



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

Appeal Number: IA/23490/2015

THE IMMIGRATION ACTS

Heard at Field House

On 11th October 2017

**Decision & Reasons
Promulgated**

On 23rd October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR AKMAL TASVEER
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Ms Z Ahmad, Senior Home Office Presenting Officer

For the Respondent: Mr S Shah, Solicitor

DECISION AND REASONS

1. For ease of reading I shall continue to refer to Mr Tasveer as “the Appellant” and the Secretary of State as “the Respondent” as they were said to be at the First-tier Tribunal.

2. The Appellant is a citizen of Pakistan whose appeal was allowed under Article 8 ECHR (and dismissed under Articles 2 and 3 ECHR) in a decision of First-tier Tribunal Judge Khawar promulgated on 9th May 2017.
3. The Secretary of State lodged grounds of application. The Appellant had raised Article 2 and 3 ECHR claims at the hearing and the judge had considered that and found the Appellant's claims to be not credible and a fabrication. However, the judge then failed to have regard to the fact that the Appellant had lied about the danger to his life in Pakistan and his ability to return there when he considered the Appellant's innocent explanation that he had sat the TOEIC exam himself. Reference was made to the case of **SM and Qadir** . ETS cases are fact-sensitive and credibility is crucial and key in these cases. The grounds say that the judge failed to consider his deception and consequently the finding on the ETS deception and credibility is flawed and unsafe. Other grounds are put forward, namely that consequently the finding under Appendix FM EX.1. is infected and unsafe because the Appellant cannot get past the suitability provisions of Appendix FM.
4. Permission to appeal was duly granted.
5. The agents for the Appellant lodged an extensive Rule 24 notice submitting that there was no material error in law for the reasons stated therein.
6. Thus the matter came before me on the above date.
7. Before me Ms Ahmad for the Home Office relied on her grounds. It was said that the findings of the judge were clearly unsafe for reasons given in the grounds. As such the decision should be set aside and because further fact-finding would be required the case should be remitted to the First-tier Tribunal.
8. For the Appellant Mr Shah submitted that the judge had given very clear reasons in paragraphs 33 to 37 as to the Appellant's ability in English and the fact that he had not used deception as had been claimed by the Home Office. As such there was no error in law by the judge and the decision should stand.
9. I reserved my decision.

Conclusions

10. What Mr Shah says about paragraphs 33 to 37 is correct in that the judge did give reasons why the Appellant had not used deception in terms of a proxy test taker.
11. The difficulty with that finding is that it takes no account at all of the specific finding of the judge that the Appellant had "fabricated" (paragraph 30) his Article 2 and Article 3 claims. Accordingly, what the judge seems to have done is to have compartmentalised the issue as to

suitability under Appendix FM in paragraphs 33 to 37, and has not taken into account his specific finding that the Appellant had lied about a material part of his claim. It therefore seems to me that because he did not do that the decision is not safe. It cannot simply be inferred that the judge had taken the previous fabrication of evidence into account in deciding the Appellant's suitability under Appendix FM because that is not the way the decision has been written. The judge has therefore failed to take into account a crucial finding in his assessment of whether or not the Appellant had used deception in the taking of the test.

12. It therefore seems to me that the decision is not safe and will have to be set aside and the matter heard again. I have concluded that because further fact-finding is necessary the appeal should be remitted to the First-tier Tribunal to be heard by a judge other than Judge Khawar.
13. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. There is no need for an anonymity order.

Notice of Decision

14. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
15. I set aside the decision.
16. I remit the appeal to the First-tier Tribunal.

Signed *JG Macdonald*
2017

Date 19th October

Deputy Upper Tribunal Judge J G Macdonald