OUTER HOUSE, COURT OF SESSION

[2025] CSOH 22

P443-24

OPINION OF LADY HALDANE

In the cause

JONES OWUSU FOR JUDICIAL REVIEW

Petitioner

against

ADVOCATE GENERAL FOR SCOTLAND, AS REPRESENTATIVE OF THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Petitioner: I Halliday, Advocate, Drummond Miller
Respondent: S Crabb, Advocate, OAG

28 February 2025

Introduction

[1] The petitioner is a national of Ghana. The respondent is the Advocate General for Scotland, as representative of the Secretary of State for the Home Department. On 14 November 2022, whilst still in Ghana, the petitioner submitted an application for entry clearance to the United Kingdom as a student and for a biometric immigration document granting such clearance. On 17 November 2022 the petitioner's application was granted, and a visa vignette was placed in his passport, which he collected from a Visa Application Centre in Ghana.

[2] On 18 November 2022 the respondent wrote to the petitioner stating that his application was being assessed and requesting further evidence demonstrating the origin of funds held within the petitioner's bank account. The petitioner did not respond to this email as his application had by this stage been granted. He believed that the email dated 18 November 2022 requesting further evidence in order to assess his application had been sent in error.

[3] On 14 December 2022 the respondent issued a further letter stating that the petitioner's application for entry clearance was refused. The reason for refusal was failure to respond to the request for further documents sent on 18 November 2022. It is the petitioner's position that he did not receive that letter until 19 March 2024. He proceeded to travel to the United Kingdom and arrived at Edinburgh airport on 1 January 2023. He was not permitted entry at the UK Border. On 2 January 2023, the respondent cancelled the petitioner's leave to enter as a student and refused to grant leave to enter in any other capacity. A notice of decision headed "Notice of Refusal of Leave to Enter" was given to the petitioner on that date. On the same day, the petitioner was detained by the respondent. He was subsequently released on immigration bail. The reason given in the notice of 2 January 2023 for cancelling the petitioner's leave as a student was that there had been such a change in circumstances since the visa was issued that it should be cancelled. The notice also stated that entry clearance had been issued to the petitioner "in error", and that the application was subsequently refused on 14 December 2022. On 3 January 2023 the petitioner was issued with a "One Stop Notice" under section 120 of the Nationality, Immigration, and Asylum Act 2002 advising him that he did not have immigration leave. On 4 March 2024 the petitioner's solicitors sent a pre-action letter to the respondent. In response the respondent

sent a decision letter in the same terms as that of 2 January 2023, but this time on a template letter headed "Notice of Cancellation of Leave to Enter."

[4] The petitioner thereafter made an application for administrative review of this decision on 8 March 2024. That application was rejected and the rejection was originally the subject of challenge in this petition. However the day before the substantive hearing the respondent confirmed that she would no longer contest the challenge so far as relating to the question of administrative review. Therefore the substantive hearing focussed on two arguments only:

(i) That the respondent had failed to take account of relevant considerations and had in any event taken account of irrelevant considerations in deciding to cancel the petitioner's leave to enter the United Kingdom; and

(ii) That the respondent had failed to provide adequate reasons for cancelling the petitioner's leave to enter based on a change in circumstances.

The relevant legal framework

[5] The legal framework governing the right to enter and remain in the United Kingdom is complex. The primary Act of Parliament for present purposes is the Immigration Act 1971. That legislation is supported and supplemented to permit its' practical application by various Orders, and by detailed Immigration Rules, which are amended from time to time. It is often necessary to read across between legislation and the relevant Rules to have a proper understanding of this framework. For present purposes, the provisions of the Immigration Act 1971 that are pertinent to this case are as follows:

"3 General provisions for regulation and control.

(1) Except as otherwise provided by or under this Act, where a person is not a British citizen—

(a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under, this Act;

(b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;

3A Further provision as to leave to enter.

