OUTER HOUSE, COURT OF SESSION

[2025] CSOH 107

P138/25

OPINION OF LADY DRUMMOND

In the petition by

AM (AP)

Petitioner

for

Judicial Review of a decision by the Secretary of State for the Home Department cancelling the petitioner's leave to remain dated 6 May 2025

Petitioner: Halliday, adv; Drummond Miller LLP
Respondent: Hastings, sol adv; Office of the Advocate General

21 November 2025

Summary of decision

[1] The petitioner is a national of Nigeria. The respondent, the Secretary of State for the Home Department, granted the petitioner leave to remain in the United Kingdom as a student on condition that he did not work over 20 hours per week during term time. By letter dated 6 May 2025 the respondent cancelled the petitioner's leave because he had worked over the permitted hours, had made false representations and used deception to obtain leave to remain.

[2] The petitioner seeks reduction of that decision on grounds that the respondent failed:

(i) to follow her published policy guidance on cancellation of leave on grounds of deception;

(ii) to give adequate reasons for cancelling the petitioner's leave.

The respondent denies any such failure and argues that she did implicitly follow her guidance and gave adequate reasons for her decision.

[3] I have concluded that the respondent failed both to follow her guidance and to provide adequate reasons for her decision. The respondent did not address whether the petitioner's false representation was an innocent mistake, as the petitioner had claimed, or was dishonest. The respondent's guidance required the respondent to address that. It was the critical point in issue. The respondent did not make any reference to what the petitioner was aware of at the time he made the representation nor how easy it would have been for him to make an error. She did not adequately explain why she considered the false representation to be dishonest. She did not provide adequate reasons for her decision.

The undisputed facts

[4] On 1 February 2022 the petitioner entered the UK on a student visa valid until 6 September 2023. It was a condition of his leave not to work over 20 hours per week during term time. On 22 February 2022 he entered into a contract of employment to work as a support worker. He was contracted to work 20 hours per week. He was required to submit timesheets confirming the number of hours worked. He was required to work at various locations and to travel between them. The contract provided that he would be paid for "the actual hours worked attending to service users" and reimbursed for costs of travel between service users.

[5] On 2 September 2022, the petitioner applied for a priority work leave to remain visa as a skilled worker. In his application he stated that he had not breached the conditions of his student visa. The respondent granted the petitioner leave to remain on 7 September 2022.

[6] A month or so later, on 19 October 2022, the respondent interviewed him and decided to cancel his leave to remain. The respondent subsequently withdrew the decision of 19 October 2022 as well as later decisions dated 25 July 2024, 11 September 2024 and 17 November 2024, all cancelling the petitioner's leave. The respondent made a further decision dated 6 May 2025 once again cancelling the petitioner's leave to remain. That is the decision challenged.

The respondent's decision 6 May 2025

[7] The respondent explains that the petitioner has breached the conditions of his student visa by working over 20 hours per week, that leave is cancelled because he made false representations on his application for leave and has therefore used deception to gain leave to remain. The key paragraphs give the following reasoning:

> "Due to the consistency of the breaches and the number of hours you breached each time, this makes me believe that on the balance of probability you have used deception to gain your leave. At interview, you stated the reasoning for working in excess of your hours was due to the travel between clients. During interview you later on stated you had worked over your permitted hours and could give no rational explanation as to why. The Home Office have taken into account paid, unpaid and travel time (as defined in Paragraph 6.2 of the Immigration rules) which shows from the timesheets provided would be in excess of your 20 hours per week visa condition.
>
> Recent information received includes input of electronic timesheets which shows the time that you spent with the customers. The rota that we have used for our evidence includes the time of travel for shifts, which has been viewed by Immigration officers as part of their working day. A work vehicle is being used for this travel, and during interview it was established that staff cannot deviate from their travel route, as well

> as being reimbursed for all costs during travel. This leads us to believe that this is part of the working day and is being considered as such. Employment is defined in the Immigration rules paragraph 6.2 as including paid or unpaid employment. The payslips and bank statements have been considered, however as above, paid and unpaid employment have been taken into account for this decision.
>
> I have therefore decided to cancel your current permission because you have admitted to Immigration Officers you have made false representations on your Page 2 of 4 application for leave to remain in the United Kingdom. You have therefore used deception in gaining Leave to Remain in the United Kingdom."

