contained in Appendix A and Appendix B of the rules. In the light of our conclusion that the mandatory ground of refusal in paragraph 322(1A) is made out, we find that the respondent's decision to award no points to Mr Khalid, Mr Syed and Mr Akmal is sound and manifestly in accordance with the law. So far as Miss Mahnoor Salman and Ms Tahira Salman are concerned, in the light of our conclusions in relation to Mr Syed, we find that their applications for further leave as his dependants were properly refused by the respondent as neither could show that the requirements of paragraph 319H(b) or 319C(b) respectively were met.

Article 8 of the European Convention on Human Rights

38. None of the appellants made any mention of Article 8 of the European Convention on Human Rights in his or her grounds of appeal. The witness statements made by Mr Khalid, Mr Syed and Mr Akmal contained very little in relation to any ties and associations they have in the United Kingdom. Mr Syed, his wife and his daughter would be removed together as an entire family unit. He arrived in the United Kingdom with leave as a student in June 2004, his wife joining him in July 2007 as his dependant. Their daughter, Miss Salman was born in this country on 27th December 2007. She is not a British citizen. There was no evidence at all to indicate that she has a particular reason for remaining the United Kingdom. She is still at a very young age and, applying *ZH (Tanzania)* [2011] UKSC 4, we find that her best interests clearly lie in remaining with her parents and, if they are removed in consequence of refusal to vary their leave to remain, in being removed with them to Pakistan. There was no evidence showing that Mr Syed and his family would have any difficulty in re-establishing themselves in Pakistan or in maintaining contact with friends or associates here, from

abroad. Mr Akmal arrived with leave as a student in September 2003. There was, similarly, no detailed evidence regarding any private life he may have established here since then and nothing to show that he would be unable to re-establish himself on return to Pakistan or that he would be unable to maintain any friendships made here, from abroad. Mr Khalid arrived in the United Kingdom with leave as a student in September 2001. There was, similarly, no detailed evidence in his case regarding any private life he may have established here and nothing to show that he would be unable to re-establish himself on return or maintain contact with friends here, from abroad. The false documents relied upon by all three lead appellants and the false representations they made in support of their applications for leave to remain are adverse factors of substantial weight, clarifying the strong public interest in their removal. Notwithstanding the paucity of evidence in this context, we find that the appellants may well have established private lives here since their arrival and Article 8 is engaged in each case in this context (but not engaged in the family life context in relation to Mr Syed, his wife and his daughter as they would be removed together). The decision in each case to refuse to vary leave was made in accordance with the law and in pursuit of a legitimate aim, the maintenance of immigration control in the interests of the economic wellbeing of the United Kingdom. Weighing all the evidence before us, we find that the decision to refuse to vary leave in each case, and any consequent removal of the appellants are manifestly proportionate responses on the part of the Secretary of State.

39. For the reasons we have given, the appeals are dismissed.

Signed Date

Immigration Judge R C Campbell,

Deputy Judge of the Upper Tribunal

APPENDIX 1

APPELLANTS: FRAZ KHALID

SALMAN ALI SYED

SHEIKH MUHAMMAD AKMAL

MAHNOOR SALMAN

TAHIRA SALMAN

DATE OF RECONSIDERATION HEARING: 4 November 2009

PANEL: Senior Immigration Judge Storey

Senior Immigration Judge P R Lane

Representation

For the 1st, 4th & 5th Appellants: Mr A Burrett, Counsel, instructed by Messrs Ali Sinclair Solicitors

For the 2nd & 3rd Appellants: No appearance and no representation

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

REASONS FOR THE DECISION THAT THERE IS AN ERROR OF LAW

IN THE DETERMINATION

1. At the reconsideration hearing on 4 November 2009, the Tribunal found that there was a material error of law in the determination of the Designated Immigration Judge, who had dismissed the appellants' appeals.

2. The Designated Immigration Judge heard on 3 August 2009 a number of conjoined appeals in respect of appellants who had claimed to have obtained postgraduate diplomas from Ealing, Hammersmith and West London College, but whose certificates allegedly issued by that college were in each case regarded by the respondent as false. As a result, the respondent refused the applications of the appellants for leave to remain as a Tier 1 (Post-Study Work) Migrants, both because they failed to amass the requisite number of points required by paragraph 245Z of the Immigration Rules and because they had falsely represented their certificates to be valid, and thus fell foul of paragraph 322(1A) of those Rules.

3. The Designated Immigration Judge had before him a witness statement of Miss Catherine Vines, the head of international operations at the Ealing, Hammersmith and West London College. Miss Vines' statement said that the college taught and issued postgraduate diplomas in hospitality and management travel, tourism and business to students who had successfully completed the course. Victoria Charles had been the course director "of the CIPD and PG hospitality management programmes" and she was currently "the course director for HND hospitality management and FDA business". The certificates put forward by the appellants purported to have been signed by Victoria Charles. However, according to Miss Vines' statement "Victoria Charles has not signed any certificates and would not do so in her current role or previous role and her signed name is not on any examination board's statements". Catherine Vines went on to say, in respect of each of the appellants, that the documents supplied to the respondent "are all fake and were not issued by the college for the following reasons; that Victoria Charles has not signed the documents in question nor would she do so in her role, all of the college's postgraduate courses are eighteen months' duration with start dates in September, January and April only, that this person has never applied to study at the college and has never studied at the college".

