



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/00799/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19<sup>th</sup> January 2018

Decision & Reasons Promulgated  
On 7<sup>th</sup> March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

MR IMRAN KHAN  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Ahmed (Counsel)

For the Respondent: Mr E Tufan (Senior Home Office Presenting Officer)

**DECISION AND REASONS ON ERROR OF LAW**

1. The appellant's appeal against a decision to refuse his human rights claim was dismissed by First-tier Tribunal Judge Obhi ("the judge") in a decision promulgated on 29<sup>th</sup> March 2017. The judge found that the appellant did not meet the requirements of the Immigration Rules ("the rules") for leave to remain. The Secretary of State had made a finding that the appellant obtained a TOEIC result by means of deception. The judge found that the Secretary of State's case was made out in this regard and that the appellant's explanation by way of response was unsatisfactory.

2. Assessing the Article 8 case outside the rules, the judge took into account the appellant's family circumstances, including the presence here of two children. Having regard to section 117B of the 2002 Act, the judge concluded that there were no significant obstacles to the appellant returning to Pakistan to apply for entry clearance in order to rejoin his wife and children here, or to the continuation of family life in Pakistan. As the appellant could not succeed under Article 8, the appeal was dismissed.
3. Permission to appeal was sought on the basis that the judge erred in law in giving weight to the Secretary of State's evidence showing deception. Some of the documentary evidence relied upon was in the name of an individual who was clearly not the appellant and there appeared to be some confusion in the Secretary of State's case, which may have led the judge astray, regarding the location of the test centre attended by the appellant. There appeared to be two candidates, South Quay College and London Eastern College.
4. Permission was refused initially but then granted by an Upper Tribunal Judge, who found that it was arguable that the judge erred in her findings regarding deception. Again, some of the documentary evidence relied upon by the Secretary of State referred to a different individual and although a statement was before the judge which referred to the appellant himself, it was unclear whether this was provided to the appellant or his representatives, arguably giving rise to a procedural error amounting to an error of law.

### **Submissions on Error of Law**

5. Mr Ahmed said that the documentary evidence gave rise to concern. Annex A in the Secretary of State's bundle related to a person who was not the appellant. In the course of the hearing, the correct spreadsheet appeared to have been produced but it was not made available to the appellant or his representatives. As appeared in the Secretary of State's rule 24 response, made on 27<sup>th</sup> July 2017, the respondent accepted that Annex A referred to someone other than the appellant. On the day of the hearing, what was described as correct information was sent by fax. The appellant's case was noted as including a submission that the Home Office wrongly stated that he took his test at South Quay College, whereas he actually took it at London Eastern College. It was acknowledged in the rule 24 response that the additional evidence from the Secretary of State arrived only on the day. Mr Ahmed said that in fact it arrived ten minutes after the hearing concluded. During the hearing, submissions were made on the appellant's behalf regarding the error in the location of the test centre and the appellant's case that he sat at London Eastern College was clearly put.
6. The judge should have made findings in this regard.
7. The Secretary of State also relied on a supplementary statement from Ms Hilary Rackstraw but this included errors about the appellant's status. At paragraphs 5 and

6 of her statement, mention was made of an application for indefinite leave to remain and refusal of that application but the appellant had never applied for leave of this sort. Although the heading and conclusion of Ms Rackstraw's witness statement referred to the appellant, the contents referred to someone else.

8. The evidence before the judge did not link the appellant with South Quay College. In the absence of evidence showing where the test was taken, the judge might well have concluded, properly, that the Secretary of State had not discharged the evidential burden upon her.
9. Mr Tufan said that there had been an administrative error in collating the Secretary of State's bundle but that was rectified within ten minutes of the hearing and the judge was passed the correct evidence. The judge referred to the correct document in the decision. The Secretary of State provided a supplementary bundle which included Ms Rackstraw's witness statement.
10. Mr Ahmed said that this revealed the problem. The decision was written without the appellant having an opportunity to fully consider the supplementary bundle, as it arrived late. The evidence was made available after the appellant and his representative had left.

### **Conclusion on Error of Law**

11. Having taken into account the helpful submissions from the representatives, I conclude that procedural unfairness has been shown. Paragraph 21 of the decision shows that the judge took into account the supplementary bundle from the Secretary of State. That bundle includes a witness statement from Ms Rackstraw, which refers to the appellant as having applied for indefinite leave to remain. As is readily apparent from the decision letter, the appellant is not someone who has applied for indefinite leave.
12. At paragraph 7 the judge noted that it "became apparent" that the respondent's evidence in relation to the English language test referred to someone other than the appellant and was attached in error. There is then the following: "That was replaced during the course of the morning with the correct attachment." With great respect to the judge, that sentence rather suggests that the correct attachment was not given to the appellant and his advisers in the course of the hearing, or in time to be taken into account in submissions. The rule 24 response supports this analysis. The Presenting Officer's minute, parts of which are set out in the response, includes the following:
 

*"Annex A ... made reference to someone other than the appellant. I contacted (MS) and she confirmed that this had been done in error. Hilary Rackstraw amended Annex A and faxed through the correct information. I supplied a copy to the IJ through her clerk ... around 10 min (sic) after the hearing."*
13. The judge noted the appellant's case that he took his test at London Eastern College, and not South Quay College. At paragraph 27, she found on a balance of probabilities that he sat the test at South Quay. The supplementary bundle,

containing Ms Rackstraw's witness statement, is one which contains errors, capable of bearing on the weight to be given to the statement and, perhaps, the other evidence tending to show the venue of the test as South Quay College. Procedural fairness required the appellant and his advisers to be given an opportunity to properly assess all the evidence, including the material that was given to the judge after the hearing.

14. In a brief discussion on the appropriate venue if an error of law were found, Mr Ahmed and Mr Tufan agreed that the decision should be remade in the First-tier Tribunal.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside, as containing a material error of law. The decision will be remade in the First-tier Tribunal at Taylor House, before a judge other than Judge Obhi.

Signed

Date 5<sup>th</sup> March 2018

Deputy Upper Tribunal Judge R C Campbell

### **ANONYMITY**

The First-tier Tribunal Judge sensibly made an anonymity order, under Rule 13 of the 2014 Procedure Rules. I maintain that order, taking into account the members of the family who are minor children.

Signed

Date 5<sup>th</sup> March 2018

Deputy Upper Tribunal Judge R C Campbell