



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01312/2019

THE IMMIGRATION ACTS

Heard at Field House
On 9 March 2020

Decision & Reasons Promulgated
On 16 March 2020

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

RAMHARI ADHIKARI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

REMAKING DECISION AND REASONS

Introduction

1. This is the remaking component of the decision in this appeal following my previous conclusion that the First-tier Tribunal had erred in law (contained in the error of law component of this decision, promulgated on 9 January 2020, appended below). In summary, when considering whether the Appellant had been dishonest when obtaining and submitting a TOEIC English language test certificate in 2013, the First-tier Tribunal had failed to have regard to evidence indicating a proficiency in English

at the time of the test in question. This error was material to the Appellant's Article 8 claim as a whole. The decision of the First-tier Tribunal was set aside and a resumed hearing listed.

The scope of the remaking component of this appeal

2. As stated in para 17 of the error of law conclusions, I am now considering the Appellant's Article 8 claim both within and without the ambit of the relevant Immigration Rules. An important factual aspect of this is the obtaining and use of the TOEIC test certificate ("the certificate") through ETS and whether the Appellant was dishonest in this regard.
3. In respect of the dishonesty issue, it is for the Respondent to meet an initial evidential burden. If this is done, the Appellant must then provide an innocent explanation; in other words, one that is reasonably capable of belief (but no more). If he is able to do this, the legal burden rests upon the Respondent to prove dishonesty. My finding on dishonesty will be factored in to my assessment of Article 8.

The evidence

4. In remaking the decision in this appeal I have had regard to the Respondent's original appeal bundle prepared for the First-tier Tribunal hearing, the Appellant's unpaginated bundle, and the oral evidence provided at the hearing on 9 March 2020, a full note of which is contained in the record of proceedings.
5. In summary, the Appellant adopted his witness statement dated 3 July 2019 and provided further information about his history of studies in the United Kingdom. He emphasised the fact that his second college, Anniesland College in Glasgow, was a publicly-funded institution and would only accept him onto the course if his English language ability had been good enough. He accepted that he had not told the Respondent of a change of address directly; he informed his college and expected them to pass this on to the Home Office. He stated that he had booked the English test at South Quay College himself and had paid in cash. He had not kept a receipt. He could not have booked an ILETS test because of the long wait involved. Pearson test centres were all fully booked. The Appellant said that a friend of his with whom he had been staying at the time could confirm that he went to the test centre, but he had not asked her to come and give evidence. He categorically denied having cheated. Finally, he confirmed that he has no wife or children.

Submissions

6. Mr Kandola relied on the reasons for refusal letter dated 9 January 2019. He submitted that the evidence adduced by the Respondent discharged the evidential burden. The Appellant had failed to provide an innocent explanation: there were no receipts; there were no witnesses; the details of the test stated in the Appellant's witness statement could have been obtained through publicly available sources. Mr Kandola pointed out the lack of academic progress made by the Appellant whilst in the United Kingdom. By inference, it was more than coincidence that all of the

colleges chosen by the Appellant had had their licences suspended and then revoked. The Appellant obtained an ILETS score of 6.0, but his TOEIC score was 200. Even if the Appellant had put forward an innocent explanation, the Respondent was able to discharge the legal burden.

7. Mr Kandola suggested that if the Appellant had not in fact received the IS.151A notice of liability for removal in 2014, this was because he had failed to notify a change of address.
8. Mr Kandola acknowledged that as the Appellant had not completed his studies in this country because of the revocation of licences, the concession made in the Court of Appeal at para 37 of Khan [2018] EWCA Civ 1684 would potentially apply if the Appellant had not been dishonest. A period of 60 days' leave to remain may be appropriate.
9. The Appellant re-emphasised his assertion that he had never been dishonest. He had made as such progress in his studies as was possible, but the suspension and renovation of the licences prevented more. He had tried to contact ETS, but they had been very difficult. Anniesland College and Glyndwr University in London had been publicly-funded institutions and this was important. He relied on his academic certificates and the two ILETS certificates in his bundle.
10. I was referred to the All-Party Parliamentary Group on TOEIC report dated 18 July 2019, in which criticisms of the Respondent's approach to ETS cases and concerns with the evidence from ETS itself are highlighted.
11. In response to this last point, Mr Kandola suggested that the APPG report was not entirely reliable, as not all of the expert evidence had been set out therein.

