



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/39702/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8 January 2016

Decision and Reasons Promulgated  
On 28 January 2016

Before

Deputy Upper Tribunal Judge Pickup

Between

Muhammad Javed Sultan  
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

**Representation:**

For the appellant:

MS A Vatish, instructed by Ashmans Solicitors

For the respondent:

Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Muhammad Javed Sultan, date of birth 2.1.81, is a citizen of Pakistan.
2. This is his appeal against the decision of First-tier Tribunal Judge Reid promulgated 3.7.15, dismissing his appeal against the decision of the Secretary of State, dated 14.10.14, to cancel his Tier 1 for false representation in relation to an English language test, pursuant to paragraph 321A of the Immigration Rules and to refuse leave to enter. The Judge heard the appeal on 25.6.15.
3. First-tier Tribunal Judge Hollingworth granted permission to appeal on 23.10.15.

4. Thus the matter came before me on 8.1.16 as an appeal in the Upper Tribunal.
5. At the outset of the hearing Ms Vatish applied for an adjournment, on the basis that there were pending hearings relating to ETS cases and that this case should be adjourned behind those cases. I refused the application on the basis that the duty of the Tribunal is to apply the law as it presently stands. If the case law in relation to ETS fraud cases changes, that is a matter that can be raised at a later date.

#### **Error of Law**

6. For the reasons set out herein, I found no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Reid to be set aside.
7. The case for the Secretary of State is simply that it has now come to light that the appellant did not in fact sit the ETS language test taken at Gant's Hill on 9.1.13 and submitted in support of his previous Tier 1 Highly Skilled Entrepreneur application, on the basis of which on 13.5.14 he was granted leave to remain in that capacity, valid to 13.5.17. It is significant that the appellant was interviewed about this matter on two occasions and was unable to recall the name of the test centre. The record of the test was examined by ETS using voice verification software to verify that a single person sat multiple tests. ETS found significant evidence that this appellant did not sit the test himself and concluded that the English language certificate was fraudulently obtained, as a result of which ETS cancelled the scores and invalidated the certificate. Relying on that information, the Secretary of State concluded that the appellant had made false representations and used fraudulently obtained information in an application for leave to remain, and thus cancelled his leave and refused leave to enter, the appellant being on temporary admission following his detention at Heathrow Airport on 7.8.14, on return to the UK from Pakistan.
8. It is clear from the decision that Judge Reid considered the appellant's account and explanation, found that account vague, inconsistent, and not credible. Taking that evidence into account with the evidence produced on behalf of ETS and the Secretary of State, at §20 the judge reached the conclusion that the appellant did not take the test himself, stating, "I find this based on all the evidence (see paras 15-18 above) and not just the generic evidence provided by the respondent as regards ETS testing generally." The judge went on to consider that the appellant's private life in the UK was relatively limited and developed during a period when he had limited leave to remain, concluding at §22 that returning him to Pakistan would not be an interference with that limited private life, and at §23 that, even if it would be an interference with his private life, that interference was proportionate to his article 8 rights.
9. At §24 of the decision the judge relied on the findings summarised above to conclude that the appellant made false representations pursuant to paragraph 321A(2), as he did not take the test on 9.1.13 but represented in his application that he had done so. "Whilst it was said in submissions that the burden of proof as regards this allegation was not discharged, I conclude that it was in the light of the findings set out above based upon the evidence before me. The decision was not solely based on the ETS invalid score report, there was other evidence relied on and the appellant had an

opportunity to explain himself ... on the findings set out above the representations made about 9<sup>th</sup> January 2013 were dishonest and not just mistaken. I therefore conclude that the decision was made in accordance with para 321A of the Rules and in accordance with the law.”