4. The position of the appellants was that they had been genuine students and had genuinely obtained their postgraduate certificates.

5. It appears from paragraph 71 of the Designated Immigration Judge's determination that he decided the appeals by reference only to paragraph 322(1A) of the Immigration Rules and not, separately, by reference to paragraph 245Z. So far as paragraph 322(1A) is concerned, despite the fact that the Designated Immigration Judge made his findings "on a balance of probabilities" (paragraph 71), it is unclear whether he appreciated that the burden of proof lay with the respondent. This leads to the first of Mr Burrett's grounds of appeal; namely, that the Designated Immigration Judge failed to appreciate that, whilst the burden on the respondent in this regard was to the balance of probabilities, the respondent needed to adduce cogent evidence, having regard to the nature of the assertions made. Mr Burrett pointed to paragraph 101 of the determination of the Tribunal in NA and Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031, where the Tribunal found as follows:

"101. However, we do agree with Mr Macdonald that the consequences of refusal under Part 9 can be serious and that this is certainly true for persons such as the three appellants who, depending on findings of fact made by the Tribunal, may find themselves, if removed from the UK, faced with a 5-10 year re-entry ban under para 320(7B) albeit para 320(7B) and (7C) contain exemptions designed, inter

alia, to ensure compliance with an applicant's human rights). Whilst we would note that Lord Hoffman in *Re: B (Children)* emphasised that the seriousness of the consequences do not require a different standard of proof, we do accept that for the respondent to satisfy us he has discharged the burden of proof on him on the balance of probabilities he would, in the context of this type of case, need 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."

6. It is important to emphasise that any such application of the kind of scrutiny just described is not to be equated with an actual standard of proof. Nevertheless, we find that there is force in Mr Burrett's submission. As we shall now explain, it is evident that the Designated Immigration Judge erred in law in his approach to the evidence.

7. There were two significant aspects about the respondent's evidence presented to the Designated Immigration Judge in these appeals. First, there was no evidence of any kind from Victoria Charles, the person whose signature was, according to the respondent, not placed (or not validly placed) on the certificates submitted by the appellants. At paragraph 68 of the determination, the Designated Immigration Judge said:-

"68. Importantly the college has not produced a document from Victoria Charles to the fact that she has not signed the documents asserted."

8. As Mr Burrett said, this finding was, in effect, left "hanging in the air" by the Designated Immigration Judge, who did not return to it in the course of his analysis of the evidence. He should have done; and his failure is, we find, an instance of his not having applied sufficient scrutiny to the evidence as a whole.

9. The other matter related to the statement of Catherine Vines. She did not give oral evidence at the hearing. At paragraph 70, the Designated Immigration Judge said that the:-

"assertion by or on behalf of the Appellants is in reality that I can rely on the Appellants' written statements and diplomas and ignore the Respondent's written statements and exhibits. I find that is a totally simplistic approach and I reject it. The Respondent does not call Catherine Vines, any one of the Appellants could have if they had wished to content that Catherine Vines' statement was made without due authority could have called and witness summoned one of the principals to attend with their relevant student records [sic]. They did not do so."

10. The Designated Immigration Judge went on to say that he could place weight upon "a senior officer of the college signed witness statement made in a Criminal Justice Act format confirming that she had access to college records as confirmation that all the Appellants were not students at the college as they have claimed". Paragraph 70, however, ends with the following sentence: "It is a weighty assertion to make against these Appellants and I have given these appeals careful consideration".

11. In deciding what weight to place upon a particular piece of evidence, judicial fact-finders are expected to have some regard, at least, to whether the person providing that evidence has done so orally or merely in writing. This is in no sense incompatible with what the House of Lords had to say in *Khawaja* [1983] UKHL 8 (as cited in paragraph 101 of *NA*), where the House held that a court in judicial review proceedings involving an alleged illegal entrant is entitled to have regard to evidence that has not been tested by cross-examination. In our jurisdiction, the question is one of weight. It is perfectly possible for significant weight to be afforded to written testimony. But the issue needs to be

properly addressed. In the present case, the Designated Immigration Judge's conclusion, that any differentiation between oral and written evidence could effectively be brushed aside, on the basis that the party not relying on that evidence could have summonsed the other side's witness, was not a proper approach.

12. Mr Burrett's grounds state that the appellants were unaware until the hearing that Catherine Vines was not being called by the respondent. Mr Tarlow did not seek to challenge that assertion, which we see no reason to reject. Mr Burrett told us that, once it became apparent that Catherine Vines was not being called, he took the decision on behalf of the appellant he represented to make the submission that the weight to be accorded to her evidence should be tempered by her failure to appear. That was an understandable stance and was not adequately addressed by the Designated Immigration Judge, because of the latter's reliance upon the witness summons issue. As a result, the Designated Immigration Judge was led into legal error, in relation to his assessment and weighing of the evidence. That is particularly so, given the point made in paragraph 101 of NA .

