



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

Appeal Numbers: IA/32882/2015
IA/32914/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 18 May 2017**

**Decision & Reasons Promulgated
On 13 June 2017**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MS NIRMALJEET KAUR
MR MOHAN SINGH**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Hossein of SEB Solicitors

For the Respondent: Mr Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision promulgated on 25 October 2016 of First-tier Tribunal Judge Beg which refused the appeals of Ms Kaur and Mr Singh against the respondent refusal of leave dated 11 September 2015.
2. The background to this matter is that the appellant first came to the UK on 30 May 2011 with entry clearance as a student. She has had leave since then either in her own right or as a dependant of her husband, Mr Singh.

They had leave until 10 July 2014 and then on 10 July 2014 made a further application for leave as a Tier 4 (General) Migrant and dependent.

3. The respondent refused their applications for further leave because it was the respondent's view that on 25 July 2012 the appellant obtained a fraudulent test certificate from a TOEIC test taken at Samford International College. The respondent had been informed by ETS that they had a recording of the appellant's speaking test. Using voice verification software ETS had been able to detect that a single person was taking multiple tests. When ETS checked the appellant's test they confirmed that there was significant evidence to conclude that the certificate was fraudulently obtained by the use of a proxy test taker. The test results were declared to be invalid and her scores were cancelled. The ETS information as to the appellant's test result being declared invalid is at pages F1 and F2 of the respondent's bundle.
4. The respondent therefore refused the application under paragraph 322(2) of the Immigration Rules as it was found that a false document had been submitted in relation to a previous application. The respondent considered her discretion in the matter and decided against the applicant in the exercise of that discretion.
5. The respondent also found that the appellant had not provided a valid CAS reference number in support of her application as required by Appendix A of the Immigration Rules. This led to the application also being refused under paragraph 245ZX(c) of the Immigration Rules together with 245ZX(d).
6. The appellant appealed on the basis that she had taken the TOEIC test herself, that she had genuine reasons why she was not able to submit a CAS to the respondent with the application and that she should be granted leave under Article 8 ECHR.
7. First-tier Tribunal Judge Beg found that the appellant was unable to meet the evidence brought by the respondent which was sufficient to satisfy the evidential burden that she had obtained a fraudulent test certificate and relied upon it in a previous application. The appeal was therefore dismissed. There was no comment in the decision on the CAS issue or Article 8 ECHR.
8. The grounds of appeal maintain that First-tier Tribunal Judge Beg acted unlawfully in refusing to adjourn the hearing. The grounds also appear to argue in paragraph 1 that the appellant had, in fact, provided a CAS with her application. The grounds also argue that the wrong burden and standard of proof was applied.
9. First-tier Tribunal Judge Beg deals with the question of an adjournment at [6] and [7] of the determination. She states as follows:
 - "6. The appellants did not attend the hearing of the appeal. The notice of hearing dated 9 June 2016 was properly served on the appellants. In

an undated letter to the Tribunal that (sic) the appellant stated she is feeling 'sick and weak' and would like the appeal to be heard after a month. She stated that both her and her husband were stressed. She attached a GP's sick note. I find that the GP saw the appellant on 12 October 2016. She complained of lower back pain and he signed her off work until 19 October 2016. I find that there is no credible evidence before me that the appellants are unable to attend the hearing. They have had ample opportunity to prepare for the hearing; the respondent's refusal letter is dated 11 September 2015 and the notice of hearing is dated 9 June 2016. The application to adjourn is refused. Accordingly I determine this appeal under Rule 28 of the Tribunal Procedure First-tier Tribunal Immigration and Asylum Chamber Rules 2014. I am satisfied that the appellants received the notice of hearing and is in the interest of justice to proceed".

10. It should be noted that the hearing took place within the window identified by the GP, on 17 October 2016 albeit on the front page the determination wrongly refers to be it being heard on 7 August 2016. Beyond the witness statements provided with the grounds of appeal, there was no bundle for the appeal from the appellant. Further, not only did only the appellants not attend but they were unrepresented.
11. The grounds maintain that the GP letter should have obliged the First-tier Tribunal to adjourn but that is disagreement not an error on a point of law. First-tier Tribunal Beg considered the relevant material before her. She found that it did not indicate to her satisfaction that the appellant was unable to attend the hearing. That conclusion cannot be said to be perverse. There was no error in the decision to proceed with the hearing in the absence of the appellants.
12. Nothing in the determination shows that, in substance, the judge did not apply the correct burden of proof. That is an additionally unsustainable ground where at [8] the First-tier Tribunal judge sets out specifically that she applied the civil standard of proof, that of the balance of probabilities. She also reminded herself at [12] that in an ETS case the decision will be fact sensitive. Further, at [19] the judge refers to the case of RP (Proof of Forgery) Nigeria [2006] UKAIT 0086 and applies it to the facts as found. The argument that the judge applied the wrong burden or standard of proof is not made out.
13. The remainder of the grounds, in my view, merely amount to a disagreement with the decision. Nothing in the assessment by Judge Beg of the evidence concerning the ETS test shows error. The judge was manifestly entitled to find, given the material from ETS here, that the appeal should be refused because false documents had been submitted. The witness statements of the appellants did little to outweigh the ETS material.
14. There is the further matter that, although not addressed by Judge Beg, nothing here shows that the appellant submitted a CAS to the respondent with the application. The appeal also had to fail for this reason.

15. The grounds at paragraphs 6 to 11 seek to argue that the appellant had an Article 8 claim of substance and that this had been before the First-tier Tribunal. The grounds are correct in stating that Judge Beg does not address Article 8 either under the Immigration Rules or outside the Immigration Rules in her decision. The appellant had not made a substantive application to the respondent under Article 8, however, and the decision letter did not address it at all as a result.
16. The appellants did refer to Article 8 ECHR as a ground of appeal at section 8 of the appeal form to the First-tier Tribunal. Those ground of appeal state at paragraph 3 that there “is a clear breach under Article 8 of the ECHR – right to respect for private life”. The witness statement of the appellant also indicates at paragraph 4 that she would argue that “the respondent refused my application rather hastily and without considering the consideration connected with Article 8 of the ECHR”. Mr Singh’s statement is identical in this regard.
17. The difficulty for the appellants is that, albeit there is no Article 8 ECHR consideration by First-tier Tribunal Judge Beg, that claim would have had to be refused and the outcome to the appeal would have been no different. The Article 8 ECHR claim was barely particularised in the materials before the First-tier Tribunal. The appellants’ immigration history is set out above. They have only ever been here with precarious leave. They have never had any expectation of remaining longer. They have undeniably strong links to Pakistan having lived there for most of their lives. There was nothing before the First-tier Tribunal Judge that could have allowed an appeal under the Immigration Rules or outside the Immigration Rules. That is additionally so where the ETS issue and inability to meet the Immigration Rules is weighed against the appellants.
18. It is therefore my conclusion that although the failure to consider Article 8 was an error, it is not a material one that it should lead the Upper Tribunal to set aside the decision. It should be obvious that, had I reached the alternative decision, and set aside the determination of First-tier Tribunal Judge Beg to be remade, I would have refused a manifestly weak Article 8 ECHR claim.
19. For all of these reasons the decision of the First-tier Tribunal should stand.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed



Date 12 June 2017

Upper Tribunal Judge Pitt