Findings of fact

12. The combination of the well-known "generic evidence" (including the witness statements of Peter Millington and Rebecca Collings), the Look-up Tool , and the extract from the Respondent's database confirming that the Appellant's results were deemed "invalid", are sufficient to discharge the relatively low evidential burden.
13. In saying this, the database extract refers to the Appellant's nationality as "Gibraltar" and this error is relevant to the overall assessment of the Respondent's evidence in respect of the legal burden, to which I will return in due course.
14. I turn to the Appellant's side of the story, as it were. I find the Appellant's English language ability leading up to the disputed test on 20 March 2013 is of significance. The two IELTS certificates, dated 7 August 2009 and 3 November 2011, have never been challenged. I find them both to be reliable evidence as to the Appellant's ability as at those points in time; the former being prior to his arrival in the United Kingdom and the latter after a period of studying here in the English medium. The speaking test scores (that being the only component said by the Respondent to have involved cheating by the Appellant) were 6.0 in 2009 and 6.0 in 2011. That was sufficient to

place him in the CEFR B2 band (at the top of the upper intermediate bracket). I have not been referred to any evidence which indicates that this meant that the Appellant was anything other than a confident English speaker. Nor have I been shown evidence which renders the Appellant's claimed increased proficiency in spoken English between 2011 and the test in 2013 to be so implausible as to be rejected out of hand.

15. Following from the above, I note that the Appellant's TOEIC listening and reading scores (stated in the Glyndwr University letter of 20 May 2013) are in line with the B2 level confirmed by the IELTS certificates. The writing element (a score of 200 – the highest) has never been the subject of challenge by the Respondent. As with the Appellant's speaking score, I have not been referred to any evidence to indicate that his achievement in the writing test was wholly implausible.
16. Mr Kandola has urged me to find that the Appellant's choice of educational institutions is problematic: all three had their licences suspended and then revoked (Glyndwr University subsequently had its licence reinstated, subject to structural changes in its operation). The inference I have been asked to draw is that this is more than simple coincidence: it indicates that the Appellant was not a genuine student all along. I reject this submission. I find that the Appellant's evidence on this issue is manifestly reasonably capable of belief. I accept that the Appellant relied on what he described as a "consultant" in Nepal as to the choice of the first educational institution, the Edinburgh School of Business. This was a private college. There is no challenge to the evidence used by the Appellant when seeking and obtaining entry clearance study at that institution. At the time the Appellant began his studies, that college had a licence and was an A rated sponsor. The Respondent has adduced no direct evidence to show that the Appellant did not undertake any studies there at all. I find that he did follow his course of studies until the college's licence was suspended on an unknown date in 2010. There is nothing adverse here to the Appellant's credibility as a genuine student.
17. Following the revocation of that college's licence, the Appellant enrolled in a course at Anniesland College in Glasgow in 2011. I find this institution was publicly-funded and was a Highly Trusted Sponsor. The letter from that institution, dated 15 December 2011, shows that the Appellant's English language proficiency was tested (resulting in the second IELTS certificate), and that he was a "hard-working student" with a high attendance record. The independent evidence indicates that the Appellant was a genuine student at that time. In addition, the Appellant's oral evidence added to his overall credibility. He was at pains to emphasise the fact that following his bad experience with the private college in Edinburgh, he had deliberately sought out a publicly-funded institution which he felt might be a more reputable provider. Whatever the reality might have been in hindsight, the Appellant's subjective view makes good sense when seen in its proper context.
18. When Anniesland College lost its Highly Trusted Sponsor status, the Appellant was obliged to find a new educational provider. Again, the Appellant has stated that he wanted to attend a publicly-funded institution, Glyndwr University, which would,

he had hoped, have provided a stable and reputable platform. His enrolment on the Chartered Institute of Management Accountants programme was not inconsistent with his previous courses. There is no evidence to show that the Appellant failed to attend the course for as long as it was possible for him to have done so. Indeed, a letter from CIMA dated 4 September 2014, shows that he had completed the Institute's Certificate in Business Accounting. As with the previous two educational institutions, the evidence shows that the Appellant was a genuine student insofar as his intentions and actual performance were concerned.