13. On 4 November, the Tribunal announced that it had found a material error of law in the determination, such that no part of the findings could stand, with the result that a fresh hearing was required on all issues.

Signed: Senior Immigration Judge P R Lane

Date: 16 November 2009

Appendix 2: respondent's evidence

The respondent's evidence

Written statement of Victoria Charles

1. Ms Victoria Charles made a statement on 27th September 2010. She teaches on hospitality and business courses at Ealing, Hammersmith and West London College. She was on maternity leave in June 2009 when the UKBA last made enquiries regarding Mr Akmal, Mr Syed and Mr Khalid. She is currently Course Director for a Foundation Degree in Hospitality Management. She stated that she is not now and has never been Course director for the Postgraduate Diploma in Business at the college.

2. So far as Mr Akmal is concerned, he provided a document entitled "Postgraduate Diploma in Business - Results at 12/12/2008". The document did not bear a student data number. It included a signature purporting to be Ms Charles' own and she was identified as Course Director. Ms Charles stated "categorically" that she did not sign the document, or any other document relied upon by Mr Akmal. Her signature has been the same since her marriage in May 2000 and comprises her full name "Victoria Charles". She never uses her initial in place of her first name and the angle of her signature is different from the one which appears at the bottom of the document relied upon by Mr Akmal. The signature which appears in the document is very different from her true one. The same observations apply in relation to the letter addressed "To Whom It May Concern", also relied upon by Mr Akmal. Ms Charles noted, in addition, that the letter refers to the college as "one of the DIUS listed body" (sic). She stated that she has never made any reference to the college being such a body and does not know what the abbreviation DIUS stands for.

3. So far as Mr Syed and Mr Khalid are concerned, Ms Charles stated that the same observations applied to the documents submitted by those appellants, which appeared in copy form in the

respondent's bundle at pages B2, B3, B5 and B7. She believed that the documents relied upon by all three were forgeries.

Written statement of Catherine Vines

4. Ms Catherine Vines made two statements. The first is dated 17th June 2009. She described herself as employed by the Ealing, Hammersmith and West London College as the Head of International Operations and as having access to college records in respect of the enrolment of students, attendance records and awards gained by them. The college has a number of sites, one of which was referred to as Hammersmith and West London College, the address being Gliddon Road, Barons Court, London W14 9BL. The college taught Postgraduate Diploma courses in Hospitality Management, Travel and Tourism and Business and students who successfully completed courses would be issued with diplomas. In her statement, Ms Vines confirmed that a letter was sent to the UK Border Agency on 17th December 2008, stating that Ms Victoria Charles had not signed any postgraduate diploma certificates and would not do so in her current or previous roles and that her name did not appear on any examination board statements. Ms Vines received a request from the UK Border Agency on 24th June 2009 regarding a number of students at the college and she was sent copies of documents apparently issued to those students. So far as Mr Khalid was concerned, he had submitted to the UK Border Agency an undated letter addressed "To Whom It May Concern" regarding an award of a Postgraduate Diploma in Hospitality and Management and his successful completion of a course, a document on Hammersmith and West London College headed paper entitled Postgraduate Diploma in Hospitality, giving results as at 9th October 2008, these two items apparently signed by Ms Victoria Charles, and a Postgraduate Diploma in Hospitality Management at pass level on Hammersmith and West London College headed paper, giving the dates of the course programme as April 2008 to July 2008. Ms Vines stated that these items were "fake" and not issued by the college. Ms Victoria Charles did not sign the documents bearing her name and would not do so in her role. All of the postgraduate courses were of eighteen months' duration with start dates in September, January and April only. Mr Khalid had never applied to study at the college and had never studied there.

5. So far as Mr Syed was concerned, he submitted to the UK Border Agency an undated letter addressed "To Whom It May Concern", regarding a Postgraduate Diploma in Hospitality Management, providing course dates of 17th January to 9th October 2008, in which it was claimed that he had successfully completed his course. The letter was signed in the name of Victoria Charles, Course Director. He also submitted a document on Hammersmith and West London College headed notepaper showing results as at 9th October 2008 and signed in the name of Victoria Charles. He also submitted a Postgraduate Diploma in Hospitality Management at pass level on Hammersmith and West London College headed paper, giving programme dates of April to July 2008. Ms Vines stated that these items were "fake" and not issued by the college. Ms Charles had not signed the documents nor would she do so. The postgraduate courses were of eighteen months' duration, with start dates in September, January and April only. Mr Syed had never applied to study at the college and had never studied there.

