



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

Appeal Number: IA/46828/2014

THE IMMIGRATION ACTS

Heard at Manchester

Decision & Reasons

On 9 September 2015

Promulgated

On 22 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SYED ZULQURNAIN ALI
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr A McVeety, Senior Home Office Presenting Officer
For the Respondent: Mr G Brown of Counsel instructed by One Source Solicitors

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge of the First-tier Tribunal O R Williams (the judge) promulgated on 6th February 2015.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to him as the Claimant.
3. The Claimant is a male citizen of Pakistan born 31st October 1988 who applied for leave to remain in the United Kingdom as the spouse of a British citizen.

4. The application was refused on 28th October 2014. The Secretary of State contended that the Claimant had sought leave to remain in the UK by deception. The Claimant had submitted with his application an English language test that he had taken and passed on 18th April 2012, but following information provided by Educational Testing Service (ETS), that an anomaly with the speaking test indicated the presence of a proxy test taker, the test results had been cancelled.
5. The Secretary of State refused the application with reference to S-LTR.2.2 of Appendix FM which is set out below;

S-LTR.2.2 Whether or not to the applicant's knowledge -

 - (a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application);
6. In addition the Secretary of State found that the Claimant's relationship with his partner had not been genuine and subsisting for at least two years. It was not accepted that there were insurmountable obstacles that would prevent the Claimant from returning to Pakistan with his partner.
7. The Claimant's appeal was heard by the judge on 29th January 2015. The judge found that the Secretary of State had not proved that the Claimant had acted dishonestly in taking and passing his ETS examination. The judge found that the Claimant had married his partner, a British citizen, on 18th February 2014, and therefore did not rely on being in a relationship akin to marriage for at least two years. The judge found that they were in a genuine relationship.
8. The Secretary of State applied for permission to appeal to the Upper Tribunal. There was no challenge to finding that the Claimant and his wife were in a genuine relationship, but the Secretary of State challenged the finding by the judge that insufficient evidence had been provided to prove that the Claimant had acted dishonestly in taking and passing his English language test.
9. It was contended that the judge had provided inadequate reasons for concluding that the Claimant had not acted dishonestly.
10. It was submitted that the two statements submitted by the Secretary of State together with a document headed 'Annex A' proved that a proxy had taken the English language test for the Claimant. It was contended that the witness statements when read in conjunction with one another, detailed extensively the investigation undertaken by ETS in relation to the Claimant's case, along with thousands of other applicants, and 'Annex A' proved the test he had taken was invalid.
11. It was submitted that the judge had provided inadequate reasons for rejecting the Secretary of State's evidence, and it was submitted that the findings were flawed and could not stand.

12. Permission to appeal was granted by Judge of the First-tier Tribunal Parkes on 13th April 2005, who found it arguable that the judge had not properly considered the evidence presented.
13. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal decision contained an error of law such that it should be set aside.

Submissions

14. Mr McVeety relied upon the grounds contained within the application for permission to appeal and submitted that the judge had not engaged with the evidence. It was submitted that the appropriate test was whether the Secretary of State had proved the case on a balance of probabilities, and it was not appropriate for the judge not to properly consider the evidence that had been supplied, but to list the evidence that he would have expected to receive as he had done in paragraphs 11-15. In addition, the judge had not recorded what evidence was contained in 'Annex A', and this evidence confirmed that the Claimant's test was invalid.
15. Mr Brown submitted that the First-tier Tribunal had not erred in law and had correctly identified the burden and standard of proof. The judge had been entitled to find that the Respondent had not discharged the burden of proof. The judge had balanced the evidence that had been placed before him and was entitled to find that it had not been proved that the Claimant acted dishonestly. Mr Brown submitted that the judge had not ignored the evidence submitted by the Secretary of State, but had balanced that evidence against the Claimant's evidence, and reached findings that were open to him.
16. At the conclusion of submissions I reserved my decision.

