



IAC-PE-AW-V1

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

Appeal Number: IA/48825/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24th November 2015**

**Decision & Reasons Promulgated
On 17th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR AHSANUL KABIR RASHED
(ANONYMITY DIRECTION NOT MADE)**

Claimant

Representation:

For the Appellant: Miss N Willocks-Briscoe, Senior Home Office Presenting Officer

For the Claimant: Mr Hosein of SEB Solicitors

DECISION AND REASONS

1. The Appellant is the Secretary of State for the Home Department. To avoid confusion I have designated the Appellant in the First-tier as the Claimant in the present proceedings. I shall continue to refer to the Secretary of State as the SSHD throughout.
2. This is an appeal by the SSHD against the decision of First-tier Tribunal Judge Robinson promulgated on 9th July 2015 whereby the judge allowed the Claimant's appeal against the decision of the SSHD. The decision by

the SSHD made on 23rd November 2014 was to refuse the Claimant leave to enter the United Kingdom.

3. By decision taken on 29th September 2015 the SSHD was given leave to appeal to the Upper Tribunal against the decision of the First-tier Tribunal. Thus the matter appears before me to determine in the first instance whether or not there is an error of law in the original decision.
4. The Claimant is a national of Bangladesh. He first entered the United Kingdom on 15th November 2009 with entry clearance valid as a student until 13th January 2013. It appears that the college at which he was studying had its license revoked in January 2012 and the Claimant had to find an alternative college. The Claimant began to study at London Churchill College. In order to study at the various colleges the Claimant on several occasions, 3 at least according to the Claimant, had to take IELTS tests and on each occasion appears to have scored 5.5.
5. Ultimately having completed the course of study at London Churchill College it appears that the Claimant gained admission to the University of Sunderland for the purposes of doing a BA (Honours) in business management. The Claimant appears to have completed the course successfully, a course which would have been taught and examined in the English Language.
6. In April 2012 the Claimant met Tahira Akter. Their relationship developed. They appear to have started living together after they married and sometime after 12th July 2013. Their marriage was registered according to British law.
7. The Claimant appears to have made an application for further leave to remain as the husband of Mrs Tahira Akter. He was granted leave in November 2013 and that leave was due to expire on 25th May 2016.
8. On 13th July 2014 the Claimant had to travel urgently to Bangladesh because his mother had become sick and he had to go and see her. On 6th August 2014 the Claimant was returning to the United Kingdom. He was stopped by an Immigration Officer and interviewed. At that stage the Immigration Officer kept the Claimant's passport and biometric card and refused the Claimant leave to enter.
9. In essence the decision was taken to refuse the Claimant leave to enter on the grounds that the IELTS certificate used by the Claimant in the past had been obtained by fraud or deception in that a proxy test taker had taken the test on behalf of the Claimant.
10. Before the First-tier Tribunal the evidence from ETS by way of statements from Peter Millington and Rebecca Collins had been submitted for consideration. The conclusion with regard to the Claimant's test certificates were that they had been obtained by the use of a proxy test taker. Because of the correlation between the Claimant's test and other

tests it was alleged that the person taking the test had taken a number of tests. The conclusion by ETS was to the effect that the English language test previously submitted by the Claimant in support of his application were invalid. It is unclear whether consideration was given to the fact that the Claimant himself admits taking several tests.

11. By comparison the Claimant claims that he has studied for a BA(Honours) at the University of Sunderland and has been awarded the degree. Further he claims to have taken the IELTS test on several occasions and consistently scored 5.5. Further to that there appears to have been an interview before the Borders Officer. Parts of that interview have been submitted as evidence to the Tribunal.
12. Material in a sense is the judge's approach to the evidence and whether in concluding that it had not been proved that the Claimant obtained the relevant certificate by fraud or dishonesty, the judge had assessed the evidence in accordance with case law. In that regard I draw attention to the cases of:-
 - Mehmood [2015] EWCA Civ 744
 - Sood v SSHD [2015] EWCA Civ 833
 - Gazi [2015] UKUT 327
 - Jakhu [2015] UKUT 693
13. The case of Gazi had the advantage of having the expert report from a Dr Harrison. Dr Harrison's report was considered with care and he had raised certain reservations with regard to the approach taken by ETS in assessing tests and the justification for the conclusions reached. One only has to consider paragraph 20 of the decision in **Gazi** in which Dr Harrison sets out a number of issues that have to be considered.
14. The conclusions from the cases however are to the effect that one has to make a case by case assessment of the Claimant's position. Whilst in principle the evidence from ETS in the form of the statements from Mr Millington and Miss Collins would be sufficient without more to come to a conclusion that an applicant had obtained an IELTS or TOEIC certificate by an improper means, there was always the possibility of false positives and there was certainly an assessment of the evidence to be made by those in the First-tier Tribunal as to the surrounding facts.
15. It is clear from paragraph 40 of Gazi that these must be considered on a case by case basis assessing an individual Claimant's ability in language, the circumstances surrounding his taking the test, his academic history and his previous life events in assessing whether or not the case that they have not obtained a certificate by fraud is made out. However care has to be taken as well to ensure that the responsibility of proving fraud is still the responsibility of the Respondent under the case of AA (Nigeria) v SSHD [2010] EWCA Civ 773.

16. It is in the light of the case law that one has to consider the approach of the judge to the facts in the present case.
17. The judge clearly at paragraph 22 has assessed the evidence by ETS and found that that was sufficient reason for the SSHD to make proper enquiries about the Claimant. However the judge has gone on to note the interview with the Claimant. The judge has considered the interview and in paragraph 23 of the judgment clearly finds that the answers given by the Claimant at the interview were relevant to the questions that were being put to him. The Claimant also gave evidence in English before the judge. The judge having carefully considered those factors and having taken account also of the fact that the Claimant had managed to obtain a degree course from Sunderland University came to the conclusion that the Respondent had not adequately dealt with the Claimant's answers in interview or the Claimant's ability in English. There was no statement or reasons indicating that the Claimant's answers in interview were rejected. The judge has therefore properly assessed all of the facts and was entitled on the basis of the evidence and the case law outlined to make a specific finding that the Secretary of State for the Home Department had not made out that the Claimant had exercised deception when applying for leave to remain in the past. The judge was entitled to conclude that on the basis of the evidence it had not been shown that the Claimant had obtained the IELTS certificates by deception and therefore the decision to refuse the Claimant leave to enter was not justified.
18. The judge has properly considered the issues before him. He has properly approached the evidence by ETS, Mr Millington and Miss Collins and has given valid reasons that that of itself would have been sufficient. However taking account of the other evidence that was before him he was entitled to conclude that he was not satisfied that the Claimant had indeed obtained the IELTS certificates by deception or fraud. In the light of that the judge was entitled to conclude that the appeal should be allowed.
19. There is no material error of law in the decision made by the First-tier Tribunal Judge. The decision to allow the appeal under the Immigration Rules stands.

Decision

There is no material error of law.

The decision to allow the appeal stands.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge McClure