6. So far as Mr Akmal was concerned, he had also submitted documents to the UK Border Agency. These included an undated letter addressed "To Whom It May Concern", providing course dates of 19th January to 12th December 2008, claiming that he had successfully completed a postgraduate diploma course. The letter was signed in the name of Victoria Charles, Course Director. Mr Akmal also submitted a document on Hammersmith and West London College headed notepaper, giving results as at 12th December 2008, also signed in the name of Victoria Charles. Mr Akmal also submitted a Postgraduate Diploma in Business and Management at pass level on Hammersmith and West London

College headed paper, giving programme dates of January to December 2008. Ms Vines stated that these items were also “fake” and not issued by the college. Mr Akmal had never applied to study at the college and had never studied there.

7. Ms Vines’ second statement was made on 27th September 2010. She joined Ealing, Hammersmith and West London College nearly seven years ago as Head of International Operations. She is responsible for recruiting international students from overseas and managing contracts with international partners. Her responsibilities include reviewing all international students’ applications to join the college and issuing and signing documents now known as “Confirmation of Acceptance for Studies” if appropriate. The college is one of the two largest in the United Kingdom, with four campuses in west London. 24,000 students are currently enrolled of whom just under 2,000 are international students. They come from 120 different countries. The college provides both academic and vocational courses. In 2008, Ms Vines’ department was awarded the Queen’s Award for Excellence in International Trade, in recognition of their responsible recruitment of international students and their contribution of an estimated £30,000,000 to the west London economy. The college was rated as highly trusted on the UK Border Agency Tier 4 Register of Sponsors. The college has an on-line management system, called “Centime”, supported by detailed paper records on each student. Full details of all recruitment activities are also retained. The college’s record keeping system is entirely electronic and bespoke. It was in place when Ms Vines began working at the college and has been enhanced over the years. A record is created on the Centime system as soon as a completed application is received from a potential student. A student is then assigned a six-digit data number which remains unique to the individual throughout their time at the college and thereafter. This student data number appears on all correspondence from the college to the student. Each piece of work submitted by the student must also bear their student data number. The issuing of the data number represents the start of what becomes an individual learning plan. The college does not destroy or delete these records when a student finishes his or her course or courses. The system therefore holds records of all students since it was installed in 2002 and 2003.

8. Ms Vines stated that academic and administrative staff have access to Centime at different levels. Upon payment of the full fee for a course a full record is set up, containing the student’s full name, address, telephone number and other basic details. It also contains a record of the student’s attendance at classes which is updated electronically by the course tutor or lecturer at the time the student does or does not attend a scheduled class. The system automatically generates an attendance warning when a student’s attendance falls below 90 per cent. If a student requests details of attendance at classes, as they often do for visa purposes, the Centime system can provide a percentage of classes attended in each module. The system also records a student’s presence on the campus because it is linked to the gates at the entrance to each campus. No one can access the college without going through these gates and each student is given an electronic access card which must be presented to the electronic sensor on the gate to effect entry and exit. As soon as a student enters or exits the campus, Centime records the date and time of that entry or exit. Details of all modules undertaken and examinations and assessments attempted are also recorded on Centime, together with results in each.

9. Mr Khalid, Mr Syed and Mr Akmal claimed to have been students at the college and supplied certificates purporting to show completion of their course, issued by the college. Ms Vines stated “with absolute certainty” (at paragraph 15 of her second statement) that Mr Syed, Mr Akmal and Mr Khalid had never applied to the college, studied there or been awarded any qualifications by the college. She had searched the Centime system for the individuals. None of them had produced any

documents containing a six-digit data number and so she searched the database using the names given in their passports and variations on their names (set out at paragraph 14 of her second statement). There was no record of any of the three on the system. It was inconceivable that a student could have attended the college and graduated from it without such a record. They could not have entered the campus, their attendance at classes could not have been recorded and there would be no record of progress or achievements to put before an examinations board prior to the awarding of a qualification.

10. Before the introduction of the Tier 4 scheme, the college issued letters which were similar in content to CAS letters, called "offer letters". Since she joined the college, Ms Vines has assessed every application and signed every offer letter, visa letter or CAS letter issued to an international student. No one else is authorised to do so. Where the international centre issues offer letters to students a paper file is created containing an application form, supporting academic documents and a copy of the offer letter. This is kept for three academic years. When students accept an offer and make full fee payment, the paper files are held for five years to meet audit requirements. Having checked the paper records, Ms Vines confirmed that no such offer letter has ever been issued to any of Mr Khalid, Mr Syed and Mr Akmal. In the electronic internationals folder on the Centime system, copies of all offer letters created from 1999 to date are kept. This folder has been searched for the names of these three appellants, including the variations that they have used, and there is no record of an offer letter being created for any of them.

11. Ms Vines asked the Finance Department to check whether any record existed of payments and these enquiries revealed that none had been received from any of them.

