



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/32205/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 25 July 2017**

**On 18 September 2017**

**Before**

**UPPER TRIBUNAL JUDGE CONWAY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**MR SAJJAD ALI PATHAN  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Singh

For the Respondent: Mr Goba

**DECISION AND REASONS**

1. Mr Pathan is a citizen of Pakistan born in 1988. He appealed against a decision of the Secretary of State made on 10 September 2015 which refused his application for leave to remain as a Tier 4 (General) Student Migrant under paragraphs 245ZX, 322(IA) and 322(2) of the Immigration Rules.
2. In summary, the Secretary of State was not satisfied that the application met the requirements of Appendix A and Appendix C of the Rules. Further, that Mr Pathan had made a false statement in relation to the application and had used deception in relation to a previous application.
3. He appealed.

### **First tier hearing**

4. Following a hearing at Hatton Cross on 19 October 2016 Judge of the First-tier Miles allowed the appeal *'to the extent that the [Secretary of State's] decision is not in accordance with the law.'*
5. His analysis is at paragraphs 10 to 13 of the decision. At [10], in respect of the claim of deception (submitting a false document namely a TOEIC English language certificate from ETS) he notes **SM & Qadir (ETS - Evidence - Burden of Proof) 2016 UKUT 229** and states that the evidence from the Home Office officials Ms Collings and Mr Millington *'was held not to discharge the legal burden on the respondent to prove such a certificate to be false'*. However, he also notes *'reference to further evidence commissioned by the respondent in the form of a statement from a Professor Peter French, as well as other subsequent reported decisions on this issue.'*
6. He goes on (at [12]) *'... given the decision in SM & Qadir ... the refusal could not be in accordance with the law in relation to that matter in the light of that development'*.
7. On the other matter (giving a false CAS number purportedly assigned by Birkbeck College) the judge noted that there was *'discussion'* of this and that *'given the standing and reputation of that college the notion that it would be party to the issue of a false CAS is very difficult, simply on its face, to accept.'* Also, *'there may be an issue as to whether the number was correctly inputted for the purpose of checking its veracity.'* [11]
8. He concluded as follows (at [12]) (ETS) *'... I was minded to allow the appeal to that limited extent with a view to inviting the respondent to give further consideration to that issue in the light of the up-to-date case law and evidence. Furthermore, such a course would also enable the respondent to revisit the issue surrounding the CAS number to ensure that accurate checks had been married (sic).'*
9. And at [13] *'In all these circumstances therefore, I find, for the reasons given, that the respondent's decision is not in accordance with the law, specifically in relation to the refusal of the application with reference to the ETS English language certificate, and to that extent therefore the appeal is allowed. It follows that the application remains outstanding before the respondent for further consideration of that matter and the Tribunal would respectfully invite the respondent also to give further consideration to the issue surrounding the CAS number for the reasons given.'*
10. The Secretary of State sought permission to appeal which was granted on 1 June 2017.

### **Error of law hearing**

11. At the error of law hearing before me Mr Goba agreed with Mr Singh that the First-tier decision showed material error of law such that it had to be set aside. I agreed.
12. It suffices to note the following. The judge failed to engage with issues that were before him and made no relevant findings. On the CAS aspect his opinions about Birkbeck College and whether the respondent might in inputting the CAS number to check its veracity have confused the figure '1' and the capital letter 'l' and the figure '0' with the capital letter 'O' and his invitation that the respondent might look again at it was not the correct approach. It was for the judge to analyse the evidence before him applying the appropriate standard and burden of proof and to reach reasoned findings on that matter.
13. As for the ETS issue his purported analysis is inadequate. While he refers to **SM & Qadir** his comment that the case decided that *'the refusal could not be in accordance with the law'* is not what that case decided. That case held that the Secretary of State's generic evidence, combined with her evidence particular to these two appellants, sufficed to discharge the evidential burden of proving that their TOEIC certificates had been procured by dishonesty. However, given the multiple frailties from which this generic evidence was considered to suffer and, in the light of the actual evidence adduced by the appellants, the Secretary of State failed (in that case) to discharge the legal burden of proving dishonesty on their part. During the course of the determination the Tribunal added that *'every case belonging to the ETS/TOEIC stable will invariably be fact sensitive. To this we add that every appeal will be determined on the basis of the evidence adduced by the parties'* (at para 102).
14. In Mr Pathan's case the judge did not enter into analysis of when or how Mr Pathan took the ETS case or what it involved.
15. In addition, he rejected the Secretary of State's claims and evidence without any examination of it, although that evidence including from Professor French, was identified by the judge, listed at [10], as new evidence for the Secretary of State and indeed relied on.
16. As indicated both parties at the hearing before me agreed that, for the reasons given, the decision showed material error of law and that the case would need to be reheard.

## **Conclusions**

17. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
18. The decision is set aside. In light of the foregoing, it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to remit the case to the First-tier Tribunal for a fresh hearing before a different judge with no findings preserved.

No anonymity direction has been requested or made.

Signed

Date

Upper Tribunal Judge Conway