The petitioner's submissions

[8] The petitioner accepts he worked over 20 hours per week in terms of the Immigration Rules definition of "employment" which includes both paid and unpaid employment. He accepts that he worked over 20 hours a week if travel time between places of work is included as work. However, when he made the application for leave he did not understand that unpaid travel time counted as work. As far as he knew he worked 20 hours a week: that is what he was contracted to do and was what he was paid for. He was not paid for travel time. The timesheets only show hours exceeding 20 hours per week if travel time is included. He now understands, having been corrected by the respondent at interview and having taken legal advice, that travel time is included as work whether he has been paid for it or not. The petitioner therefore accepts that when he stated on his application that he had not breached the conditions of his student visa, that was a false representation. However, he maintains that it was an innocent mistake. He did not deliberately deceive the respondent, his statement was a result of him not understanding the definition of work in the rules. The petitioner referred to his answers at interview which show his understanding was that he had complied with his conditions of leave because he was only paid for the 20 hours contracted for, not travel time which was unpaid.

[9] The petitioner's first ground of challenge is that when the respondent cancelled his leave on grounds of deception, she did not apply her deception guidance contained in "Suitability: false representations, deception, false documents, nondisclosure of relevant fact", dated 14 November 2023. In particular she did not ask whether the petitioner had made an innocent mistake or had an intention to deceive. The guidance (page 16) requires the decision maker to ask how easy it would be to make an innocent mistake and how likely it is that the applicant was aware that the information is correct. In oral argument, though not mentioned either in the petition or the written note of argument, counsel explained that the guidance gives effect to the approach required by caselaw when a decision maker is considering whether a dishonest representation has been made or not. The fact-finding tribunal must first ascertain the actual state of the individual's knowledge or belief as to the facts and whether it is genuinely held. Once that is established, the question whether his conduct was honest or dishonest is to be determined by applying the objective standards of ordinary decent people (*Ivey* v *Genting Casinos UK Ltd (t/a Crockfords Club)* [2017] UKSC 67, paragraphs 62 and 74).

[10] In *Kidd* v *Lime Rock Management LLP* [2025] CSIH 11, the Inner House held that *Ivey* did not mandate that the second stage of the test left out of account the individual's beliefs and state of mind: the key point in I*vey* was that someone's honesty or dishonesty did not depend on their own opinion as to their behaviour. However, when the ordinary right-thinking person's standards were invoked, the exercise included everything relevant to whether the individual acted dishonestly, including the reasons for their conduct. It is their behaviour given their actual state of mind on the facts that it is relevant. To determine whether they acted dishonestly it is necessary to explore what the person's own knowledge is (paragraphs 80-81). As is envisaged in *Ivey*, the guidance asks the decision maker to look

at the subjective intention of the applicant. The respondent made no attempt to consider the petitioner's knowledge, whether his belief that his working hours were the hours he was in fact paid, was an innocent mistake, one that could easily have been made or was a deliberately false representation to obtain leave. Had the respondent applied its own guidance, it would have applied the law.

[11] The reasons provided are inadequate as they fail to explain why the respondent rejected the petitioner's claim to have made an innocent mistake. The respondent must justify her conclusion that the petitioner acted dishonestly (*Dadzie* v *Secretary of State for the Home Department* [2018] CSOH 128 at paragraphs 30-31). The respondent refers to the consistency and number of breaches, but that was not relevant where the petitioner was ignorant throughout that period of the application of the Immigration Rules. The mere fact that there are over 20 hours of work in the timesheets is not a sufficient basis to conclude that the petitioner acted dishonestly. The respondent should explain why an inference of dishonesty has been drawn.

[12] The only other reason given is that the petitioner has given no rational explanation as to why he had worked over his permitted hours. However, the relevant question is whether he genuinely believed he had breached conditions and whether judged objectively that was dishonest. He told the interviewer what his state of knowledge was, repeatedly asserting that he was not paid for travel time and did not understand it to be work.

