



IAC-FH-AR-V1

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

Appeal Number: IA/36455/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 4th February 2016**

**Decision & Reasons
Promulgated
On 23rd March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**BILAL QADIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ahmed, Counsel, instructed by J Stifford Law Solicitors

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Pakistan, born on 20th February 1987. The Appellant first arrived in the UK on 31st March 2014 when he was given leave to enter as a Tier 4 (General) Student Migrant. However, on 9th September 2014 the Respondent decided that false representations

had been employed to obtain that leave and that the Appellant's leave should be cancelled and that the Appellant should be refused leave to enter. The Appellant appealed that decision, and his appeal was heard by First-tier Tribunal Judge Afako (the Judge) sitting at Taylor House on 20th May 2015. He decided to allow the appeal for the reasons given in his Decision dated 14th June 2014. The Respondent sought leave to appeal that decision, and on 8th October 2015 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Respondent decided to cancel the Appellant's leave to enter on receipt of information from Educational Testing Services (ETS) that the IELTS certificate awarded in the name of the Appellant following an English Language test taken on 12th March 2014 had been taken fraudulently in that a proxy tester had been used. The Appellant's leave to enter was therefore to be cancelled under the provisions of paragraph 321A(1) of the Statement of Changes in Immigration Rules HC 395. The Judge allowed the appeal because he found the evidence of the Appellant credible and decided that the Respondent had not discharged the burden of showing that a deception had been practised.
4. At the hearing, Mr Clarke argued that the Judge had erred in law in coming to that conclusion. He referred to the grounds of application and submitted that the Judge had failed to give adequate reasons for his findings. The Judge had attached insufficient weight to the evidence from Peter Millington, Rebecca Collings, and the ETS Test form contained in the Bundle of Documents submitted to the Judge. There had been good reason for ETS to invalidate the Appellant's test result. Instead, the Judge had relied upon the uncorroborated evidence of the Appellant. The Appellant had failed to show that his case was a possible "false positive". The Judge had not decided the appeal in accordance with the decision in **R (on the application of Gazi) v SSHD (ETS - judicial review) IJR [2015] UKUT 00327 (IAC)**. The Judge had placed too great a reliance upon the expert evidence of Dr Harrison given in that case. He had treated that evidence as determinative without giving weight to the substance of the Respondent's evidence. At paragraph 17 of the Decision, the Judge had applied the wrong standard of proof in deciding if there was a case for a "false positive".
5. In response, Mr Ahmed argued that there was no such error of law in the decision of the Judge. the Judge was correct not to assume that the evidence of the Respondent was flawless. The Respondent's witness Peter Millington did not claim voice recognition processes to be perfect, and the expert evidence of Dr Harrison went further. The Judge carried out a thorough analysis of all the evidence. He considered the evidence of the Appellant at paragraphs 14, 15 and 17 of the Decision, and also carefully considered the evidence of the Respondent contained in the Explanatory

Statement. The Judge stated the correct burden and standard of proof at paragraph 9 of the Decision, and it was apparent that he had applied it.

6. I find myself in agreement with the arguments of Mr Ahmed and I decide that the decision of the Judge did not contain an error on a point of law so that it should be set aside. In my view, the Judge carried out a careful and thorough analysis of all the relevant evidence and having applied the correct burden and standard of proof came to a conclusion which was open to him on that evidence. It is a matter for the Judge to decide what weight to attach to any evidence, and it cannot be said that in this case the decisions made by the Judge were perverse. The decision of the Judge was not contrary to any relevant jurisprudence and in particular the case of **Gazi** which in any event is a judicial review decision and therefore not necessarily binding upon the Judge. The Judge dealt with the conflict in the evidence as to whether the Appellant had dishonestly employed a proxy tester, and dealt with the issue of a possible “false positive”. The Judge did not exclude from his consideration any relevant evidence of the Respondent, and it was open to him to prefer the evidence of the Appellant. The arguments of the Respondent amount to no more than a disagreement with the decision of the Judge.

Notice of Decision

7. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

8. The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed I find no reason to do so.

Signed

Date

Deputy Upper Tribunal Judge Renton