



IAC-TH-LW-V1

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

Appeal Number: IA/03195/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 February 2016**

**Decision & Reasons  
Promulgated  
On 25 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PEART**

**Between**

**FAHEEM HAYAT  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: None

For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan. He was born on 12 March 1985.

2. He appealed against the respondent's decision to refuse him leave to enter dated 17 March 2015.
3. The appeal was heard by Judge Lingam (the judge) who in a decision promulgated on 28 August 2015, allowed the appeal under the Immigration Rules. That was because she found the respondent had failed to show that the appellant had relied upon a false document to procure his last leave to enter and that even if so, there was no causal link between the alleged false document and the leave issued following the appellant's 2014 leave application.
4. The grounds claimed a material misdirection of law and failure to provide inadequate or any reasons on a material point :

### **Material Misdirection in Law**

5. At [20] the judge, relying upon an unreported decision of the Upper Tribunal concluded that the application of paragraph 321A was limited to instances where deception was deployed in the application granting the current leave. It was said that since the appellant did not rely upon the ETS qualification for his current period of leave, the respondent erred in cancelling leave under paragraph 321A.
6. In her assessment at [20] the judge had failed to consider the respondent's assertion that the appellant did not disclose material facts (that is, his historic deception) in the application the subject of the appeal, the Immigration Officer having sought clarification regarding the validity of the appellant's ETS qualification.
7. On that basis, the previous use of deception and the subsequent failure to disclose material was relevant to the application granting the appellant's current period of leave. It was relevant because if such matters had been disclosed to the respondent, she would have considered the appellant's conduct. In any event the assertion by the respondent that deception had been exercised was put to the appellant at his port interview and investigations were undertaken. As such it was incumbent on the judge to consider the evidence advanced by the respondent that the appellant had used a proxy in his English language test, the witness statements of Mona Shah, Rebecca Collings and Peter Millington as well as the specific evidence relating to the appellant.

### **Failure to Provide Inadequate or any Reasons on a Material Point**

8. At [17] and [18] the judge failed to consider in any way the statements of Peter Millington and Rebecca Collings which were highly material to the issue of deception and related directly to the production of the database printout identifying the appellant as an individual whose test had been invalidated as a result of a proxy being detected. It was incumbent on the judge to consider that evidence and, if was the case, provide cogent reasons for rejecting the evidence.

9. In addition, the only criticism taken of the respondent's evidence related to the statement of Mona Shah at [18]. It would appear that the statement mistakenly referred to a different individual. The grounds claimed that was clearly an administrative error. In any event, the judge had before her the ETS source database entry which identified the appellant. That evidence was pertinent to the issue of deception and the administrative omission did not detract from the materiality of that evidence. The data entry coupled with the evidence in the other witnesses' statements demonstrated how the appellant was identified as an individual who had used deception.
10. Judge Saffer considered the application for permission to appeal and granted permission in a decision dated 19 January 2016. He took the view that the judge had arguably erred as she did not appear to have considered the alleged current deception in terms of not disclosing material facts of historic deception. Further, he found it was arguable that the judge had erred in terms of failing to provide inadequate or any reasons on material points as the judge appeared to have ignored the statements of Peter Millington and Rebecca Collings.
11. There was no Rule 24 response.
12. Neither the appellant nor his representatives appeared. I caused enquiries to be made of Milestone Chambers. It was reported to me that Mr Nasim of Milestone Chambers had been contacted via his mobile telephone. He said he had informed the appellant that because he would be in Birmingham on 26 February, that the appellant should seek alternative representation; that aside, there was no explanation for the appellant's absence.

### **Submissions on Error of Law**

13. Mr Whitwell relied upon the grounds. He handed up a witness statement of Mona Shah dated 25 February 2016, which I will refer to further at [16] below.

### **Conclusion on Error of Law**

14. I find the judge materially erred in her assessment of the evidence because the historic deception was relevant. There was evidence in that regard at E1 of the respondent's bundle under record 21670 certificate number 0044201649018068 in the appellant's name. The test date was recorded as 27 June 2012. The test was recorded as "*Invalid*".
15. I find the judge failed to take into account the respondent's claim in the reasons for refusal that the appellant did not disclose material facts with regard to his historic deception in the application the subject of the appeal. That is apparent from the interview record, in particular, at Q45, 47, 48, 49, 53, 54, 55 and 56. It was put to the appellant at Q62 that the evidence provided by ETS declared his test as "*invalid*" and that as a

result, his current leave would be cancelled. The appellant's response was that he would discuss that with his solicitor. Those were issues which the judge failed to adequately address in her analysis of the evidence.

16. I do accept that it was put to the judge at the First-tier hearing by Mr Nasim that she should be cautious of the attachment to Mona Shah's statement because there was an error as to the name on the attachment. The statement of 25 February 2016 apologised for the error. Ms Shah goes on to say inter alia:

*"5. This witness statement is intended to assist the First-tier Tribunal in understanding the process by which the appellant was identified as a person who had sought to obtain leave by deception through the use of a fraudulently obtained English language test certificate provided by Educational Testing Services (ETS).*

*6. The appellant is one of many individuals in respect of whom leave to enter was refused by the Home Office following invalidation of an English language test certificate by ETS.*

*7. The decision to refuse leave to enter in this case was taken in light of the cancellation of an English language test result by the test provider. The test result had been cancelled by ETS on the basis of its own analyses indicated that the test result had been obtained via the use of a proxy tester. The Home Office was notified by way of an entry on a spreadsheet an excerpt from which in respect of the appellant is at Annex A."*

17. Annex A of the statement of 25 February 2016 is a duplicate of the ETS SELT source data I have referred to above at [9] contained within the respondent's bundle at E1.
18. I find the judge erred because she failed to take into account the historic deception, by failing to give reasons or any adequate reasons on material points as identified by the respondent and to have ignored the statements in support of the respondent's position.
19. In the circumstances, none of the judge's findings shall stand. Directions are attached to this short decision.

### **Decision**

20. The decision of the First-tier Tribunal contains errors of law, is set aside and will be remade following a *de novo* hearing.

Anonymity direction not made.

Signed

Date 10 March 2016

Deputy Upper Tribunal Judge Peart