12. Mr Khalid, Mr Syed and Mr Akmal each relied upon a diploma certificate purporting to come from the college, showing two signatures. Ms Vines stated that she had not seen the signatures before being shown the certificates. The first, on the left of each document appeared to be of someone called "Galvi" or "Salvi". She has never known a Course Director by either name and a search made by the Personnel Department showed that the college had never employed an individual by either name in any capacity. The second signature, which purported to be that of the college Principal, appeared to be "Kevin K". The college's Personnel Department records showed that no "Kevin K" had been Principal during the relevant period. Insofar as it might be suggested that the signature was that of Kevin Finnegan, who was Principal from 1st May 2006 until 31st December 2007, the Personnel Manager at the college provided a copy of Kevin Finnegan's signature (which appeared with other specimen signatures at pages C6 to C8 of the respondent's bundle) which bore no resemblance to the signature on the certificates. In any event, Kevin Finnegan left the college at the end of December 2007, some months before the certificates were apparently issued. Ms Vines stated that she is aware that one of the appellants responded to directions from the Upper Tribunal to provide his student data number and claimed that he was unable to provide it as he was required to return his identification card to the college. The suggestion that the college required students to return their cards was completely incorrect. Cards were linked to the Centime system, which also contained start and end dates of each course. Following the end of a course, the system no longer permitted a person access through the gates of the campus. There was therefore no reason to attempt to recover the cards. Should a student enrol on a new course in the future, the system would once again recognise the card and permit them access to the college for the duration of the new course. For those reasons, the college was happy for former students to retain their cards.

Oral Evidence of Victoria Charles

13. Ms Charles adopted the witness statement she made on 27th September 2010 and said that the contents were true and accurate. She described herself as a lecturer and also a Course Director responsible for running certain programmes. She was the Course Director for the hospitality management programme in the business division. She was not and had never been Course Director for the Postgraduate Diploma in Business. Mr Tarlow asked about the period from January to December 2008. Ms Charles said that she was not a Course Director on any postgraduate diploma programmes, although she was Course Director for a Foundation Degree in Business and a Foundation Degree in Hospitality Management.

14. Part B of the respondent's bundle was placed before Ms Charles. The document at B1 appeared to be a diploma certificate issued to a Syed Salman Ali. The dates shown in the document made no sense as they suggested that his work placement began before the course of studies. The signature applied above the words College Director appeared to show a surname of "Salvi" or "Galvi" and the first name might have been "Robi". She had not known any College Director with those names in the eight years she had been with the college. The name of the principal appeared as "Kevin K" or "Kevin F". The college at one time had a Principal called Kevin Finnegan, but he had left by the dates shown in the document. The Principal in 2008 was Paula Whittle. The document at B2 appeared to show results from an examination board for Syed Salman Ali. The format was as one would expect. Ms Charles said that her name appeared in the document but she was not a Course Director at that time. The signature in the document was not hers. A sample of her true signature appeared at the end of her witness statement. She used "Victoria" usually and when she issued exam results, she would not sign although her name would appear in the results sheet or transcript. She did not recall signing this particular document. On the right at the bottom, the Principal's name appeared as Kevin Finnegan and the date of issue was 9th October 2008. Mr Finnegan was not the Principal at that time. Moreover, the document appeared to come from the Hammersmith campus and not from the college as a whole. There was a second logo for "The Sixth Form Centre Hammersmith and West London College" but no logos for the other sites. The Sixth Form Centre was at the Southall site and she did not know why it would appear in a document of this type. She had not seen any document from the college that had this mix of logos. If the contents appeared on college headed paper, the title of the college would include "Ealing" as well. The subjects taken, appearing as "unit titles" appeared similar to the units or modules on the programme.

15. Ms Charles said that the letter at page B3, giving Mr Syed Salman Ali's name and showing her as Course Director, looked strange. A logo appeared for the college but there was no address. Genuine headed paper would contain addresses and telephone numbers. The qualification was described as "PGDHM" but nobody would know what the abbreviation or acronym stood for. The college would write out the qualification in full. The date of the letter was 9th October 2008, the same date as appeared in the results sheet at B2. This too was strange. A student would finish the course and then the examination board would meet one or two months later to consider marking and cross marking. After that a student would get something like the document at B2 showing results. The certificate would not be issued until later. It was very odd that the documents contained the same date. The description of the college as one of the "DIUS Listed Body" was also odd. It would not be appropriate to describe the college in that way in a letter. Nor would capitals have been used in "Certify" and "Successfully". The capital would not have been omitted from "Bachelor's" degree. Ms Charles said that this was the first time she had seen "DIUS" in a letter of this sort and she could not guess what it stood for.

16. Ms Charles said that neither signature appearing above her name in documents B2 and B3 was hers. She would not have used the phrase “this course is a Post Graduate diploma above level of United Kingdom” (sic), as appeared in the letter at B3 and she would not state what level a particular qualification was at, as that would be a matter for others. The format of the certificate at B1 looked strange. The headed notepaper referred to just one site and did not include the full name of the college. However, the body of the document referred to Ealing, Hammersmith and West London College. That would have been the name that appeared in a genuine logo. The typeface was rather “artistic” and she had not seen one like it before. The dates of the programme and the work placements made no sense. The address and telephone numbers of the college would also have appeared in a genuine document. Hammersmith was just one of the sites. In the past there was an institution called Hammersmith College but she was not aware of any legal entity called Hammersmith and West London College, as appeared in the logo. The Barons Court site might be described as the Hammersmith campus but not as Hammersmith and West London College. A postgraduate diploma would be issued in the name of Ealing, Hammersmith and West London College.