(1) The Secretary of State may by order make further provision with respect to the giving, refusing or varying of leave to enter the United Kingdom.

(2) An order under subsection (1) may, in particular, provide for—

(a) leave to be given or refused before the person concerned arrives in the United Kingdom;

(b) the form or manner in which leave may be given, refused or varied;

(c) the imposition of conditions;

(d) a person's leave to enter not to lapse on his leaving the common travel area.

(3) The Secretary of State may by order provide that, in such circumstances as may be prescribed—

(a) an entry visa, or

(b) such other form of entry clearance as may be prescribed,

is to have effect as leave to enter the United Kingdom.

4 Administration of control.

(1) The power under this Act to give or refuse leave to enter the United Kingdom shall be exercised by immigration officers, and the power to give leave to remain in the United Kingdom, or to vary any leave under section 3(3)(a) (whether as regards duration or conditions) (or to cancel any leave under section 3C(3A), shall be exercised by the Secretary of State; and, unless otherwise allowed by or under this Act, those powers shall be exercised by notice in writing given to the person affected, except that the powers under section 3(3)(a) may be exercised generally in respect of any class of persons by order made by statutory instrument."

[6] The 1971 Act also contains a number of Schedules. Schedule 2, paragraph 2A is in the following terms:

"2A (1) This paragraph applies to a person who has arrived in the United Kingdom with leave to enter which is in force but which was given to him before his arrival.

(3) He may be examined by an immigration officer for the purpose of establishing—
   (a) whether there has been such a change in the circumstances of his case, since that leave was given, that it should be cancelled;
   (b) whether that leave was obtained as a result of false information given by him or his failure to disclose material facts; or
   (c) whether there are medical grounds on which that leave should be cancelled.

…….

(8) An immigration officer may, on the completion of any examination of a person under this paragraph, cancel his leave to enter."

[7] The relevant parts of the Immigration (Leave to Enter and Remain Order) 2000 are:

"Entry clearance as Leave to Enter

2. Subject to article 6(3), an entry clearance which complies with the requirements of article 3 shall have effect as leave to enter the United Kingdom to the extent specified in article 4, but subject to the conditions referred to in article 5.

Extent to which Entry Clearance is to be Leave to Enter

4.—(1) A visit visa, during its period of validity, shall have effect as leave to enter the United Kingdom on an unlimited number of occasions, in accordance with paragraph (2).

(2) On each occasion the holder arrives in the United Kingdom, he shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter the United Kingdom for a limited period beginning on the date of arrival, being:
   (a) six months if six months or more remain of the visa's period of validity; or
   (b) the visa's remaining period of validity, if less than six months.

(3) In the case of any other form of entry clearance, it shall have effect as leave to enter the United Kingdom on one occasion during its period of validity; and, on arrival in the United Kingdom, the holder shall be treated for the purposes of the Immigration Acts as having been granted, before arrival, leave to enter the United Kingdom:
   (a) in the case of an entry clearance which is endorsed with a statement that it is to have effect as indefinite leave to enter the United Kingdom, for an indefinite period; or
   (b) in the case of an entry clearance which is endorsed with conditions, for a limited period, being the period beginning on the date on which the holder arrives in the United Kingdom and ending on the date of expiry of the entry clearance.

3B A short term biometric entry clearance shall have effect as leave to enter the United Kingdom on one occasion during its period of validity; and, on arrival in the United Kingdom the holder shall be treated for the purposes

of the Immigration Acts and having been granted, before arrival, leave to enter the United Kingdom –

(a) In the case of an entry clearance which is endorsed with an indefinite period of leave, for an indefinite period; or

(b) In the case of an entry clearance with is endorsed with conditions, for a limited period, being the period beginning on the date on which the holder arrives in the United Kingdom and ending on the date of the expiry of the holder's period of leave

Incidental, supplementary and consequential provisions

6.—(1) Where an immigration officer exercises his power to cancel leave to enter under paragraph 2A(8) of Schedule 2 to the Act(1) or article 13(7) below in respect of an entry clearance which has effect as leave to enter, the entry clearance shall cease to have effect.