19. The certificate from ETS in respect of the TOEIC test on 20 March 2013 was used by the Appellant to gain admission to Glyndwr University. Mr Kandola is right to point out that there are a couple of evidential shortcomings in the Appellant's explanation concerning his assertion that he in fact undertook the speaking test himself. There are no receipts confirming the booking of the test or payments made. Further, the Appellant has stated that a friend with whom he was staying at the time could have attended as a witness on his behalf and that she would have been able to confirm that he had gone to the test centre on the day in question. There is no evidence from this individual. These two omissions are relevant, and I take them into account. However, I must also consider the evidence that I do have, including that presented by the Appellant both in writing and orally. In my view, there is nothing inherently improbable about an individual throwing away a paper receipt in circumstances where there was no apparent need for that evidence to be retained. In his oral evidence, the Appellant told me that he had initially sought to book a speaking test with IELTS, but the waiting time was too long. He had then sought to book a TOEIC test at a Pearson institution, but they fully booked up. South Quay College was, as it were, a last resort. I accept this evidence is being true. It fits well with the overall pattern of the Appellant's behaviour as regards his education in the United Kingdom: he had repeatedly sought to comply with the rules, to pursue his studies, and to optimise his chances of successfully completing those studies.
20. The Appellant's witness statement provides a good amount of detail concerning his attendance at the test centre and the various components of the test in question. None of the details have been specifically challenged by the Respondent. I have not been referred to any evidence which materially undermines the details provided by the Appellant in that witness statement. Mr Kandola has suggested that the Appellant could have learned this information from "publicly available sources", but this is entirely speculative. It is *a* possibility, but in the context of the evidence as a whole, a remote one at best.
21. The Appellant stated that due to his good ability in English at the time there was no need for him to have cheated in the speaking test. He makes what I consider to be a fair point; that he had already had experience with tests, the inference being that a fear of not been able to cope with the environment was not a relevant factor in his case.
22. A final point in respect of the Appellant's explanation is the fact that he took it upon himself to contact ETS. A response from ETS is contained in the Appellant's bundle.

Although it is undated, I am satisfied that the contact was made in 2014 on the basis that a follow-up email in the bundle is dated 3 December 2014. This correspondence supports the Appellant's evidence that it was difficult to obtain any detailed information from ETS. It is also consistent with the point made earlier concerning the Appellant being proactive in seeking to genuinely pursue studies in this country.

23. In light of the above, the evidential "boomerang" now flies back in the Respondent's direction. Has she provided sufficient evidence to undermine what I consider to be the Appellant's strong explanation?
24. I have considered the evidence presented by the Respondent in respect of South Quay College itself. It was the subject of Project Façade and was severely criticised in respect of TOEIC tests undertaken. In a sense, this is the strongest evidence against the Appellant. The Appellant's test March 2013 was within the period assessed by the investigation. The extract at Annex K the Respondent's bundle indicates that abuse was "widespread", and that proxy test-takers were identified in the large majority of speaking and writing test sessions examined. I have considered this evidence in the context of the Look up Tool in respect of the test date in question and the database extract confirming that the Appellant's speaking test was deemed "invalid".
25. I do not of course have any voice recordings and/or voice analysis evidence in respect of the Appellant's speaking test. Although it might have been possible for the Appellant himself to have requested these, the legal burden rests upon the Respondent and there has been no attempt (at least as far as I can see) to obtain the evidence. Thus, the central evidence upon which ETS apparently relied when undertaking its analysis, and upon which the Respondent now relies when asserting that the Appellant has been dishonest, is not before me.
26. The erroneous reference to the Appellant being from "Gibraltar" is not entirely irrelevant to my assessment of the evidence as a whole: it is a clear mistake and goes to indicate that the recording of relevant information is certainly not infallible.
27. I acknowledge the fact that there may be a variety of reasons as to why an individual would cheat in a test. A known lack of proficiency may be one; so too may be a fear of a test environment in general. However, in the present case, I have found that the Appellant already had a good proficiency in English by March 2013, that he had had previous experience of test conditions, and that he was a genuine student who wished to pursue his studies in the United Kingdom.
28. In respect of the APPG report from 2019, whilst in no way decisive, it does cast material doubts upon the systems operated by EPS and, in turn, the Respondent in respect of the very serious allegations of dishonesty ranged against a large number of individuals. If Mr Kandola's criticism that the report does not set out of the expert evidence, thus reducing its overall reliability, is correct then surely the same can be said about the Respondent's case here: the "expert evidence" comprising the analysis of the voice recordings is not before me; nor are the recordings themselves.