17. The postgraduate diploma certificate at B4 appeared to have been issued to Khalid Farz. Ms Charles said that she had the same comments in relation to this document as to the certificate at B1 and had the same comments about the results sheet at B5 as made in relation to the similar document at B2. It appeared that the same grades and attendance figure appeared in each of those documents, although they were apparently issued to different people. At B6 was a results sheet in Mr Khalid’s name. She was not sure what “results from first block” meant and she had never issued anything that included the phrase. It was also very odd to see something from the college without a student data number as this unique signifier would appear in all such documentation. She had the same comments to make about the letter at B7, addressed “To Whom It May Concern”, showing Mr Khalid’s name, as in relation to the similar letter at B3 in Mr Syed’s name.

18. At B8 was a postgraduate diploma certificate in the name of Sheikh Muhammad Akmal. Ms Charles said that she had the same comments to make regarding the logo which appeared and the signatures for the College Director and Principal as with the similar documents in the names of Mr Khalid and Mr Syed at B4 and B1. The course was described as running from January to December 2008, but courses would start in September or October and finish in May or June the following year, if run without a work placement. At B9 was a results sheet in Mr Akmal’s name. Ms Charles said that she had never been Course Director on this programme and so she would not have issued such a document. The grade pattern and attendance rate appeared the same as in the other results sheets issued to Mr Syed and Mr Khalid. She would not have issued any Postgraduate Diploma in Business results sheets as she had never been Course Director on the programme. She would never have issued a document relating to students on another course. She had the same comments to make in relation to the letter at page B10 as in relation to the similar letters issued to Mr Syed and Mr Khalid at B7 and B3. She wished to add that a student who finished a course on 12th December 2008 would not have been awarded a postgraduate diploma on the same day. The college would not mark, agree results and make an award all on the same day as a course came to an end.

19. The assignments made available by Mr Akmal, which accompanied the witness statements made in readiness for the hearing before the Asylum and Immigration Tribunal, were placed before Ms Charles. Mr Tarlow asked her to comment first on the assignment in Mr Akmal’s name, bearing the title “Going Forward: the Strategic Position of Dell”. Ms Charles said that the document suggested review by Mehdi Farr. She said that she would expect the tutor’s name to appear and there was no assignment top sheet attached. This would include the student’s name, data number and the name of

the tutor. There would also be space for the tutor to enter a grade and comments. These would be expected on such an assignment. There were also no tutor marks on the work itself. At the time of submission in September 2008, assignments were marked by hand and would include highlighted errors and comments. The same comments applied to Mr Akmal's second assignment, "Response of HR Function to the Constraints of Resourcing Strategies Faced by the Nature of External Employment Market". This was to be reviewed by Maria Pelley. Ms Charles said she had never heard of this person although she had heard of Mehdi Farr, who worked at the college. The titles of the assignments were very broad and general, which was unusual. Something more specific would have been required.

20. Mr Khalid also provided a copy of an assignment in his appeal bundle before the Asylum and Immigration Tribunal. Ms Charles said that she had the same comments to make. There was no top sheet or grading grid and no tutor marks. The title was very strange for a hospitality management course. It was "Instrumental Stakeholder Theory Suggests that Those Businesses that are Managed in the Name of All Stakeholders Tend to Maximise Profits for Shareholders. Discuss." The college would not have asked for a discussion of stakeholders on such a course. Something would have been required in relation to the organisation the students worked for. The assignment did not say which module it related to. She could not see how work on stakeholder theory would fit in with any of the modules on the hospitality management course.

21. Mr Syed's appeal bundle also included two assignments, placed before Ms Charles. She said that she had the same comments to make. There was no evidence that this work had been submitted to the college, no mention of modules and no marks from the tutor. The title of the first assignment was "Impact of New Working Practises and Patterns on Individual and Business Performance" but she did not consider that this would have formed the subject of an assignment. Something would have been required relating to the hospitality industry. The level of English in the assignment was very good compared with what one would expect from most of the overseas students. It would be very unusual to see this level of English, particularly so early in the course. The assignment was dated 14th April 2008.

Oral Evidence of Catherine Vines

22. Ms Vines adopted the witness statements she made on 17th June 2009 and 27th September 2010. She said that the contents of each statement were true. Her role as Director and Head of the International Centre was a hybrid one. It was not academic in the teaching sense; she checked the documentation submitted by students and interviewed them. She identified new courses, new international markets and developed programmes for groups of international students. She produced the International Course Guide for 2009 and 2010. This document was different from the home prospectus and was aimed at non-EC students. It had sections on visa requirements and a price list for students outside Europe. The Ealing, Hammersmith and West London College was a market leader and the only one to be given the Queen's Award for its international work. Ms Vines said that she was appointed a United Kingdom national advisor in September 2010 for the Association of Colleges in the development of their international charter.

