



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

Appeal Number: IA/48898/2014

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On 3 September 2015  
Prepared on 3 September 2015**

**Determination Promulgated  
On 9 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

**Between**

**HUANG SONG  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Mr Carrington, Counsel

For the Respondent: Mr Kingham, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, born 17 December 1992, is a citizen of China. He first came to the UK to study with a valid grant of entry clearance as a Tier 4 student in June 2013, and on 4 August 2014 he applied for leave to remain in the same capacity. On 5 September 2014 the Appellant was interviewed by the Respondent. That interview prompted a decision on 20 November 2014 that he was not genuinely able to undertake the course he had applied to follow, and was not genuinely able to communicate in English at the standard he had claimed to have in his application, taken by reference to paragraphs

245ZX(da) and 245ZX(o) of the Immigration Rules. As a result the application was refused on 24 November 2014 and a removal decision was also made on that date pursuant to s47 of the 2006 Act.

2. The Appellant duly appealed against those immigration decisions. His appeal was heard on 10 March 2015 and it was dismissed under the Immigration Rules and on Article 8 grounds in a Decision promulgated on 1 April 2015 by First Tier Tribunal Judge Fisher.
3. The Appellant's application to the First Tier Tribunal for permission to appeal was granted by Judge Cheales on 9 June 2015. Thus the matter comes before me.

#### The decision under appeal

4. The Appellant produced in support of his application a CAS that had been issued to him by the University of Sunderland which declared that his fluency in English had been assessed as equivalent to CEFR B2 by reference to the 2:2 degree that had been awarded to him by that University in June 2014.
5. On 5 September 2014 the Appellant was interviewed by the Respondent, by reference to paragraph 245ZX(da);
  - (da) The applicant must, if required to do so on examination or interview, be able to demonstrate without the assistance of an interpreter English language proficiency of a standard to be expected from an individual who has reached the standard specified in a Confirmation of Acceptance for Studies assigned in accordance with Appendix A paragraph 118(b) (for the avoidance of doubt, the applicant will not be subject to a test at the standard set out in Appendix A, paragraph 118(b)). (01.10.2013 HC 628)
6. The Appellant's performance at that interview resulted in the decision on 20 November 2014 that he was not genuinely able to undertake the course he had applied to follow, and that he was not genuinely able to communicate in English at the standard he had claimed to have in his application, by reference to paragraphs 245ZX(da) and 245ZX(o);
  - (o) the Secretary of State must be satisfied that the applicant is a genuine student.
7. The application was then refused on 24 November 2014 and a removal decision was also made by reference to s47.

#### Error of Law?

8. At the hearing the Appellant was the subject of a cross-examination that the Judge was satisfied established that he could not understand many of the questions posed to him [10]. The Judge recorded in his decision the questions and answers that he considered most significant, and it is plain that there was a sound evidential basis for this finding [5]. Mr Carrington (who also appeared for the Appellant

before the Judge) accepted that the Appellant had been in difficulties at the hearing, and he accepted that he raised no challenge to the accuracy of the Judge's record of the evidence.

9. I note that Mr Carrington undertook no re-examination of the Appellant to seek to repair any of the damage inflicted by that cross-examination, and that the Judge was best placed to assess for himself whether the questions had been put fairly and clearly, and whether the Appellant was struggling to answer them because of his fluency or because of some other reason.
10. I also note that Mr Carrington raised before me no challenge to the accuracy of the record of the Appellant's interview, and no complaint about the way in which it had been conducted. He accepted that this too showed that the Appellant had been in difficulties. The Judge made two key findings about this interview which were therefore unchallenged; (i) that the Appellant's criticisms of his interview were unfounded, and, (ii) that he was not unable to answer the questions asked because he was anxious or tired, but because of his extremely limited ability in English [10].
11. Against this background the Appellant argues two grounds, which I shall take in turn.
12. The first ground commences by asserting that the Judge failed to apply the correct burden and standard of proof. There is no merit in that assertion. It was for the Appellant to establish that he met the requirements of paragraph 245ZX(da) and paragraph 245ZX(o), on the balance of probabilities and that is the direction the Judge gave himself. There is nothing in the decision to suggest that he applied a different burden and standard of proof, and Mr Carrington accepted that he was unable to identify anything that did so.
13. The first ground goes on to argue that the Respondent and the Tribunal have gone behind the evidence relied upon by the University to assess the Appellant's language fluency, without having sufficient evidence to rebut that assessment, so that they have both usurped the function and powers of the University. There is no merit in that argument either because it ignores the existence of paragraph 245ZX(da), and it also assumes, wrongly, that the fluency assessment undertaken by the University when issuing a student's CAS is somehow to be taken by both the Respondent and the Tribunal under the Immigration Rules as conclusive of the level of fluency attained by an individual student.
14. The second ground asserts that the Judge has "gone behind the findings in the documents that were provided" and that "there is an evidential burden on the Respondent to show that the documents were not genuine". Mr Carrington argued that the award of a degree to the Appellant by the University of Sunderland in June 2014 spoke