29. Weighing up all evidential matters in this case, I find that the Respondent has failed to discharge the legal burden of proving that the Appellant dishonestly obtained and then used the English language certificate in 2013. Given the seriousness of the allegation made, legal burden can only be discharged by cogent evidence (albeit, on the balance of probabilities and nothing higher). Here, the Appellant's evidence is, when viewed cumulatively, powerful. The Respondent's case finds relatively strong support in the form of the evidence from Project Facade in combination with the cancellation of the Appellant's test results. However, other points taken against the Appellant do not stand up to scrutiny and there is the absence of the voice recordings themselves, together with any voice analysis thereon. On a highly fact-specific assessment, the respondent has not made out her case. I find that the Appellant has never acted dishonestly. My finding would be the same wherever the legal burden rested.
30. On a separate issue, the Appellant has asserted that he never received a notice of liability to removal or a curtailment decision, issued by the Respondent 3 October 2014. He has accepted that he did not inform the Respondent of a change of address, assuming that Glyndwr University would have done this. In light of Regulation 7(2) of the Immigration (Notices) Regulation 2003, I am satisfied that once the notice was returned to the Respondent on delivered to the Appellant's last known address (albeit that he was not residing there at time), that notice was placed on file and that this constituted service.
31. Given that the Appellant had been granted leave to remain as a Tier 4 student from 29 May 2013 until 26 September 2016, the IS.151A notice of the more 3 October 2014 must have followed from a curtailment decision of that leave. Unfortunately, I have not been provided with that curtailment decision. Under Article 8ZA(1) and (4) of the Immigration (Leave to Enter and Remain) Order 2000, as amended, an unsuccessful giving of notice of the curtailment decision to the last known address of the Appellant and the placing of that notice on file (which I am satisfied did in fact occur) constituted good service.

Conclusions

32. The outcome of this particular appeal can of course only be based upon Article 8.
33. I find that the Appellant has established a private life in the United Kingdom over the course of time. Although the details of any social ties and suchlike are thin, the length of time here and his pursuit of studies is sufficient.
34. I am also satisfied that the Respondent's refusal of the Appellant's human rights claim constitutes an interference with the private life.
35. Moving straight onto the issue of proportionality, it is clear that the Appellant cannot meet any of the relevant Immigration Rules, in particular paragraph 276ADE(1)(vi). On any view of the evidence, the Appellant would not face "very significant obstacles" to his reintegration into Nepalese society.

36. The real point here is whether my finding on dishonesty constitutes a feature of sufficient strength to outweigh the general public interest in maintaining effective immigration control and the other relevant considerations under section 117B of the Nationality, Immigration and Asylum Act 2002, as amended.
37. Mr Kandola has accepted that the Appellant's previous need to remain as a student was not curtailed because he (the Appellant) had completed his course of studies. He acknowledged that the concession made by the Respondent before the Court of Appeal in Khan would appear to apply in the Appellant's case.
38. Para 37 of Khan includes the following:

"37. Further, at para. 8 of the note, it was stated:

"Nonetheless, for the avoidance of doubt, the SSHD confirms that:

(i) For those individuals whose leave was curtailed, and where that leave would still have time to run as at the date of an FTT determination that there was no deception, subject to any further appeal to the UT, the curtailment decision would be withdrawn and the effect ... would be that leave would continue and the individuals would not be disadvantaged in any future application they chose to make;

(ii) For those whose leave has been curtailed, and where the leave would in any event have expired without any further application being made, the Respondent will provide a further opportunity for the individuals to obtain leave with the safeguards in paragraph (iii) below.

For those whose leave had expired, and who had made an in time application for further leave to remain which was refused on ETS grounds, the effect of an FTT determination that there was no deception would be that the refusal would be withdrawn. The applicant in question would still have an outstanding application for leave to remain and the Respondent will provide them with a reasonable opportunity to make any further changes to their application which would be considered on the basis of them not having employed any deception in the obtaining of their TOEIC certificate, and they would in no way be disadvantaged in any future application they chose to make.

(iii) In all cases, the Respondent confirms that in making any future decision he will not hold any previous gap in leave caused by any erroneous decision in relation to ETS against the relevant applicant, and will have to take into account all the circumstances of each case."

39. In the Appellant's case it is (ii) that would seem to apply. As Mr Kandola acknowledged, the Appellant would be entitled to a grant of leave to remain for 60 days during which he could, if he so wished, make an application for further leave to remain as a student (or indeed in some other category).