23. Students were given a unique data number from the time they made enquiries. If a person moved to application and enrolment he or she still kept the same number throughout. The system had been in place at the college since before she arrived some ten years ago. Once checks were completed a student was invited to join and would receive an identity card once the fees were paid. This would be used at the entrances to the four campuses, where entry would be gained by "swiping" the card. The system would be brought in my all colleges in the United Kingdom in due course. The card was

generated from information held on the database. Ms Vines produced examples of the cards, one of the type issued to a student and the other a card issued to her as a staff member. The staff card had a six-figure number whereas the student card had seven figures and a data number consisting of six figures. The identity number was the data number at the top. The seven-figure number might include figures showing the first course completed, results in examinations and the number "1" meant that a student had not asked for a replacement card and was the issue number. The data number was the one against which copies of qualifications and other documents would be held and accessed. Every time an assignment or a piece of work was handed in, it could be accessed by means of the data number. No member of staff would accept coursework without the student providing that number on it. The number was especially important as assignments might go out for assessment by universities or external bodies. Students would also have to complete the data number on every page in an exam book. They would not be allowed into the examination hall or any building without this number. The Hammersmith campus had 12,000 students, 5,000 full time and 7,000 part time, taking classes in the evenings and for professional qualifications. About half of those students would leave each year when their courses came to an end. The 6,000 cards issued to those who left would become redundant and they would not be able to re-enter the buildings. If they joined another course, this would be in September and they would go through the same process and keep the same data number, although an updated photograph might be needed. Most courses ran for a maximum of two years and so there would not be a lot of change in this regard. There was no attempt to collect cards because the card "went dead" (ie became incapable of operating college systems) at the end of each year. The cards were not collected. The system would then begin again in the following academic year. The same system applied at all the campuses. There was one database for all of them.

24. Section B of the respondent's bundle, consisting of documents provided by the appellants, was placed before Ms Vines. At pages B2, B5 and B9 were documents showing results. In relation to Mr Syed and Mr Khalid, the results sheets or transcripts were dated 9th October 2008; in relation to Mr Akmal, the results sheet was dated 12th December 2008. Ms Vines said that the name of the Principal shown in the documents was Kevin Finnegan. In fact, Mrs Paula Whittle was the Principal at the time. At pages B1, B4 and B8 were copies of documents purporting to be postgraduate diplomas issued to Mr Syed and Mr Khalid in Hospitality Management and to Mr Akmal in Business and Management. Each showed in the bottom right of the document a signature appearing as "Kevin K" above the word Principal. Before Ms Whittle was appointed, a Kevin Finnegan had been Principal but Ms Vines said that nobody in that position would have used an initial for their surname. The other signature, above College Director in each item, appeared to be "Gaji Salvi". Each one of the four campuses had a College Director, similar to a Vice Principal. The College Director for the courses and at the Hammersmith campus was Mrs Lyn Pearson. Records at the college from 2000 showed that nobody called Salvi or Galvi had been appointed as a College Director.

25. The diploma at B1 appeared to have been issued to Syed Salman Ali but in her position as head of the International Division, Ms Vines had never known anyone with that name at the college. The course was developed in Mumbai. Students were drawn from the Christian and Hindu communities there, from the Institute of Hospitality at Mumbai University. The course was only for students from that city. They had no Muslim students and the name was not known to her. Checks had been made of the Centime system from 2005, when the course in Hospitality Management first began but nobody with that name had joined the course. Ms Vines said that she would travel to Mumbai and interview students there. If they were successful they were admitted. They were drawn exclusively from Mumbai. The programme was then opened out to Poona, as a satellite.

26. Ms Vines said that the document at B1 also showed an incorrect logo. The name of the college was given as “Hammersmith and West London College” and the word “Ealing” had been omitted. In addition, the length of the programme was wrong. The copy diploma showed it as running from April to July 2008, whereas it ran for eighteen months. It also showed a work placement between January and October 2008 even though the course programme was described as beginning in April that year. Students could not have had a work placement before the course began. Students were placed in partner hotels and the first part of the course was concerned with general principles. The work placement would then follow. The awards themselves would be given in association with partnership or external institutions. The partner in the postgraduate diploma course was Edexcel and successful students were given exemption from some modules on an MBA course with the University of Wales. A graduate would be given a certificate by the college and also by Edexcel.