The respondent's submissions

[13] The respondent accepted the approach to be taken to dishonesty is that set out in *Ivey*. The respondent required to act with procedural fairness (*Balajigari* v *Secretary of State for the Home Department*, [2019] 1 WLR 4647) and did so. She indicated to the petitioner that

she considered his leave to remain had been sought on the grounds of deception and provided him with an opportunity to explain his position at interview. She had regard to the petitioner's responses at interview when reaching her conclusion on deception including: (i) that the petitioner had said at interview that "people" had told him that if he was working for the NHS, he could work more hours. He then contradicted that in his comment that he found that out online (page 10). No further information was provided to justify or substantiate the erroneous view he had taken; (ii) he had stated that after he was promoted, he was paid for his whole shift, whereas previously he did not get paid for travel time between jobs but was reimbursed his travel expenses (page 11); (iii) his acceptance that he was working during his travel time (page 16); (iv) his acceptance, when examples were put to him, that the timesheets showed him working over 20 hours; (iv) his claim that for him to get paid for 40 hours every 2 weeks, he required to work for more hours to travel between clients (page 15 and 16).

[14] Viewed through the lens of the petitioner's state of knowledge on 2 September 2022 his declaration that he had not breached the terms of his student visa was patently false, a position he now belatedly accepts. He ought to have been aware of the limit on the number of hours worked and definition of employment in the rules. If he did not think he was working when travelling between clients, what did he think he was doing? His position is inconsistent with his position at interview that he should be paid for time logged on timesheets and that he was working when travelling between clients (pages 14, 16 and 17). Tested objectively, the petitioner's false representation was dishonest. It cannot be viewed as simply an innocent mistake bearing in mind that the false information benefitted the petitioner but was contradicted by information from his employers and his own answers on interview.

[15] The respondent accepts an allegation of dishonesty is a serious allegation with serious consequences. In *Balajigari* v *Home Secretary*, at paragraph 42, the court recognised that a discrepancy between earnings declared to two different bodies may justifiably give rise to a suspicion that it is the result of dishonesty. Although it does not by itself justify a conclusion to that effect, it calls for an explanation. If an explanation once sought is not forthcoming, or is unconvincing, it may be legitimate for the Secretary of State to infer dishonesty. The Secretary of State must simply decide, considering the discrepancy in the light of the explanation, or lack of it, whether she is satisfied that the applicant has been dishonest. In the circumstances, the decision taken was open to her in the exercise of her discretion. It cannot be said that the conclusion reached was unlawful or one not open to her on the facts. The above considerations entitled her to conclude, on the balance of probabilities, that the petitioner had sought to gain leave by deception.

[16] The respondent does not require to elaborate or to deal with every argument advanced. If she has not dealt with an argument but there are grounds for her to reject it, then it should be assumed she has acted on those grounds unless a petitioner can point to convincing reasons to the contrary (*R (Iran)* v *Respondent for the Home Department*, [2005] Imm AR 535 at paragraph 13). The decision letter must not be read as a legal document. It should be given a benevolent interpretation and adverse inference not readily drawn *South Bucks District Council and another* v *Porter* [2004] 1 WLR 1953). The respondent stressed that the test is what the informed reader would understand from the decision letter (*Wordie Property Ltd* v *Secretary of State for Scotland* 1984 SLT 345 at p 348; *MS YZ* v *Secretary of State for the Home Department* [2017] CSIH 41 at paragraph 44).

[17] Whilst there was no express reference to the guidance by the decision maker, the informed reader would understand that the petitioner's inconsistencies at interview were

being relied upon to conclude he was being deliberately dishonest. The respondent explained her view that the petitioner had no rational explanation for having worked over 20 hours. His understanding that he was not working because he was not getting paid for travel time does not bear scrutiny when consideration is given to him travelling to work between clients using a work vehicle and not deviating from the travel route. The respondent was entitled to take into account the number of breaches and consistency as indicative of whether it might have been an innocent mistake or not. The petitioner knew at the point he was completing the work permit application that his response was not true. He must have known he was using a work vehicle and that he could not deviate from the route. That means it was not an innocent mistake, and that he was acting dishonesty. The guidance and the questions that must be asked are implicit within the reasoning provided in the, albeit brief, decision. It is clear as a matter of inference that the respondent has considered whether an innocent mistake had been made.