Grant and refusal of leave to enter before arrival in the United Kingdom

7.—(1) An immigration officer, whether or not in the United Kingdom, may give or refuse a person leave to enter the United Kingdom at any time before his departure for, or in the course of his journey to, the United Kingdom."

[8] The version of the Immigration Rules in force at the relevant time contains the following provisions which are relevant in the circumstances of the present case:

"Entry clearance

24. The following persons are required to obtain entry clearance in advance of travel to the UK:

(i) a visa national;

(ii) a non visa national (not a British or Irish national) who is seeking entry for any purpose other than as a visitor seeking entry for 6 months or less, or

(iii) a British national without the right of abode who is seeking entry for a purpose for which prior entry clearance is required under these Rules.

Any other person who wishes to ascertain in advance whether they are eligible for admission to the United Kingdom may apply for the issue of an entry clearance.

24A. A person who requires entry clearance must on arrival in the UK either:

(i) produce to the Immigration Officer a valid passport or other identity document endorsed with a United Kingdom entry clearance, issued to them for the purpose for which they seek entry, which is still in force, or:

(ii) where they have been granted a United Kingdom entry clearance which was issued to them in electronic form (an eVisa) for the purpose for which they seek entry and which is still in force, produce to the Immigration Officer a valid passport or other identity document.

25. Entry clearance takes the form of a visa (for visa nationals) or an entry certificate (for non visa nationals). A visa or an entry certificate may be issued in electronic form. These documents are to be taken as evidence of the holder's eligibility for entry into the United Kingdom, and accordingly accepted as 'entry clearances' within the meaning of the Immigration Act 1971.

39D. For the purpose of assessing whether any of the grounds of cancellation of entry clearance or permission under Part 9 apply the Secretary of State may request a person to:

(a) provide additional information to the Home Office at the address specified in the request within 28 calendar days of the date the request is sent; and

(b) attend an interview."

[9] Part 9 of the Immigration Rules includes the following provisions

"Failure to provide required information, etc grounds

9.9.1. An application for entry clearance, permission to enter or permission to stay may be refused where a person fails without reasonable excuse to comply with a reasonable requirement to:

(a) attend an interview; or
(b) provide information; or
(c) provide biometrics (whether or not requested as part of an application); or
(d) undergo a medical examination; or
(e) provide a medical report.

9.9.2. Any entry clearance or permission held by a person may be cancelled where the person fails without reasonable excuse to comply with a reasonable requirement to:

(a) attend an interview; or
(b) provide information; or
(c) provide biometrics; or
(d) undergo a medical examination; or
(e) provide a medical report.

Section 3: Additional grounds for refusal of entry on arrival in the UK

No entry clearance grounds

9.14.1. Permission to enter must be refused if the person seeking entry is required under these rules to obtain entry clearance in advance of travel to the UK, and the person does not hold the required entry clearance.

Change of circumstances or purpose grounds

9.20.1. Entry clearance or permission held by a person may be cancelled where there has been such a change in circumstances since the entry clearance or permission was granted that it should be cancelled."

The petitioner's submissions

[10] Mr Halliday, for the petitioner, adopted his note of argument. He summarised his first remaining ground of challenge as a dispute about the petitioner's immigration status when he arrived in the United Kingdom. The petitioner at that point had leave to enter and this could not be cancelled on the ground that it had been issued in error. Any contention that there had been error in issuing his visa was not a relevant consideration in deciding whether or not to allow him entry. There was no dispute that there were entirely valid procedures by which it was open to the respondent to cancel the visa of someone in the position of the petitioner, however none of those had been employed in the present case.

