



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM)
APPEAL NUMBER: IA/17013/2015

CHAMBER)

THE IMMIGRATION ACTS

Heard at: Field House
On: 14 August 2017

Decision and Reasons Promulgated
On: 4 September 2017

Before

Deputy Upper Tribunal Judge Mailer

Between

MR MOHAMMAD SAEED
ANONYMITY DIRECTION NOT MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr D Ayodele, Goodfellows Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan born on 1 January 1959. He appeals with permission against the decision of the First-tier Tribunal Judge D Telford, who dismissed his appeal against the decision of the respondent refusing his application to remain under paragraph 276B of the Immigration Rules. The decision was promulgated on 12 December 2016.
2. First-tier Tribunal Judge Telford noted that the refusal was made under paragraph 322(1)A of the Immigration Rules as the appellant claimed to be in possession of a genuine ESOL certificate which would show that he had a certain command of the English language as required under paragraph 276B of the Rules.

3. He found at [8] that the appellant had not shown that the ESOL certificate was validly obtained by him.
4. On 20 June 2017 First-tier Tribunal Judge Ford granted the appellant permission to appeal.
5. An application dated 9 August 2017 to admit further evidence pursuant to Rule 152A of the 2008 Rules was not proceeded with. Mr Ayodele relied in particular on ground 2 and 4 of the grounds of appeal.
6. Mr Ayodele, who represented the appellant at the hearing, submitted with regard to the finding at [8] that the Judge did not have proper regard to the burden of proof as set out in decisions including AA (Nigeria) v SSHD [2010] EWCA Civ 773 and SM and Qadir v SSHD (ETS - Evidence - Burden of Proof) [2016] UKUT 229 (IAC).
7. The Judge therefore failed to consider that the burden of proof “lies with” the respondent on the balance of probabilities to demonstrate that the appellant relied on a false document to support his application. That he contended was a clear error of law as the burden was with the respondent on the balance of probabilities.
8. In the reasons for refusal the respondent referred to an interview on 8 March 2015 after which it was concluded that it was not credible that the appellant had successfully achieved entry level certificate in ESOL having regard to the discrepancies in his account. He struggled to answer questions asked and had a poor level of English. The respondent was satisfied that there was substantial evidence to conclude that the certificate produced had been fraudulently obtained. The appellant achieved a first class pass when tested.
9. The appellant asserted in his witness statement produced to the Tribunal that he believes that the ESOL certificate issued to him was genuine after he passed the test. He had a written interview test where he had to write his name, date of birth and some other questions. He said he can speak little English and can also read and write his name in English. He understands the English language “but little.”
10. The grounds also assert that the Judge failed to give adequate consideration to the plausible reasons given by the appellant in his witness statement. The English language is neither his mother tongue nor his first language. It was wrong for the Judge to make a formal assessment of the appellant’s standard of English. The Judge was required to support an allegation of deception on the evidence produced.
11. Mr Ayodele submitted that deception in this case 322(1)(a) entails dishonesty - AA v SSHD paragraph 75.
12. Mr Ayodele also submitted (ground 4) that the Judge failed to make a finding or give adequate reasons in respect of paragraph 276ADE of the Rules. There the Judge stated at [13] that the appellant produced little or no documentary evidence of his own 20 or more years claimed life in the UK. The logic was because it may be common for some people not to have any documentary evidence of their lives over the past 20 or so years,

it must follow that he is one of those persons and so nobody should even attempt to look at why he produced little or no documentary evidence. He found that this was poor logic based on a false premise [13].

13. On behalf of the respondent Mr Tarlow submitted that even assuming that the Judge's "finding" at [8] that the appellant has not shown that the ESOL certificate was validly obtained by him, is an error, it was however not material in the circumstances. He referred to [11] of the decision. The Judge referred to some of the questions asked in his interview of March 2015. His command of English was so poor that he must have known that the certificate he produced was false. He did not accept at [11] that on the proper standard of proof "the respondent has failed to show the certificate was false."
14. Accordingly, the Judge did properly direct himself as to the burden of proof being on the respondent.
15. In the reasons for refusal, the respondent has set out the basis for the conclusion that it was not credible that the appellant had successfully achieved the entry level certificate. He struggled to answer questions asked and had a poor level of English when interviewed. There was substantial evidence to conclude that the certificate produced was fraudulently obtained.
16. The interviewing officer concluded that it is not credible that he has a genuine qualification as he struggled to answer the questions asked and had a poor command of English.
17. Mr Tarlow referred to and relied on the full interview set out in the respondent's bundle from D3 onwards.
18. After question 17, the interviewer did not put the questions 18-25 to the appellant (D6). His answers to other questions had not been to the point. The later questions were not asked having regard to his inability to answer the earlier questions meaningfully.
19. He submitted that the Judge's conclusion is justified in the light of the evidence as a whole.
20. In reply Mr Ayodole submitted that the appellant has answered all the questions fully, but he "understood to an extent."

Assessment

21. The Judge has clearly erred, when stating at [8] that the appellant has not shown that the ESOL certificate was validly obtained by him. The burden of proof is with the respondent on the balance of probabilities.
22. Nevertheless, it is evident that the Judge was in fact aware that the respondent had the legal burden of proof when finding at [11] that he did not accept that on the proper standard of proof the respondent has failed to show that the certificate was false.
23. It is contended by Mr Ayodele that there was not a proper evidential basis for such finding. The respondent had the burden of proof.