Decision

[18] At times in submissions the respondent's counsel appeared to argue broadly that the decision reached was open to the respondent on the material before her and was one she was entitled to reach. However the petitioner makes no attack on the rationality or reasonableness of the decision in this case, arguing only that the respondent did not follow her guidance and provided inadequate reasons. I have therefore focused on those matters.

[19] The respondent accepts that decision makers are expected to follow the deception guidance and that the guidance makes a distinction between false information innocently or dishonestly given. If false representations are alleged, the burden of proof lies with the

respondent to show both that the representations were not true and that there is dishonesty or deception, tested on the balance of probabilities (pages 8 and 14 of the guidance).

[20] Page 16 of the guidance sets out how a decision maker should consider a false representation:

> "It is important to be clear in the decision whether the false representation was made in relation to the current or a previous application, by whom it was made, and whether there was deception, as that will determine what action should be taken.
>
> **Mistakes**
> '**You must consider whether an innocent mistake has, or could have, been made. You must not refuse on grounds of false representations if there may have been an innocent mistake,** …
>
> **In considering whether an innocent mistake has been made, you should ask:**
>
> - **how easy would it be to make an innocent mistake?**
> - how likely is it that the applicant was unaware the information has been provided?
> - **how likely is it that the applicant, or the person providing the information etc, is aware that the information is incorrect?**
> - **does the false information benefit the applicant?**
> - **is it contradicted by other answers in the application form, or by any information in any documents provided with the current or a previous application?** …
> - has this 'innocent mistake' also been made on a previous application?" (*emphasis added)*

[21] In the key paragraphs of the letter, the decision maker does not ask whether the petitioner has made an innocent mistake. None of the questions listed at page 16 are mentioned. No reference is made to the distinction between a false representation innocently or dishonestly made. Nonetheless, as the respondent argues, it may be implicit from the terms of the letter that the respondent has followed her guidance and considered these matters, albeit without express reference to them.

[22] The respondent refers first in her reasoning to "the consistency of the breaches and number of hours breached each time" as making her believe that the petitioner has used deception. Whilst the list of questions in the guidance does not refer to the number and

consistency of breaches, I accept that the list is not exhaustive. When assessing dishonesty the exercise includes considering everything relevant to that (*Kidd*). In some circumstances the number of times the mistake was made could have some bearing on the overall assessment. Indeed the guidance does require decision makers to ask whether the "innocent mistake" has been made on a previous application.

[23] However, recognising the number and consistency of breaches is not in itself sufficient. Applying *Ivey,* the decision maker must ascertain the state of the individual's knowledge or belief as to the facts and whether that is genuinely held, before assessing objectively whether his conduct is dishonest or not. The assessment requires the decision maker to include everything relevant to whether the individual acted dishonestly, including the reasons for their conduct (*Kidd* v *Lime Rock Management* paragraphs 80-81). As the guidance puts it, amongst the relevant questions to ask are: How likely was it that the petitioner was aware that he was providing false information when completing his application? How easy would it be for him to make an innocent mistake?

[24] The respondent next mentions the petitioner's explanation at interview that the reason that he had worked over 20 hours was due to travel between clients. She continues that the petitioner later at interview accepted he had worked over the 20 hours but could give no rational explanation as to why. In submissions the respondent referred to a series of inconsistencies within the responses at interview and suggested the respondent implicitly based her decision on these. I find that proposition and this passage in the letter difficult to understand for a number of reasons. First, the respondent doesn't refer to any inconsistencies at interview in her letter. Instead she relies on the fact that the petitioner has accepted he has worked over 20 hours but has offered no rational explanation as to why. It is not obvious to me why the informed reader should suppose the decision maker has based