[11] The respondent had in effect conflated two procedures – refusal of leave and cancellation of leave and purported, by her notice of 2 January, to refuse that which had already been granted, which was not only illogical but procedurally incorrect and unlawful. The suggestion by the respondent in her note of argument at paragraph 29 that it was open to her to refuse leave once granted was disputed as a matter of fact and law. The respondent was attempting to argue that the power that was exercised on 2 January 2023 was that set out in Schedule 2, paragraph 2A to the Immigration Act 1971, that is to say the power to examine a person arriving in the United Kingdom with a view to establishing whether there had been a change in circumstances. However that was not the power purportedly exercised by way of the letter of 14th December 2022, which stated that the application was being refused under paragraph 9.9.1(b) of the Immigration Rules, in short a power to refuse an application for entry clearance where a person does not provide information requested. In January 2023, when the petitioner arrived in the United Kingdom, the respondent could have relied upon the power found, inter alia, at subparagraph (8) of Schedule 2,

paragraph 2A which authorises an entry clearance officer to cancel otherwise valid leave to enter following examination of the individual for any one of the stated purposes set out in that paragraph. The respondent did not, however have the power to do what she purported to do which was to refuse leave already granted.

[12] The respondent could not answer these criticisms by pointing, as she did, to the terms of Article 7 of the 2000 Order. That sets out a general power to refuse leave to enter for those arriving from a non-visa nation. The petitioner, who required and had obtained a visa prior to arrival, fell instead within the definition found in Article 4(3B) of the 2000 Order as someone with short term biometric entry clearance. In short, there might be any one of a number of good and procedurally appropriate reasons to cancel the petitioner's leave to enter, but the letter of 14 December 2022 was not one of them. The letter of 14 December 2022 should have cancelled the petitioners entry clearance and been preceded by a different request. In relying upon that letter as a basis for her decision notice on 2 January 2023 the respondent had taken into account an irrelevant consideration.

[13] There were similar issues with the second iteration of this decision issued to the petitioner in response to the pre-action protocol letters submitted on his behalf. This document, unlike its predecessor, was headed "Notice of cancellation of leave to enter" – a correct description – but it then rehearsed much of the body of the first decision given on 2 January 2023 including stating that leave had been refused on 14 December 2022. It was hard, then, to understand what was now being cancelled. Thus the confusion between refusal of leave and cancellation of leave continued to permeate the decision making process.

[14] On the approach contended for by the respondent, one power that could have been used, but was not, was found in Part 9 of the Immigration Rules at paragraph 9.14.1 which provides,

> "9.14.1. Permission to enter must be refused if the person seeking entry is required under these rules to obtain entry clearance in advance of travel to the UK, and the person does not hold the required entry clearance."

[15] Following through on the logic of the respondent's positon, if it was being asserted that by the time the petitioner arrived in the UK he did not hold valid entry clearance (it having been refused by the letter of 14 December 2022) then the power in paragraph 9.14.1 could have been exercised, but it was not.

[16] The same chapter of the Immigration Rules provided a basis to cancel entry clearance where there had been a change in circumstances (paragraph 9.20), but again, that was not the power sought to be invoked in this case. There was also a power to cancel on the basis of a failure to provide documents to be found in paragraph 39D of the immigration Rules which empowered the respondent, for purpose of determining whether any of the grounds in Part 9 have been established, to request further information within 28 days and attend an interview. Once again, that was a provision that could have been relied upon, but had not been.

[17] In January 2023 the petitioner was not provided with an opportunity to provide further information under paragraph 39D, for example, rather his leave to enter was cancelled on the purported basis that he had previously been asked to provide information, had failed to do so and his application had therefore been refused by way of the letter of 14 December 2022.