40. I conclude that the erroneous allegation made by the Respondent in respect of the Appellant's dishonesty is a compelling feature of this case. The Appellant's previous leave to remain as a student was curtailed either because it had specifically been alleged he had acted dishonestly in obtaining and submitting a fraudulent certificate, or because they were deemed to be systemic problems with Glyndwr University's assessment of English language proficiency in 2014 (the reason I cannot be precise as to the basis of the curtailment is that the Respondent has failed to provide a copy of the notice). On either basis, the ETS issue played a decisive role in the curtailment. In light of my findings of fact, the Appellant had never been dishonest, the force allegation constitutes a compelling feature of this case, and the concession made by the Respondent in Khan should apply to him.
41. Any period of leave granted to the Appellant in light of my decision is of course a matter for the Respondent.

Anonymity

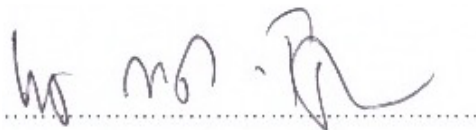
42. The First-tier Tribunal did not make an anonymity direction. There is no reason why I should do so and no such direction is made.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The decision is remade and the appeal allowed.

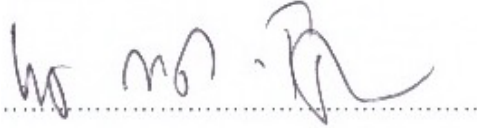


Signed
Upper Tribunal Judge Norton-Taylor

Date: 10 March 2020

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140.00.

A handwritten signature in black ink, appearing to read 'Ms Norton-Taylor', written over a horizontal dotted line.

Signed

Date: 10 March 2020

Upper Tribunal Judge Norton-Taylor

APPENDIX: ERROR OF LAW COMPONENT



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

Appeal Number: HU/01312/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 2 January 2020**

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MR RAMHARI ADHIKARI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person

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

DECISION AND REASONS

Introduction

1. The Appellant appeals to the Upper Tribunal against the decision of First-tier Tribunal Judge Kainth (“the judge”), promulgated on 6 August 2019, dismissing the Appellant’s appeal against the Respondent’s refusal of his application for leave to

remain in the United Kingdom (deemed to be a human rights claim), dated 9 January 2019.

2. The Appellant had arrived in the United Kingdom in October 2009 with leave to enter as a Tier 4 Student. Following a number of extensions in the same category, the applicant, as I understand it, was deemed to have become an overstayer from October 2014. On 26 September 2016 he made an application for indefinite leave to remain. On 9 May 2017, this was varied on the basis of human rights, specifically private life under Article 8.
3. In refusing the human rights claim, the Respondent relied on suitability grounds, asserting that the Appellant had fraudulently obtained an English language test certificate following a test purportedly taken on 20 March 2013 at South Quay College in London. It was said that following receipt of information from ETS, it had been established that the Appellant had used a proxy test taker. Consideration was given to Article 8 within the context of the Immigration Rules and without. It was said that refusal of the claim would be proportionate.

The decision of the First-tier Tribunal

4. On appeal to the First-tier Tribunal, the Appellant represented himself. He had submitted a bundle of evidence including a witness statement and a number of documents relating to previous English language tests, plus letters from various United Kingdom institutions regarding his education in this country.
5. The Respondent had provided what has commonly been referred to as “generic evidence” relating to the ETS issue, together with evidence from Project Façade relating to South Quay College, a spreadsheet concerning the Appellant’s test results and the Look-up Tool relating both to the test taken on the particular day in question and more generally.
6. The judge was satisfied that the Respondent’s evidence discharged the evidential burden resting upon her. He then went on to consider whether or not the Appellant had provided an “innocent explanation”. The judge considered the Appellant’s attempts to contact ETS regarding the test results. He was not satisfied with the Appellant’s explanation as to why additional contact with ETS had not apparently occurred (at least in respect of the evidence adduced on appeal). The judge regarded the Appellant’s written and oral evidence as being “more generic than specific”.
7. In considering the Respondent’s evidence in more detail, the judge noted the various statistics collected in respect of South Quay College. This evidence satisfied the judge that many of the test takers had apparently scored significantly higher than that of genuine candidates who had taken the tests in at least one other credible educational institution. The well-known expert report of Professor French was also considered. Having undertaken this exercise, the judge concludes at [36] that the Appellant had failed to provide a plausible and innocent explanation which satisfied the minimum level of plausibility. Although the judge did not then state in terms (as he should have done) that the Respondent had therefore discharged the legal burden

resting upon her, by default as it were, it is clear enough that he was concluding that this had in effect been done and that the Appellant had practised deception when using the English language test certificate for an application made on 29 March 2013.