for itself as to his language fluency. Since the CEFR B2 assessment of fluency was based on the award of that degree it was therefore not open to the Respondent or the Judge to reach a different conclusion in relation to the assessment of the Appellant's fluency without the Respondent having established either that no degree had in fact been awarded to him, or, that the degree awarded had been obtained by deception.

15. The answer to this argument is to be found in the Judge's decision. Having looked at all of the evidence which he was permitted to look at by virtue of s85A, and indeed in addition at the documents produced at the hearing which s85A precluded him from admitting in evidence, the Judge was not satisfied that the Appellant had demonstrated the requirements of paragraph 245ZX(da) [11]. Although the paragraph number is not given, it is plain from the language used by the Judge that this is what he was referring to. There was an assessment by the Judge of the weight that could properly be given to the different elements of the evidence that was before him. In the light of the Appellant's performance at interview and under cross-examination, there was an obvious disparity with the award of the degree in June 2014 and the documents produced by the Appellant at the hearing which were said to demonstrate satisfactory progress in his study for his Masters degree. The Judge noted that disparity and he noted the subject of the course of study that the Appellant said he was pursuing, since Mathematics for example might require less fluency, and he recognised that his conclusion cast doubt on the reliability of the documents the Appellant had produced at the hearing. There was in my judgement no error of law disclosed as a result of his doing any of this.
16. I accept as Ouseley J did in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318. Evidence, whether oral or documentary, does not carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of the evidence about its nature, provenance, timing and background evidence and in the light of all the other evidence in the case, especially that given by the claimant. That is precisely the exercise the Judge undertook. What the criticisms of the decision fail to engage with is the extremely damaging evidence that was before the Judge. The Judge was entitled to find that the interview record and the performance under cross-examination were compelling evidence which indicated the Appellant's true fluency. He was entitled to find, after looking at the evidence in the round, as he plainly did, that the Appellant had failed to meet the requirements set out in paragraph 245ZX(da) and thus 245ZX (o). The decision discloses no error of law.
17. No Article 8 appeal was pursued before the First Tier Tribunal, and no criticism is raised by the Appellant of the Judge's consideration of

the guidance to be found in Nasim [2014] UKUT 25, and his decision in consequence that the Appellant's desire to pursue an education in the UK in these circumstances did not engage his Article 8 rights. It is clear that the arguments available did not rely upon the core concepts of moral and physical integrity. In my judgement the Judge was correct to conclude that the evidence relied upon did not establish that there were any compelling compassionate circumstances that meant the decision to remove the Appellant to China, lead to an unjustifiably harsh outcome.

## DECISION

The Determination of the First Tier Tribunal which was promulgated on 1 April 2015 did not involve the making of an error of law in the decision to dismiss the appeal that requires that decision to be set aside and remade. The decision to dismiss the appeal is accordingly confirmed.

### Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

The Appellant did not seek anonymity before the First Tier Tribunal, and no request for anonymity is made to me. There appears to be no proper basis for the Upper Tribunal to make such a direction of its own motion.

Deputy Upper Tribunal Judge JM Holmes  
Dated 3 September 2015