[18] The second limb of the petitioner's argument in relation to irrelevant considerations related to the question of whether the petitioner's entry clearance had been granted in error

and the relevance, if any, of that. The respondent sought to suggest that had not been the grounds for cancellation; rather that a change in circumstances was relied upon. However it was hard to discern from the terms of the decision of 2 January exactly what change of circumstances was being relied upon other than an assertion that entry clearance had been granted in error. If error of that sort was being relied upon, then that was unlawful. Entry clearance granted by mistake or error is nevertheless valid, provided that (i) there has been no fraud or dishonesty on the part of the applicant for leave, and none was alleged here, and (ii) there had been no question of lack of actual authority to grant leave at all – again that was not contended here (*R* v *Secretary of State for the Home Department Ex parte Ram* 1979 1 WLR 148 per Widgery C.J.).

[19] Reliance by the petitioner upon *R (on the application of B)* v *Secretary of State for the Home Department* (recording of leave – date stamps) IJR [2016] UKUT 00135 (IAC) was misconceived. The considerations set out in paragraph 51 of that decision, namely:

> "51. But the corollary is not that a blameworthy individual must automatically be able to benefit from such a stamp. Someone who, by misrepresentation, induces an immigration officer to proceed on a mistaken basis is not automatically entitled to succeed, merely because a mistaken decision has been formally recorded. In such a scenario, consideration must be given to:
> (a) the person's actions and understanding; and
> (b) what the immigration officer thought he or she was doing by affixing the stamp"

were of no application in the present case. There had been no suggestion of misrepresentation on the part of the petitioner, in an attempt to induce an immigration officer to proceed on a mistaken basis.

[20] Putting matters another way, it was not open to the respondent to refuse a visa after granting it, but it would be possible to require the petitioner to provide any information required under paragraph 39D. What could not be done was what was being attempted in

the present case, in effect to open up and refuse an application for entry clearance after it had already been granted. Whether or not the respondent concluded that such leave had been granted in error, that was not a relevant consideration having regard to the dicta in *Ram* – the entry clearance was valid and took legal effect when it was granted. For all those reasons, the respondent had taken into account irrelevant considerations in issuing her decisions of 2 and 3 January 2023. On that basis alone, Mr Halliday invited the court to sustain his fourth and sixth pleas in law and reduce both decisions.

[21] Turning then to his remaining ground of argument which related to adequacy of reasons, Mr Halliday submitted that the test was whether the reasons were adequate rather than simply what was required. Reliance was placed on the decision letter of 2 January 2023 on a change of circumstances but that begged the questions as to what had changed? Was it being suggested that the petitioner no longer met the eligibility requirements? The only reference was to the letter of 14 December 2022 but as previously submitted, that was not a relevant consideration. The petitioner cannot understand, from the reasons provided, why the respondent has decided to cancel his leave to enter. The reasoning gives rise to substantial doubt as to whether the decision-maker erred in law, in particular in relation to the petitioner's status upon entering the UK. On that basis the petitioner invited the court to sustain his fifth and seventh pleas and reduce the decision.

Submissions for the respondent

[22] Mr Crabb, on behalf of the respondent, confirmed that there was no longer any opposition to reduction of the separate, administrative decision of 8 March 2024 issued by the respondent. Otherwise, Mr Crabb adopted his note of argument. He rejected the submission that any irrelevant considerations had been taken into account by the

respondent but contended that even if there were irrelevant considerations in the decision, these had made no difference to the outcome. The nub of the respondent's concern related to funds in the petitioner's bank account, the origin of which had not been accounted for. That was something that the entry clearance officer was entitled to ask questions about. In addition the information provided by the petitioner about where he was going to live as a student had changed. The powers set out in Schedule2, paragraph 2A permitted the respondent to cancel leave to enter where false information had been provided. It was accepted that the petitioner was someone who had valid leave, but the change of circumstances relied upon related to a failure to disclose material facts – specifically where he was staying and the source of funds question.

