



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/02697/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 2 August 2018

Decision & Reasons Promulgated  
On 20 August 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

MUHAMMAD NOOR  
(NO ANONYMITY DIRECTION)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chohan, instructed by SZ Solicitors  
For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Muhammad Noor, was born on 19 August 1986 and is a male citizen of Pakistan. The appellant entered the United Kingdom in 2005 having been granted leave to enter as a Tier 4 (General) Student. In March 2016, he made an application on the basis of 10 years' residence in the United Kingdom which was refused by a decision of the Secretary of State dated 31 January 2017. The appellant appealed to the First-tier Tribunal (Judge O'Hagan) which, in a decision promulgated on 5 December 2017, dismissed the appeal.
2. The appellant's application was refused, *inter alia*, on the basis that he had used deceit in obtaining an English language certificate from ETS. Judge O'Hagan stated at [4] that, "the crux of the matter is that the appellant submitted a TOEIC certificate as part

of his application. That had been obtained from ETS. Subsequently, ETS identified the appellant's certificate as one which had been obtained fraudulently through use of a proxy". The appellant's application was refused under paragraph 322(1A) and 322(2) of HC 395 (as amended).

3. At [32] Judge O'Hagan recorded the appellant's evidence that he had paid for the examination fee in cash. Judge O'Hagan considered it was "unusual" that cash payments were made but he accepted that, on occasion, they were for payments such as that in the instant appeal. The appellant claimed to have had a receipt but he did not adduce it in evidence. He had not taken steps to obtain any evidence to show that he had made the payment for the fee.
4. These comments follow on from an earlier finding [30] that the appellant had given an innocent explanation that "satisfied the minimum level of plausibility", the question of dishonesty having been raised by the response from ETS regarding the appellant's test results. The appellant's "innocent explanation" consisted of a bare denial of the allegation against him, the claim that he had sufficient English language skills to conduct the hearing before the First-tier Tribunal in English, and evidence of his competence in English whilst in Pakistan as a student. Judge O'Hagan appears to have rejected each of these elements of the explanation save for the claim that the appellant had chosen an examination college close to where he lived.
5. The judge rejected the appellant's claim that he had made payment for the test in cash as he claimed. He also rejected the appellant's explanation for having failed to contact ETS when he found that his test result had been cancelled. The judge also considered that the appellant's reliability had been called into question by the fact that, when asked to give evidence about the test itself, he admitted that the details he had provided had been obtained by research which he had carried out rather than his remembering what had happened during the examination. The judge considered that such evidence was, at best, "worthless" since it had no bearing upon past events. However, the judge considered that the evidence was "more significant than that" and concluded that the appellant had "clearly intended to convey the impression that he was described in the exam that he personally sat (*sic*)".
6. I accept that the judge was entitled to give weight to the finding that the appellant had been unable to provide a receipt for the examination which he claims to have undertaken. I accept also that it was open to the judge to draw an adverse inference from the fact that the appellant had taken no steps (even after he had instructed solicitors) to contact ETS. A stronger point in the judge's analysis is one which is not addressed in the grounds, namely the judge's finding that the appellant had sought to deceive the Tribunal by passing off research as memory. The appellant, significantly, did not volunteer the fact that he had researched the examination; he only disclosed that he had done so when cross-examined. I am mindful also that the judge had the opportunity (which I have not had) of hearing the appellant give oral evidence in court. Ultimately, the judge reached a conclusion which was available to him on the evidence. Some of his reasons for reaching that conclusion are, perhaps, not particularly persuasive but, taken as a whole, I find that the judge has given

sufficiently cogent reasons to support his findings of fact. In those circumstances, the appeal is dismissed.

**Notice of Decision**

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

Signed

Date 8 AUGUST 2018

Upper Tribunal Judge Lane

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 8 AUGUST 2018

Upper Tribunal Judge Lane