



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/10208/2015

THE IMMIGRATION ACTS

Heard at Field House
On 8th June 2018

Decision & Reasons Promulgated
On 16th July 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ISANUL HOQUE
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms S Vidyaharan, Home Office Presenting Officer
For the Respondent: Mr M Moriarty, Counsel instructed by D J Webb & Co Solicitors

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State who challenges the Decision and Reasons of First-tier Tribunal Judge Davidson promulgated on 15th November 2017 in which he allowed the appeal.

2. The Appellant in this case is a national of Bangladesh born in 1983 and it is what is commonly referred to as an ETS case. He came to the UK in 2006 as a student and had various extensions of leave during which there was no challenge to the fact that he was studying. He made an application in March of 2014 and whilst that application was still pending he was visited by immigration enforcement officers and detained. That application was refused and it was refused on the basis that in a previous application he had submitted a false English language test. The Appellant voluntarily left the UK in November 2015 and an appeal was lodged thereafter. He was only entitled to an out of country right of appeal. The judge therefore did not have any live evidence, only documentary evidence and a lengthy and detailed statement from the Appellant.
3. The Tribunal had the usual bundle of evidence from the Secretary of State in relation to witness statements from Kelvin Hibbs, Senior Caseworker, Rebecca Collings, Civil Servant from UKVI, Peter Millington, Assistant Director responsible for processing in country Tier 4 student applications and an expert report from Professor French. Those documents all suggested that there was reliable evidence that the Appellant's language test should be regarded as invalid and having been taken by a proxy. That satisfied the initial evidential burden on the Secretary of State that there were reasonable grounds to think this has happened which then shifted to the Appellant to proffer an innocent explanation.
4. The judge having found that the Respondent had discharged the initial burden of proof then found the Appellant had discharged that burden. The difficulty with that is that there are no reasons given whatsoever by the judge, he simply says at paragraph 14, "I find that the Respondent has discharged the initial burden of showing that there is a prima facie case to answer", and at paragraph 15, "I find that the Appellant has discharged his burden of showing that there is an innocent explanation and I accept his account of events as plausible." Again, no reasons given. The lack of reasoning leads me to conclude without any hesitation that this Decision and Reasons is tainted by material errors of law and should be set aside. However, given that this is an out of country case and reliant upon documentary evidence, both representatives in front of me were content that I could re-decide the matter on the evidence as contained in the file. I share the view of the First-tier Judge that those documents do provide sufficient evidence to discharge the initial burden of proof on the Secretary of State and I say that because there have been countless cases stating precisely that in relation to this evidence, so that said, the burden does shift to the Appellant to proffer an innocent explanation.
5. I find that the Appellant has proffered an innocent explanation and the reasons I say that are because this Appellant, before he came to the UK, undertook an English language test as he was required to do. That was as long ago as 2004 which he passed and he passed with a good score. He has produced a number of Certificates that he has achieved during his studies in the UK, all of those courses being in the English language. There is a Certificate from the Business College of London where he was awarded a Diploma in English Language in September of 2007, there is a Certificate from the Business College of London in relation to that same course showing that he passed that course with First Division, which I presume is similar to a First Class

Degree except it is a Diploma. There is then a Certificate in March 2009 to say that he had completed an Advanced Diploma in IT at the Business College of London and again his scores for that course were As, A+s with only a couple of Bs. There is then a Certificate dated 2011 that he has achieved Level 4 Professional Certificate in Tourism and Hospitality Management which he achieved with a merit and Level 5 also with merit in March 2012. There is then a Certificate at Level 6 passing with merit in October 2012 and then, perhaps most impressive of all, University of the West of England Bachelor of Science Degree Lower Division Second Class Honours in March 2014. All of those courses were studied in English.

6. Case law in this field has made clear however that the demonstrable standard of English is not necessarily a complete answer and people who speak excellent English may have other reasons for wishing somebody else to take the test for them. In this case however the Appellant in his witness statement goes into great detail describing the day of the test, how long it took, the arrangement of the room, the sort of questions and that indicates to me on a balance of probabilities that he was there and he took the test himself. Also quite telling is the test in question was the one taken on 19th September 2012. He took an additional test on 22nd September 2012 and that has not been challenged as questionable or invalid, so on the basis of the Appellant's evidence I am entirely satisfied that he did not employ a proxy to take the English language test, that he took it himself and that he passed and therefore in re-deciding the appeal I allow it.

Notice of Decision

7. This of course is an old style appeal and it is allowed under the Immigration Rules.
8. No anonymity direction is made.

Signed *T J Martin*

Date 16th July 2018

Upper Tribunal Judge Martin