My Conclusions and Reasons

17. The Secretary of State does not dispute that she has the burden of proving that a proxy took the English test on behalf of the Claimant, and therefore the Claimant has acted dishonestly and sought to obtain leave by deception and therefore it was correct to refuse the application with reference to S-LTR.2.2(a). It is contended that the judge failed to give adequate reasons for reaching conclusions that the burden of proof had not been discharged. I find that the most recent relevant authority on adequacy of reasoning is Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC) the headnote of which I set out below;

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

18. In my view the judge has discharged the duty set out above, in relation to adequacy of reasons, and I do not find any material error of law in the First-tier Tribunal decision for the following reasons.
19. The evidence provided by the Secretary of State is referred to by the judge in paragraph 9, and amounted to witness statements from Peter Millington and Rebecca Collings, together with a single sheet marked 'Annex A - Evidence from ETS in respect of Syed Ali.'
20. The witness statements do not refer to the Claimant. The statements were prepared in relation to an application for permission for judicial review, and the purpose of Peter Millington's statement is to provide an understanding of the work of ETS and the process and procedure used by ETS to assist the Home Office in response to widespread deception used by applicants applying for leave to enter or remain in the United Kingdom.
21. The purpose of the statement from Rebecca Collings is to provide the Tribunal with an understanding of the purpose of Secure English Language Testing (SELT) and how it is operated, and the role of ETS therein, and the approach to the cases already considered which were reliant on a SELT certificate obtained from ETS.
22. It is evident that the judge considered both statements, as there is reference to them in paragraphs 9-17 of his decision. The judge notes in particular that the evidence referred to by Rebecca Collings in paragraph 30 of her statement, as being "information provided by ETS on individual cases was required for us to make decisions on an individual basis and in relation to the particular merits of their case" was not before the Tribunal.
23. I do not accept the submission made on behalf of the Secretary of State that the judge did not engage with the evidence. In my view it is clear that he has engaged with the contents of those witness statements, and he took into account 'Annex A.' It was submitted that the judge had erred by not stating what was contained in 'Annex A.' The judge does however note that this document does not contain the detailed information which Peter Millington records in his statement was gathered.
24. The judge notes that 'Annex A' is not signed. The evidence contained in that document confirms that the test centre was All-Educate Ltd, the Appellant's name, date of birth and certificate number, the test date, and that 150 was scored for speaking and writing. Under the heading 'Inv/Quest' is the word 'invalid'.
25. No further information is contained within that document. The document does not state why the test was invalid.
26. The Secretary of State criticises the judge for recording what evidence it would have been reasonable to have produced, to prove the presence of a proxy test taker. It is correct that the judge did in paragraphs 10-17, refer to evidence that he would have expected to have received, to prove the case against the Claimant. In my view the criticism is not valid. It is

indicative that the judge considered with some care the evidence that was provided, as he was able to list evidence that was missing.

27. The judge in paragraphs 18-20 sets out the Claimant's evidence, describing this as credible and consistent, and noting that the Claimant spoke in clear and accurate English while giving evidence, and noting that the Claimant had taken up the invitation from the Secretary of State to take another English language test with another test provider, and had passed that examination obtaining a higher grade than necessary.
28. The role of the judge was to assess the evidence and decide whether the Secretary of State had discharged the burden of proof. In my view the judge carried out that role, analysing the evidence, and finding that the burden of proof was not discharged. In my view the judge gave adequate reasons for reaching that conclusion.
29. It may be that a different judge would have reached a different conclusion, but that is not the point, and I find that the grounds contained within the application for permission to appeal amount to a disagreement with the conclusion reached, but do not disclose an error of law.

Notice of Decision

The making of a decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision must be set aside. I do not set aside the decision. The appeal of the Secretary of State is dismissed.

Anonymity

No anonymity direction was made by the First-tier Tribunal. There has been no request for anonymity made to the Upper Tribunal and no anonymity order is made.

Signed

Date 15th September 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

Because the decision of the First-tier Tribunal stands so does the decision to make a fee award.

Signed

Date 15th September 2015

Deputy Upper Tribunal Judge M A Hall