her decision on any one or number of inconsistencies at interview as referred to in submission. Second, I am puzzled as to what made the decision maker conclude the petitioner's explanation was not rational. He was contracted to work 20 hours a week and was paid for 20 hours' work a week. As he repeatedly stated, he was not paid for travel time and therefore did not understand it to be work. Whilst, as he now accepts, that is not the correct legal position under the Immigration Rules, no explanation is given by the respondent as to why his incorrect understanding was irrational. It is not clear why using a work vehicle and not deviating from the route to travel, made his explanation irrational, assuming that formed part of the reasoning for the conclusion. In any event, the critical issue is not one of rationality, but dishonesty. It is far from implicit in this reasoning that the respondent has gone anywhere near the questions she is directed in the guidance to ask and has engaged in any assessment of whether an innocent mistake has been made.

[25] The remainder of the letter explains how under the Immigration Rules travel time counts as work, even if not paid. It explains that the petitioner's time sheets and rotas show that he has worked over 20 hours when travel time is included, with the decision maker concluding that "This leads us to believe that this is part of the working day". Again none of that addresses the petitioner's knowledge and honesty. On the contrary, it refers to the respondent's belief. Whilst it supports the conclusion that the petitioner has given false information, it does not address whether the false information has been dishonestly or innocently given.

[26] A finding of deception or dishonesty is a serious one. In *Dadzie* v *Secretary of State for the Home Department* [2018] CSOH 128, Lord Tyre held that the mere fact that different amounts had been declared did not constitute a sufficient basis to conclude that the appellant had acted dishonestly; that the respondent had to address her mind to whether

the discrepancy indicated inadvertence or intentional wrongdoing. In the absence of any assessment of whether there was evidence of deliberate misdeclaration as opposed to innocent error, the decision was unreasonable according to *Wednesbury* principles. Whilst the ground of challenge in *Dadzie* was *Wednesbury* reasonableness, it addressed the same underlying error as is relied on in this case: an absence of an assessment by the decision maker of whether the petitioner has made a deliberate misdeclaration. Here the grounds of challenge are a failure to follow guidance and provide adequate reasoning, but the underlying illegality is the same.

[27] It is well established that decision letters must not be read like legal documents, adverse inferences should not be readily drawn. Not every point requires to be addressed but the informed reader should not be left in real and substantial doubt as to the reasons for the decision and what were the material considerations taken into account in reaching it (*South Bucks District Council and another* v *Porter; Wordie Property Limited* v *Secretary of State for Scotland*).

[28] The English Court of Appeal in *R (Iran)* v *Secretary of State for the Home Department* refers to complaints of a failure to give reasons being seen "far too often". It explained that it is sufficient where the decision maker has not dealt with some particular argument and there are grounds on which she would have been entitled to reject it, to assume that she acted on those grounds unless the appellant can point to convincing reasons to a contrary conclusion (at paragraph 13 citing *Giffiths LJ in Eagil Trust Co Ltd* v *Piggot-Brown* [1985] 3 ALL ER 119). The court at paragraph 16 stated that the practice of bringing appeals because the decision maker had not made reasoned findings on matters of peripheral importance must come to an end. However, the court also stated that the issues the resolution of which are vital, critical or material to the decision maker's conclusion should

be identified and the manner in which the decision maker resolved them explained (at paragraphs 14 to 15, citing Lord Phillips MR in *English* v *Emery Reimbold & Strick Ltd* [2002] 1 WLR 2409 at paragraph 19).

[29] Here the vital and critical issue was whether the petitioner had acted dishonestly or made an innocent mistake. The decision maker failed to explain how she assessed that critical issue and the factors that led her to conclude that the petitioner made a dishonest rather than innocent misrepresentation. The informed reader is left in real and substantial doubt as to the reasons for the decision. The decision maker on the face of it has not followed her guidance. I do not consider any of this reasoning implicitly shows the respondent has followed her guidance. The reasons provided do not adequately explain why she concluded the petitioner had been dishonest.

Conclusion

[30] I therefore reduce the respondent's decision, sustain the petitioner's second plea-in-law and repel the respondent's pleas-in-law. I award expenses against the respondent.