24. I consider the basis for such finding as derived from the interview in March 2015.
25. The appellant confirmed at the outset that he was fit to be interviewed. His responses to some of the immigration history questions asked were clearly not appropriate.
26. I set out examples of inappropriate replies to questions asked at the interview. When asked what his current immigration status was, he said that he came to Heathrow Airport on 1 January 1993.
27. When asked how he chose the course before taking the English test and whether it was recommended to him, he stated that he did not know and does not remember.
28. When asked how often he attended the course he stated “three days a week go” (I presume he went three days a week).
29. He was asked why he chose this English language test. His response was that this was a long time ago, “my memory is not good now.” When asked whether anyone recommended the test to him he stated that he wanted to learn English too much. He looked at Tooting and other colleges. The Home Office wanted it.
30. He said that the test cost “maybe £100.” He booked the test.
31. The test lasted one day. It involved only English. He said he loves English. He looked at other colleges in Broadway.
32. He was asked how long it took him to obtain the certificate. He replied “sister, I don’t understand what you say.” The question was repeated and he said he gave him a paper after one and a half months.
33. He was asked where he took the Life in the UK test. He answered “no, no, maybe I will look for a nice college just one test B1”.
34. In the closing questions he was asked whether he has understood all the questions. He replied “now I am here a long time, you give me this work now, long time no work allow, you give me please.”
35. He was asked whether he would like to ask any questions. He said he is happy - no problem - he loves the UK “good country, nice people. Long time here I want stay good country.”
36. In the test certificate from City and Guilds relating to entry level certificate in ESOL International (spoken) (achiever) B1, it is noted that the appellant attended Universal Professional and Vocational College on 20 November 2013 and achieved a “first class pass”. At D2, a notification of candidate results are produced from City and Guilds (not a certificate) in which the written assessment held on 20 November 2013 recorded that he achieved a first class pass.
37. The Judge had regard to evidence of the appellant which he found to be “incredible” [9]. He did not accept his evidence that he followed the correct procedure in obtaining the ESOL certificate.

38. He stated that '...the submission that this is a fairly easy test (whatever that means) is not the point'. In particular, he found the appellant to be illiterate in English and could barely speak a few words of English. He cannot understand basic questions or phrases. This is nowhere near what is required even from the most basic ESOL test [9].
39. The Judge noted that the appellant simply failed to understand many basic phrases in English at the outset of the case and had to use the interpreter "in his own tongue throughout the proceedings". This undermined his submission that he was easily able to complete the test. The lack of fluency in English is very much an understatement of his capability in English. In the circumstances he found that it would be surprising if he had been in the UK for 20 or more continuous years.
40. He found that the appellant answered some questions in the interview in March 2015 but his command of English was and is so poor he must have known that the certificate he produced was false.
41. It was noted that none of the witnesses produced sought to argue that the appellant ever spoke to them in English, preferring throughout his time to use Urdu.
42. The Judge had regard to the submission that because it may be common for some people not to have any documentary evidence of their lives over the past 20 or so years that it must follow that the appellant is one of those persons and so one should not even attempt to look at why he produced little or no documentary evidence of his own 20 or more years claimed life in the UK. That he found to be poor logic based on the false premise that because some of a set of persons act in one way it somehow necessarily means that this appellant does [13].
43. Nor did the appellant provide any other evidence why he took no reasonable steps to provide evidence of his life in other forms. There is not a whole map or even a sensible piecemeal map of his life in the UK as a resident continuously for 20 or more years. Evidence of his witnesses was generalised and referred more to character and friendship [14].
44. Nor should he be accorded "the benefit of the doubt" as to what he says because to have any documents might mean that he would have been detained and lost his chance of living there for 20 or more years. There was no such legal test. He had failed to provide a reasonable explanation as to why he cannot or will not provide any sound evidence in any form of his stay here [15].
45. Moreover, the test is not as asserted, that it is "reasonably clear" that he has been here since 1992. He has to show on the balance of probabilities that this was so [16].
46. The evidence in his witness statement and "live form" does not establish that he was in the UK continuously or residing here [17]. One of the witnesses stated that she has known him in the UK for 15 years; another for 18 years whilst another stated that he knew him in the UK for 10 years.

47. The Judge noted his claim to have worked as a tailor but there is no record of any tax or National Insurance paid. Nor did he have any partner or family life or child in the UK [19].
48. I find that the Judge has given a careful decision. He has considered the evidence as a whole, including the appellant's performance at the hearing which took place on 12 December 2016. The Judge found that his English was poor and that he failed to understand many basic phrases and had to have an interpreter throughout the proceedings. The ESOL test was moreover undertaken in November 2013, more than three years prior to his giving evidence before the First-tier Tribunal.
49. The Judge has had proper regard to the interview record itself in which it was concluded that it was not credible, having regard to his poor level of English and comprehension, and his struggle and inability to answer basic questions asked, that he had successfully achieved an entry level certificate in ESOL which resulted in a first class pass in both written and spoken ESOL.
50. In the circumstances the Judge did not accept that on the proper standard of proof the respondent had failed to show that the certificate was false [11]. That was a conclusion that was sustainable on the evidence produced.

Notice of Decision

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

Anonymity direction not made.

Signed

Date 2 September 2017

Deputy Upper Tribunal Judge C R Mailer