



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

Appeal Number: IA/39586/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6 May 2015**

**Decision & Reasons Promulgated
On 12 May 2015**

Before

**THE HONOURABLE MRS JUSTICE MCGOWAN
UPPER TRIBUNAL JUDGE PERKINS**

Between

REHAN SAID

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. E. Oremuyiwa, Legal Representative from London
Investigation Immigration Education Ltd

For the Respondent: Miss A. Broklesby-Weller, Senior Home Office Presenting
Officer

DECISION AND REASONS

BACKGROUND

1. The Appellant is a citizen of Pakistan; he was born on 26 May 1986. He is married to Safia Parveen. She was born on 4 May 1984; she is also a citizen of Pakistan. They have a daughter, born on 25 February 2014 in the UK. The Appellant's wife is a Post Study Work Migrant and the appellant claims as her dependent.

2. The Appellant entered the UK as a General Student Migrant on 24 September 2009 with leave until 2011. On 29 October 2012 he applied for further leave to remain as a Tier 4 Student to study at Bedfordshire College. His leave was extended until 5 May 2014.
3. The licence held by the college was revoked. He applied to vary his leave from Tier 4 to Tier 1 (PSW) dependent. That was granted to run from 20 February 2014 until 20 February 2016.
4. He attempted to re-enter the UK on 9 October 2014 with his wife and child. He, alone, was refused. He was interviewed on 9 October 2014 and 11 October 2014. After the second interview he was served with a Notice of Refusal of Leave to Enter which included the observation "the cancellation of your leave will be treated for the purposes of the Immigration Act 1971 and the Nationality, Immigration and Asylum Act 2002 as a refusal of leave to enter at a time when you were in possession of a current entry clearance certificate". By so doing the Respondent intended to, and did, make an "immigration decision" within section 82(2) (e) of the 2002 Act which, by reason of section 92(2) of the same Act meant that the Appellant could appeal the decision while he was in the United Kingdom.
5. The continuing leave was cancelled because the Respondent was satisfied that false representations had been made, or material facts not disclosed, in order to obtain leave. That decision was made on the basis that a false or fraudulently obtained TOEIC certificate had been provided to this sponsoring college in order to obtain a CAS.
6. The Appellant's appeal against that decision was heard by the First-tier Tribunal on 8 January 2015. That appeal was dismissed, on both the Immigration Rules and the Article 8 points. The Tribunal had the benefit of hearing evidence from the Appellant and his wife. Witness statements and documentary evidence was relied upon by the Respondent. The Tribunal gave a reasoned and detailed determination and reasons. We are grateful to the First tier Tribunal for the detailed history which we do not need to repeat in detail here.
7. The Appellant appeals to the Upper Tribunal, essentially on two grounds; that there was a material error of law in the application of the burden and standard of proof and that if applied properly there was no, or no sufficient evidence, to support the findings and secondly that there was a material error of law in not finding that the Appellant's Article 8 rights and the rights of his child under s. 55 Borders, Citizenship and Immigration Act 2009 meant the Respondent's decision was unreasonable because it was disproportionate.

APPEAL

8. It was submitted before us on the Appellant's behalf that there was no evidence that he had been involved in the use of a fraudulently obtained certificate. It was said that the only evidence available to the Respondent was of alleged general misconduct by Educational Testing Services, (ETS), the institution that carried out the tests and granted the certificates. We

cannot accept that submission. In fact, in his evidence to the Tribunal the Appellant produced his TOEIC certificate showing that he took a test on 18 September 2012. The certificate gives his name, date of birth and a registration number 0044202016030055. The Respondent produced evidence of the checks carried out on the validity of the process at ETS, that evidence showed that the certificate granted to someone with the same name, date of birth, registration number who carried out the tests on the same two days was "invalid". That was the certificate which the Appellant accepted had been used by him to obtain the CAS which was the basis upon which leave was granted to him.

9. Without any other evidence that was ample material upon which the Tribunal could have been satisfied to the required standard that the Respondent had proved her case. The Tribunal looked at all the evidence. It made findings on the Appellant's inability to recall important details about taking the test.
10. The finding was that the Appellant had sought to deceive by using the fraudulently obtained certificate to gain a place on the course at the college. There was a further finding that he withheld material facts in not disclosing the original deception on applying for further leave to remain under the PBS.
11. The tribunal made a reasonable decision based on the evidence and applying the proper burden and standard of proof. There is no lack or gap in the evidence upon which it reached that decision. The burden of proof was correctly identified as remaining on the Respondent, given the allegations. In a reasoned manner the differing pieces of evidence were examined and counter balanced, paying strict regard to the standard required to discharge that burden. The Tribunal found, as it was perfectly entitled to do, that the Appellant had engaged in the process of obtaining a fraudulently acquired certificate.
12. In considering the Article 8 submissions the Tribunal conducted a very careful exercise to balance the rights claimed by the Appellant as against the public interest. The Judge found, as he was perfectly entitled to do, that the Appellant's right to the continued enjoyment of his family life was an important consideration but there was no evidential basis upon which to conclude that that could not continue in Pakistan. Both the Appellant and his wife are from Pakistan and lived outside the UK until they reached adulthood. Their child was still less than one year old at the date of the hearing. She has no life outside her immediate family.
13. The Tribunal went on to consider s 55 and the child's individual rights. Her best interests are to remain in the care of her mother, that can be achieved either in the UK with her mother, who has a right to remain at the moment or to return to Pakistan with her parents, if that is the choice they make.
14. No valid criticism can be made of the reasoning process used or the decisions reached. No error of law has been identified and substantiated in this appeal which must, for the reasons given, be dismissed.

Signed

Date 7 May 2015

Mrs Justice M^cGowan
Sitting as a Judge of the Upper Tribunal