[23] The terms of the relevant legislation favoured the interpretation contended for by the respondent. In particular, section 11 of the 1971 Act, taken together with Article 7 of the 2000 Order, meant that the respondent had the power to refuse entry to the petitioner at the UK border as he was still "in the course of his journey to" the United Kingdom (as set out in Article 7). That was a key factual distinction from the position in *Ram*. Mr Ram was an Indian national who had been granted leave on a number of occasions previously, and had set up a business in the UK – that was materially different from the position of the petitioner who was arriving at a port, which engaged the powers in the 2000 Order and Schedule 2 to the 1971 Act. Mr Crabb accepted that there was no dishonesty alleged on the part of the petitioner, nevertheless unlike *Ram*, it was not the case that there was no fault whatsoever. In the present case the petitioner had been stopped by immigration officials and interviewed, asked about the source of his funds and where he was going to say and had provided insufficient information in relation to these questions. Looked at in the round neither the facts nor the law were of assistance to the petitioner.

[24] Turning to the reasons challenge, Mr Crabb submitted that, as was well accepted, the relevant test was whether the reasons left the informed reader in any real doubt as to the reasons underlying the decision, and whether the reasons were adequate. That required that the reasons be read as a whole, and in their context. Looking at the letter of 2 January, it was a reasonable inference that the petitioner had been asked at interview about the source of funds in his bank account and where he was staying. The informed reader would be aware of that interview and would understand the point being made in the letter. Although there was reference to the previous letter of 14 December, whether that had been sent to the petitioner or not, he was now being asked about source of funds. Both Schedule 2 to the 1971 Act and the 2000 Order entitled immigration officers to ask questions about those sorts of matters and if they were not satisfied with the responses they could conclude that such amounted to a failure to disclose information or a change in circumstances entitling the respondent to refuse leave. That was what had happened in the present case and the respondent was accordingly entitled to refuse leave to enter to the petitioner.

[25] Implicitly accepting that the decision in question might have been more elegantly framed, Mr Crabb ultimately submitted that even if the view were taken that the decision letter was imperfectly expressed, when one had regard to the context that did not lead to the inevitable conclusion that it was unlawful. If the question were posed as to whether the impugned decision enabled the informed reader to understand what the issues were and why the decision was taken, the answer was that it did. For all those reasons, Mr Crabb submitted that the petition should be refused, apart from the one aspect in respect of which a concession on reduction had already been given.

Analysis and decision

[26] At the heart of the petitioner's application to the court lies what is said to be a fundamental distinction between the concepts of refusal of leave to remain, and the cancellation of leave to remain. That brief summary also begs the question as to whether any actual or apparent distinction between the two matters, as a matter of law, from the perspective of the respondent's overarching power to control entry to the United Kingdom. The petitioner contends that the distinction is real, and that his legal status on arrival is fundamental to the question of whether the proper, lawful procedure in respect of the withdrawal (to employ a neutral term) of his leave to enter as a student has been followed.

[27] It was accepted on behalf of the respondent that the draftsmanship of the decision letter of 2 January 2023, upon which the subsequent One Stop Notice of 3 January 2023 was based, might be described as imperfect. That is a concession that was well and properly made. The question remains however as to whether, looked at fairly and in its proper context, those imperfections are to be regarded as encompassing legally irrelevant considerations and are expressed in such a way that the informed reader is left in real and substantial doubt as to as to what the reasons for the decision were and what were the material considerations which were taken into account in reaching it (*Wordie Property Co Ltd* v *The Secretary of State for Scotland* 1984 SLT 346 at page 348). I deal with each of those questions in turn.

Irrelevant considerations

[28] The petitioner was told by letter on 17 November 2022 that his application for a visa had been successful, and the relevant visa vignette was placed in his passport. The letter went on to say "when you arrive in the UK you will have permission to be in the UK

(known as Leave to enter) as STUDENT from 23 December 2022 until 22 May 2024." That letter might be thought to be unequivocal in its terms. A subsequent email on 18 November suggesting that the petitioner's application was being assessed and that further information on source of funds in his bank account was required was considered by him to have been sent in error, standing the terms of the letter of 17 November. Whether he ought perhaps to have investigated the matter further is not germane to the question for determination in this petition. In any event, a further letter dated 14 December 2022 was then sent to the petitioner. The salient part reads

> "Dear Jones Owusu
>
> You applied for entry clearance as a Student on 14/11/2022. I am writing to tell you that your application is refused."

