



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

Appeal Number: IA/00165/2016

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 31 October 2017**

**Decision &  
Promulgated**

**On 27 November 2017**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**SYED SOHAIB AHMED HASHMI  
(NO ANONYMITY DIRECTION)**

Respondent

**Representation:**

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer

For the Respondent: Mr Parkin, instructed by Rayan Adams Solicitors

**DECISION AND REASONS**

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).
2. The appellant, Syed Sohaib Ahmed Hashmi, was born on 8 March 1977 and is a male citizen of Pakistan. In September 2014, having remained in the United Kingdom for some time with immigration status in a number of different categories, the appellant applied for indefinite leave to remain on the basis of his length of residence in the United Kingdom. On 23 March 2015, he was served with a notice as a person who had sought leave to

remain by deception. Pursuant to paragraph 322(2) of HC 395 (as amended) the respondent asserts that the appellant made false representations in his application for leave to remain. The appellant had submitted TOEIC certificates in respect of a test undertaken on 1 August 2012 in support of his application. Ultimately, on 21 December 2015, the respondent refused the appellant's application under paragraph 276B by reference to paragraph 322(2). The appellant appealed to the First-tier Tribunal (Judge Shimmin) which, in a decision which was promulgated on 13 January 2017, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

3. In allowing the appeal, the judge had taken into account the appellant's apparent lack of motive (he has a 'strong command of English' in any event). Significantly, this was a case in which there had been no "look-up tool" for test results available to the Secretary of State. There was no evidence to show whether the appellant's test result had been flagged as "invalid" as opposed to "questionable". In essence, the respondent had relied upon the so-called "generic" evidence of Mr Millington and Ms Collings.
4. I have read the judge's decision carefully. He has sought to deal with the evidence of Mr Millington and Ms Collings in some detail. He has not rejected it out of hand. He has, quite reasonably, observed that there was nothing in the evidence of Professor French [32] which would lead him inevitably to find that the appellant had cheated in his test. The judge was also correct to note that the evidence of the respondent's witnesses had not been tested by cross-examination and, in consequence, only limited weight could be attached to those statements [33]. The judge recorded that the appellant gave his evidence in "very competent English" at [37] and only one month after the disputed test, had passed a qualification for the Chartered Management Institute which had been taught entirely in English.
5. I find that the judge's decision is sound in law. It is significant that there was no "look-up tool" in the appellant's case. The judge heard evidence from the appellant which he accepted as truthful; it was open to him to do so. Indeed, I can do no better in concluding my decision than to quote from Mr Parkin's Rule 24 statement at [8]:

The fact remains that any examination of an allegation of TOEIC fraud is fact-sensitive. On the evidence before the First-tier Tribunal, the Tribunal believed the appellant. That conclusion was open to it. This appeal should be dismissed.

### **Notice of Decision**

6. This appeal is dismissed.
7. No anonymity direction is made.

Signed

Date 23 November 2017

Upper Tribunal Judge Lane