10. Permission to appeal was only granted because Judge Hollingworth considered there was an arguable error of law “in relation to the juxtaposition between the Judge’s reference at paragraph 14 to the standard of proof being on the balance of probabilities and the finding set out at paragraph 24 of the decision in which the judge states that he concludes that the appellant made false representations in paragraph 321A(2). It is arguable that the reference at paragraph 13 of the decision in relation to the burden and standard of proof is insufficient.”
11. However, it is clear from the decision, particular at §9, §13, §14, §20, and §24 that the judge did not misdirect himself as to the burden and standard of proof, neither in relation to the Rules nor in relation to article 8 ECHR. Ms Vatish accepted in her submissions that the standard of proof is the civil standard, but relied on Bijendra Giri [2015] EWCA CIV 784, where at §38 the Court of Appeal made it clear that there is no heightened standard of proof, but noted that the evidence should be of sufficient strength and quality. At §36 the Court of Appeal noted that the House of Lords had approved the statement in the judgement of R (N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605 [2006] QB 468, that “although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application. In particular the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities.” The judicial review appeal in Giri, which concerned paragraph 322(1A) and whether deception was required, was dismissed.
12. In the circumstances, the case provides no material assistance to Ms Vatish’s submissions, as it is clear the judge has applied the correct burden and standard of proof.
13. The judge gave full and detailed reasons for the findings made and conclusions reached, based on a consideration of the evidence as a whole. Having found that the appellant did not in fact take the English language test, the outcome of the appeal was inevitable. The finding that the burden of proof was discharged was fully open to the judge and for which cogent reasons have been given. It cannot be said that the decision was in any way perverse or irrational, or inconsistent with the considerable weight of the evidence.
14. In relation to private life, it was arguable that the judge’s treatment was rather perfunctory and it was not clear what evidence there was about the appellant’s private life. In the circumstances, I invited Ms Vatish to lead evidence from the appellant on private life, there being no reliance on family life, as all his family members remain in Pakistan.
15. Ms Vatish submitted that the appellant had spent time and money setting up his business and had arranged for funds to be transferred to the UK for that business. The evidence demonstrated (A46) that the appellant had set up a limited company

following the grant of his entrepreneurial visa. He gave oral evidence stating that he intended to start a business supplying frozen and fresh fish and was going to take over some premises for that purpose. However, his mother fell ill and died, so he returned to Pakistan in 2014 for her funeral and remained there for some 2 months. He had not in fact commenced trading or taken any substantive steps towards doing so; all he had done was to register a limited company. He had come to the UK for the first time in 2011 and is now 33 years of age. He said he was being financially supported in the UK by friends and maintained that he had not worked. He agreed that the funds had not been transferred yet.

16. It follows that the judge was correct to observe that there is very limited evidence of private life. It is clear that the appellant could not meet the requirements of paragraph 276ADE to show very significant obstacles to integration into Pakistan. I am not satisfied there are any compelling circumstances in this case to have justified even considering article 8 ECHR outside the Rules, but the judge did so. The judge would also have had to take into account paragraph 117B of the 2002 Act that little weight should be given to a private life developed in the UK whilst the appellant's status was precarious, as it was dependent on the grant of further leave. Further, the very aspects of private life relied on arise principally from his fraudulently obtained entrepreneurial visa. Frankly, he is now reaping the consequences of his fraud and misrepresentation and can hardly rely on his very limited business activities to justify a private life overriding the application and consequences of fraud and misrepresentation applicable under the Immigration Rules.
17. In all the circumstances, even considering the further evidence from the appellant and the submissions of Ms Vatish, there is absolutely nothing to suggest that the judge was in error in finding that any interference with the appellant's private life occasioned by his removal, or refusal to permit entry, can be properly described as disproportionate or otherwise unjustifiably harsh.

**Conclusions:**

18. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



**Signed**  
**Deputy Upper Tribunal Judge Pickup**

**Dated**

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order. Given the circumstances, I make no anonymity order.

**Fee Award**                      **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed.



**Signed**  
**Deputy Upper Tribunal Judge Pickup**

**Dated**