[29] The petitioner claims not to have received that letter at the time. A determination of that factual dispute is not required. The terms of the letter do however purport to refuse an application that had, as a matter of fact, been granted, with the petitioner being told explicitly that he had leave to enter the United Kingdom for the purpose, and for the time frame, specified.

[30] The petitioner then travelled to the United Kingdom and was denied entry at the UK Border at Edinburgh airport on 1 January 2023. The next day, on 2 January 2023, he was served with a decision letter, the key parts of which were as follows:

> "'Notice of Refusal of Leave to Enter'
>
> You have sought permission to enter the United Kingdom as a student at the University of Stirling.
>
> Your passport contains a UK Visa……This visa was issued in error, and you were advised on 18th November 2022 to provide evidence demonstrating the origin of funds in your bank account. You were further notified on 14 December 2022 that you had not responded to this email and that your visa application had been refused…..

> You have sought permission to enter the United Kingdom as a student, but your visa application was formally refused…
>
> You also stated that you would be staying at the University of Stirling accommodation facilities and that you had paid £2000 for this. The university have confirmed your enrolment but hold no record of your arrival details for accommodation. You then changed your story saying that you intend to stay with your cousin who has lived in the UK for 10 years. You failed to provide his name[,] date of birth and address.
>
> Although your visa was subsequently refused after a visa vignette had been endorsed in your passport I have considered you application for permission to enter as if you held a valid visa.
>
> I am therefore refusing you permission to enter the United Kingdom and cancelling your visa as I am satisfied that there has been such a change of circumstances since the visa was issued that is should be cancelled."

[31] There is therefore clear reference (i) to refusal of leave to enter on 2 January 2023, (ii) a statement that the visa issued to the petitioner had been issued in error, (iii) a statement that leave had been refused, earlier, by way of the letter of 14 December 2022, (iv) a statement that the petitioner's "application for permission" was being considered as though he held a valid visa, and (iv) a statement that permission to enter was being refused and the visa cancelled on the basis of a change in circumstances. The respondent contends that the only consideration taken into account in reaching the decision was a relevant one, namely a change in circumstances, and that the immigration officer was entitled to refuse entry clearance on the basis of a failure to disclose material facts (Note of argument for the respondent, paragraph 29).

[32] The existence of a power available to the respondent to refuse leave to enter, or to cancel a visa, depending on the circumstances, where an individual has failed to disclose material information was not in dispute. The criticism here is that, in purporting to refuse leave to enter on the basis of (i) a visa granted in error, and (ii) that leave had in any event

already been refused by way of the letter of 14 December, the respondent took into account irrelevant considerations. Put simply, a valid visa issued to the petitioner cannot be "refused" after the fact and any "error" in issuing that visa at the hand of the respondent cannot be relied upon against the petitioner in these circumstances (*Ram*). These were factors explicitly relied upon by the respondent in the letter of 2 January, the petitioner argues, and in so doing the respondent acted unlawfully.

[33] There can be no doubt that there has been a significant lack of clarity on the part of the respondent in respect of the petitioner's status when he arrived in the United Kingdom. As a matter of plain English, the respondent's attempt to refuse an application that had already been granted, both by way of the letter of 14 December 2022 and, on arrival, in the letter of 2 January 2023, is illogical. By the time of his arrival the petitioner fell within the terms of Schedule 2, paragraph 2A of the 1971 Act as "a person who has arrived in the United Kingdom with leave to enter which is in force but which was given to him before his arrival." His visa had effect as leave to enter the United Kingdom in terms of the 2000 Order. Immigration officers were still, undoubtedly, entitled to examine and ask questions of the petitioner about any matters relevant to his entry into the country. Those powers are found in the same legislation. If not satisfied on any such matters, the immigration officer would be empowered to cancel the leave previously granted.