The grounds of appeal and grant of permission

8. The Appellant, with the assistance of a friend I assume, drafted the grounds of appeal. They are lengthy, but can be summarised as follows: first, it is said that the judge failed to consider relevant documentary evidence relating to the Appellant's pre-existing ability in English language at the time of the test in March 2013; second, that the judge failed to adequately assess oral evidence including that relating to the sending of emails to ETS; third, that the judge had failed to adequately consider a generic report produced by the National Union of Students relating to the ETS issue.
9. In a detailed and considered grant of permission, First-tier Tribunal Judge Landes deemed it arguable that the judge had erred in failing to consider the documents relating to pre-existing English ability and an error in the ETS spreadsheet which had referred to the Appellant's nationality as Gibraltar rather than Nepalese. Whilst the other two grounds of appeal were deemed to have little if any merit, the grant of permission was not restricted.

The hearing

10. I was satisfied that the Appellant understood the nature of the proceedings and was able to participate fully and fairly. He explained in a little more detail about the email issue, telling me that he had sent an email to the alternative ETS email address on 12 December 2014. He candidly accepted that he was not sure whether evidence of this had in fact been before the judge.
11. Mr Tufan acknowledged that the judge had not referred to the documentation relating to the Appellant's pre-existing English language ability and had not dealt with the error in the spreadsheet relating to nationality. However relying on [50], [51] and [57] of MA (ETS - TOEIC Testing) [2016] UKUT 00450 (IAC) and the judge's decision as a whole, he submitted that the omissions were not material. The judge had been entitled to conclude that the test results had been invalidated as a result of the ETS investigations, and he had been entitled to place weight upon the Respondent's evidence relating to South Quay College, in addition to the report of Professor French.

Error of law decision

12. I conclude that the judge has materially erred in law. This is specifically in respect of the failure to have considered certain relevant documentary evidence at all, namely the IELTS certificates dated 7 August 2009 and 3 November 2011, together with other accompanying relevant documents which clearly went to the issue of the Appellant's pre-existing English language ability at the time of the controversial test on 20 March 2013.

13. Both of the certificates, one obtained whilst the Appellant was still in Nepal and the other when he was in the United Kingdom, gave his speaking score as 6.0. These test results (which have not been the subject of any challenge at any stage as far as I am aware) had both been relied upon in order to obtain enrolment onto various courses in the United Kingdom. On their face they clearly indicated a fairly strong proficiency in English language, particularly in respect of speaking. They were before the judge and in my view they required specific consideration in the context of the evidence as a whole.
14. Mr Tufan is fully entitled to rely on MA and the proposition that people with good English language ability may nonetheless cheat in tests for a variety of reasons. That is undoubtedly a factor that has to be grappled with in cases such as this. However, that can only be done fairly and properly if *all* relevant evidence is considered. In this case an important aspect of that evidence has been left out of account. It is not to say that specific consideration of this evidence would inevitably have led to a different outcome, but the certificates carry with them sufficient potential weight to render the judge's failure to consider them not simply an error, but a material error.
15. As the error goes to the issue of the English language test and in turn the Appellant's honesty, I see no other alternative but to set the judge's decision aside.

Disposal

16. This appeal will be retained in the Upper Tribunal and a resumed hearing held before me in due course.
17. At the next hearing, I will receive oral evidence on all relevant matters. In particular, I will consider the issue of the English language test in 2013 and the Appellant's Article 8 claim. I give directions to the parties, below. The Appellant should read these carefully.

Notice of Decision

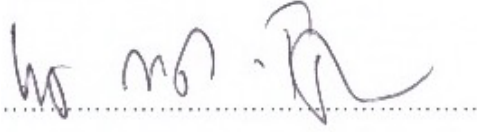
The decision of the First-tier Tribunal contains an error of law and is set aside.

The appeal is adjourned for a resumed hearing.

Directions to the parties

- 1) **The Appellant shall send any further evidence (including documents concerning any emails sent to and received from ETS) to the Upper Tribunal and the Respondent no later than 25 January 2020;**

- 2) Any further evidence from the Respondent shall be sent to the Upper Tribunal and the Appellant no later than 25 January 2020.

A handwritten signature in black ink, appearing to read 'Ms Norton-Taylor', written over a horizontal dotted line.

Signed

Date: 7 January 2020

Upper Tribunal Judge Norton-Taylor