



IAC-FH-NL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/33681/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 1 March 2016**

**Decision & Reasons
Promulgated
On 29 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SAJAD HUSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr. G. Harrison, Senior Home Office Presenting Officer
For the Respondent: Ms S. Najma, Kher Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge K Henderson, promulgated on 28 May 2015, in which she allowed Mr. Hussain's appeal against the Secretary of State's decision to cancel his leave to remain and to remove him from the United Kingdom.

2. For the purposes of this appeal, I refer to the Secretary of State as the Respondent, and to Mr. Hussain as the Appellant, reflecting their positions as they were before the First-tier Tribunal.
3. Permission to appeal was granted as follows:

“The cases of Gazi [2015] UKUT 000327 and Mehmood and Ali v SSHD [2015] EWCA Civ 744 have in part dealt with the issues of the generic nature of the evidence provided where there is a challenge by the respondent to an appellant’s IELTS test. The issue of whether or not the generic evidence is sufficient is clearly arguable. Leave is granted.”
4. The Appellant attended the hearing. I heard oral submissions from both representatives following which I reserved my decision, which I set out below with my reasons.

Submissions

5. Mr. Harrison relied on the grounds of appeal.
6. Ms Najma submitted that it was a detailed 15 page decision. The judge had given careful consideration to the evidence before her. I was referred to paragraph [9] where she referred to the lack of documents provided for the hearing. It was submitted that the judge had not had the necessary evidence before her to determine whether the Appellant had taken part in a deception. This evidence consisted of the three generic statements presented in every TOEIC case. In addition there was a template from the Respondent. The judge was correct to find that the documents provided by the Respondent did not link the Appellant to the deception. The burden of proof was on the Respondent. The documents provided by the Respondent did not link the Appellant to the fraud. The judge had reached her decision after careful consideration.
7. Mr. Harrison submitted in response that it was a long decision, but that the judge had rejected the Respondent’s position without fully engaging with the accusation of fraud. It was incumbent on the judge to make a finding as to why this evidence was rejected.
8. Ms Najma submitted that in paragraphs [21], [23] and [28] the judge had given reasons for why she did not attach weight to the evidence of the Respondent. In [29] she had given clear reasons for why the Respondent had not discharged the burden of proof.

Error of law

9. I find that this is a carefully considered and well-reasoned decision which does not involve the making of an error of law.

10. The judge sets out her concerns about the documents provided by the Respondent (paragraphs [9] to [11]). In paragraph [10], when referring to the document which was produced to link the Appellant to the information in the two other witness statements, she stated:

“I indicated to the Respondent’s representative that simply producing a document like this without evidence linking it to the Appellant and to the investigation was inadequate.”

11. It was following this that the Respondent’s representative produced “a template statement which was intended to assist the First-tier Tribunal in understanding the process by which the Appellant was identified as a person who had sought to obtain leave by deception” which the Respondent’s representative signed and adopted.

12. The judge set out her findings from paragraphs [20] to [34]. She gave careful consideration to the statements of Rebecca Collings and Peter Millington. (paragraphs [21] to [27]). She then set out her findings on the further statement adopted by the Respondent’s representative at the hearing. At paragraph [28] she states:

“I was finally presented with a witness statement which has been provided by the Home Office representative. This witness statement is an attempt to link the document provided at the hearing naming the Appellant with the process outlined above. The difficulty is that again this witness statement is generalised.”

13. The judge then set out her concerns with the term “invalid” which had been applied to the Appellant. In paragraph [29] she states:

“I am concerned that there is insufficient evidence to fully explain whether the finding of “invalidity” against the Appellant is on the basis of a sample of his test which has been matched with a proxy test taker or the alternative scenario which was outlined at paragraph 47 of Mr Millington’s witness statement which simply invalidates the test result on the basis of test administration irregularity. My conclusion is that it is important that where an individual is accused of deception that the full facts for coming to that conclusion are provided on an individual basis. The information provided by the Respondent needs to confirm which of the two alternatives outlined above has been applied to the Appellant. I do not accept that if the Appellant’s test score has been identified as invalid simply on the basis of irregularities at the test centre that this is sufficient evidence to show that he has provided a fraudulent test result. The Respondent must go further than this to avoid general and mistaken assumptions regarding dishonesty. If for example they are able to provide evidence that all tests on a certain date at a named college were obtained by abuse then this would be sufficient but that is not the position in this appeal.”

14. The judge had set out paragraph 47 of Mr Millington’s witness statement earlier in the decision [26], and had engaged with the two different scenarios.
15. I find that the judge carefully examined the evidence presented by the Respondent. She was aware of the seriousness of the allegation made by the Respondent that the Appellant had used deception, and that the burden of proof rested on the Respondent. She was aware that the term “invalid” was used to cover two different scenarios, [26] and [29], and she was not satisfied on the evidence before her that the use of the term “invalid” in association with the Appellant showed that he had used deception. I find that the judge was entitled to come to this finding, having carefully analysed the evidence and having given clear and cogent reasons for her finding.
16. The judge also assessed the Appellant’s evidence, [30] to [33]. She did not find this evidence to be entirely helpful, for example the evidence referred to in paragraph [30]. However she carefully assessed it and stated in paragraph [31] that “the other issues referred to are not conclusive in contributing to the finding that the Appellant has used deception”. She then gave reasons for these findings.
17. It was for the Respondent to show that the Appellant had used deception. The judge gave clear reasons for finding that the Respondent had not provided sufficient evidence to fully explain how the finding of invalidity was made in respect of the Appellant, and therefore that he had used deception. She engaged with the issue before her and gave clear reasons for her findings.

Notice of Decision

The decision does not involve the making of an error of law and I do not set it aside.

The decision of the First-tier Tribunal stands.

Signed

Date 14 March 2016

Deputy Upper Tribunal Judge Chamberlain

Approval for Promulgation

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| Name of Deputy Judge issuing approval: | |
| Appellant's Name: | |
| Case Number: | |

Oral decision (please indicate)

I approve the attached Decision and Reasons for promulgation

Name:

Date:

Amendments that require further action by Promulgation section:

Change of address:

Rep:

Appellant:

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Other Information: