



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

Appeal Number: IA/40948/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 February 2016**

**Decision & Reasons  
Promulgated  
On 12 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**IMMIGRATION OFFICER-HEATHROW**

Appellant

**and**

**MRS SYEDA MARIA RAHEEL  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Kotas, Home Office Presenting Officer  
For the Respondent: No Attendance.

**DECISION AND REASONS**

1. This matter comes before me pursuant to permission having been granted by Upper Tribunal Judge Perkins dated 16 December 2015. The reason given was concise and precise namely that, "This is an ETS case: see **Mehmood and another** [2015] EWCA Civ 744". The appeal relates to a decision by First-tier Tribunal Judge Harris sitting at Hatton Cross whereby

a Decision and Reasons was promulgated on 6 August 2015. The Judge at the First-tier Tribunal had made it clear that the appeal had been allowed.

2. The Secretary of State appealed against the First-tier Tribunal Judge's decision. For ease of reference I shall continue to refer to the parties as they were before the First-tier Tribunal despite this being an appeal by the Secretary of State. Two particular matters are relied upon in the grounds of appeal:
  - (1) The Judge failed to give adequate reasons for findings on a particular matter; and
  - (2) The Judge should have taken account of the standard bundle of documents provided by the Secretary of State which had included witness statements from Peter Millington and Rebecca Collings. Thereby the test had been invalidated and for that invalidation to occur the case has to have gone through a computer programme analysing speech and two independent voice analysts.
3. At the hearing before me, when the case was called on at 10am there was no attendance by or on behalf of the Appellant. I put the case back. When all of my other cases had concluded the case was called on again. There was still no attendance by or on behalf of the Appellant. There appeared to be no good reason for the non-attendance of the Appellant. Mr Kotas submitted that the hearing ought to proceed.
4. There appeared to be no procedural or other reasons why I should not hear the appeal and therefore I did so.
5. Mr Kotas made brief submissions. He said the Judge's application of the decision in **R (on the application of) Gazi v Secretary of State for the Home Department [2015] UKUT 327 (IAC) IJR** was wrong. The Judge was wrong to conclude as he did at paragraph 15 that there were shortcomings in the evidence of the Secretary of State. He referred to paragraphs 35 to 37 and particularly paragraph 36. He submitted that **Gazi** was not the final word. The Judge fell into error because this was not the final word. It was a Judicial Review. Then at paragraphs 18 and 19 of the decision there is reference to cross examination and there are no real clear and necessary findings. He either accepts it or he does not. Asked what he was inviting me to do, Mr Kotas said he was not able to invite me to dismiss the appeal outright but that the Judge's decision ought to be set aside and remitted to the First-tier Tribunal for rehearing when further cases will have been reported thereafter.
6. I had reserved my decision.
7. The Court of Appeal in **R (on the application) of Mehmood and Ali v Secretary of State for the Home Department [2015] EWCA Civ 744** considered the issues which arise from the "Panorama" television

programme. The Court also considered the Upper Tribunal's decision in **Gazi**. At paragraphs 51 and 52 of the judgment of Beatson LJ, with whom Sullivan LJ and Roth J had agreed, it was made clear that an out of country appeal is regarded by Parliament as sufficient, except in cases in which there are "special or exceptional factors". Disputes of fact are rarely going to equate to "special or exceptional factors".

8. The real issue in this case is the assessment of the evidence by the First-tier Tribunal Judge. Having considered the decision as a whole and particularly paragraphs 18 to 20 in my judgment more in terms of reasoning was required for the rejection of the Respondent's evidence if there was going to be the acceptance of the Appellant's evidence. More so since the acceptance of the Appellant's evidence appears to be lukewarm at best. The Appellant had lived in London but took her English test some distance away in Leicester. There was an explanation provided that she was more familiar with Leicester having moved recently to London and because she had babysitting available to her in Leicester.
9. The combination of this factor relating to the findings, with the failure of the parties to bring the Court of Appeal's decision in **Mehmood and Ali** to the Judge's attention is such that the decision of the First-tier Tribunal Judge shows a material error of law. The hearing before the Judge was on 16<sup>th</sup> July 2015 and the Court of Appeal had handed down its judgment on 14 July 2015.
10. In the circumstances I set aside the decision of the First-tier Tribunal. There will be a rehearing at the First-tier Tribunal.

### **Notice of Decision**

The First-tier Tribunal's decision contains an error of law.  
I set it aside and therefore the Secretary of State's appeal is allowed.

No anonymity direction is made.

Signed

Date 22 February 2016

Deputy Upper Tribunal Judge Mahmood