27. At B4 was a similar document in the name of Khalid Farz. Ms Vine said that she had the same comments and observations regarding the signatures which appeared. The wrong logo appeared at the top right of the document whereas “Ealing” appeared in the name of the college in the body of the document, as was also the case with the item at B1. She had the same comments to make in relation to the work placement and the course programme dates as with the diploma in Mr Syed’s name. At page B8 was a document in the name of Sheikh Muhammad Akmal, purporting to be a Postgraduate Diploma in Business and Management. She had the same comments to make regarding the signatures which appeared at the bottom of the document, showing “Kevin K” as Principal and “Salvi Galvi” as College Director. Neither was known to the college. The diploma would have been validated by Edexcel. Mr Tarlow asked whether the college would have issued a certificate in this form. Ms Vines replied that they would not have done so. It was a poor fake. It contained the wrong title for the college, the Principal’s surname appeared as an initial only and they would not have issued the document in this form. A person who had genuinely obtained a Postgraduate Diploma in Business and Management would have received a certificate from the college and a document from Edexcel. Also missing from all three documents was the Queen’s Award logo which marked out the college as unique in the whole United Kingdom Ms Vines said that the particular postgraduate diploma course stood out in her mind. It was developed in 2008. Once it was launched, the visa requirements changed. The course was offered twice to two small cohorts, one a group of seven and the other a group of five. The course ran for twelve months, between January and December 2008. There was no person called Sheikh Muhammad Akmal in either cohort.

Appendix 3: documents relied upon by Appellants

<u>Document relied upon by Appellants</u>	<u>Feature</u>	<u>Defect shown by Evidence</u>	<u>Other Comments</u>
1. Postgraduate Diploma in Hospitality Management (undated).	The document is signed by “Galvi” or “Salvi” as College Director and by “Kevin K” or “Kevin F” as Principal.	Signatories not known as College Director or Principal; names suggested by signatures not associated with either role.	Principal at EHWLC in October 2008 was Ms P Whittle; if “Kevin F” or “Kevin K” purports to be signature of Kevin Finnegan, then (a) Mr Finnegan was Principal from 1 st May 2006 until 31 st December 2007 and (b) signature bears no relation to genuine signature,

specimen of which was supplied to Tribunal.

	Programme dates shown as April 2008 to July 2008.	Postgraduate courses were of eighteen months duration.	
	Work placement shown as commencing January 2008.	Work placements on genuine courses commenced after course of studies began.	
	Logo in top right showing "Hammersmith and West London College".	Genuine Postgraduate Diplomas would include logo showing full name of college: "Ealing, Hammersmith & West London College".	
	Absence of Queen's Award logo at foot of document.	Genuine Postgraduate Diplomas would include Queen's Award logo.	
2. Postgraduate Diploma in Business and Management (undated).	Signed by "Galvi" or "Salvi" as Course Director; signed by "Kevin K" or "Kevin F" as Principal.	As above in relation to Postgraduate Diploma in Hospitality Management.	As above.
	Programme dates shown as January 2008 to December 2008.	As above; courses were of eighteen months duration.	
	Logo in top right showing "Hammersmith and West London College".	As above, in relation to Postgraduate Diploma in Hospitality Management.	
	Absence of Queen's Award logo at foot of document.	Genuine diplomas would include Queen's Award logo.	

3. Results sheet (Postgraduate Diploma in Hospitality): 9 th October 2008.	<p>Signed by Victoria Charles as Course Director.</p> <p>Principal shown as "Kevin Finnegan".</p> <p>Logo appearing in top right bears name "Hammersmith & West London College".</p> <p>Second logo appears beneath first: "The Sixth Form Centre".</p>	<p>Victoria Charles was not a Director on any Postgraduate Diploma Programme between January and December 2008; signature applied was not hers.</p> <p>Kevin Finnegan not Principal at date of issue of document.</p> <p>Genuine logo has full name of College (see above).</p> <p>Genuine results sheet or notification of performance would not include this logo or mix of logos.</p>	Exam results issued in the name of Victoria Charles would not have included her signature.
4. Results sheet (Postgraduate Diploma in Business):12 th December 2008.	Signed by Victoria Charles as Course Director.	As above, in relation to results sheet dated 9 th October 2008; signature applied was not hers.	
5. Undated letter addressed "To whom it may concern", purporting to certify successful completion of course.	Bears name of Victoria Charles as Course Director and signature purporting to be hers	Ms Charles was not Course Director on any Postgraduate Diploma Course in 2008; signature appearing in letters not hers.	

6. All documents relied upon.	Logo appears in top right, showing "Hammersmith & West London College".	Genuine items would contain full name of college in logo (see above).	
	Letters contain no address.	Genuine items would include address, telephone numbers and other contact details.	
	Letters include abbreviation or acronym for course described: "PGDHM"; "PGDBM".	Abbreviation or acronym would not be used in genuine item; qualification would appear in full.	
	Description of college as "DIUS Listed Body" (sic).	College would not be described in this way in genuine item.	
	Odd phrasing: "This course is a Post Graduate diploma above level of United Kingdom" (sic).	Genuine item would not include phrase or attempt to state the "level" of a particular qualification.	
	Letters show date of award as 9 th October 2008 (Syed and Khalid) and 12 th December 2008 (Akmal),	This is the same date as appears in the results sheets in each case.	Completion of course, shown as date of publication of results, would not have led to an award of diploma on the same day. EHWLC would not mark, agree results and make an award all on the same day.
	Absence of unique student data number.	Genuine Diploma Certificates would include unique student data number.	All genuine students are allocated a unique student data number by the Centime Recording System which is retained throughout their course of studies.