[34] The difficulty with the decision letter of 2 January is that, despite the respondent's contention that the immigration officer based his or her decision on a change of circumstances, the underlying basis upon which that change of circumstances was considered is flawed. That consideration is said to have been carried out "as if you (the petitioner) held a valid visa". At that point, he did hold a valid visa. It had not been cancelled (although it perhaps could have been) by way of the letter of 14 December 2022.

There is no explicit power contained in any of the legislation relied upon to refuse an application once granted. Reliance by the respondent upon the power in Article 7 of the 2000 Order to "give or refuse a person leave to enter the United Kingdom at any time before his departure for, or in the course of his journey to, the United Kingdom" is misconceived in the circumstances of the present case. By the time of his departure for the United Kingdom the petitioner held ostensibly valid leave to enter. Although he would not of course formally enter the United Kingdom until permitted to cross the border at Edinburgh Airport, to invite an interpretation of that situation as being "in the course of his journey to the United Kingdom" strains the meaning of Article 7 and is not the scenario at which that article is directed. The letter concludes by purporting both to refuse leave and to cancel the visa previously granted.

[35] I have considered carefully whether, despite the contradictions and infelicities of expression contained in the letter, the aspect of the decision based on a change of circumstances could nevertheless be regarded as, in effect, severable from the other matters listed, and be upheld. Ultimately I have concluded that it cannot. The contradictory terms of the letter of 2 January 2023 go beyond mere semantics, so far as the refusal or cancellation of leave is concerned. As a matter of law, the respondent can either refuse leave, or subsequently cancel leave, based on a change of circumstances or other valid reason. There are clear procedures in place to permit the respondent to either refuse or cancel leave, which are engaged depending on the immigration status held by the individual at the time the decision is made. However a decision that purports to do both these things and bears to take into account error in granting the visa as well as an earlier purported refusal of leave, does impermissibly take into account irrelevant considerations and is ultimately unlawful. Equally, a statement that the decision has been taken proceeding "as if the petitioner held a

valid visa" is eloquent of a fundamental misunderstanding of the petitioner's status at the time he presented at the United Kingdom border and thus fails to take account of a relevant consideration in determining whether or not (and indeed on what basis) to cancel leave previously validly granted.

[36] I am not persuaded that the distinction sought to be drawn between the circumstances of this case, and that of *Ram*, is a valid one. There is no suggestion either that the petitioner acted dishonestly to obtain his visa or that the official who granted it did not have power to do so. The question of error is therefore also irrelevant in this context. It follows that I uphold the first limb of the challenge to the decision of 2 January 2023.

[37] For essentially the same reasons, I consider that the challenge so far as based on inadequate reasons is also made out. Given the manner in which the letter is expressed, it is not possible, looked at fairly and objectively, for the informed reader to have no real and substantial doubt as to the basis upon which the author came to their decision. Issues around the conflation of refusal of leave and cancellation of leave have already been discussed. The relevance of the apparent change of circumstances to the petitioner's eligibility for leave to enter as a student also lacks clarity. In the mind of the decision maker, what is the significance of the two issues identified in relation to source of funds and accommodation? Does the respondent take the view that the petitioner is no longer a genuine student, for example? As has often been said, reasons do not need to be overly elaborate or technical, but they do need to be comprehensible and adequate. The primary decision of 2 January 2023 (and, by extension, its second undated iteration, issued in response to the pre-action letter sent on his behalf on 4 March 2024) does not meet that test, and therefore it falls to be reduced.

Disposal

[38] For the foregoing reasons, I shall of consent sustain the second plea in law for the petitioner, thereafter I shall sustain the fourth, fifth, sixth and seventh pleas in law for the petitioner, refuse the respondents pleas in law and grant reduction of the relevant decisions as craved. I shall reserve all questions of expenses meantime.