



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-000463

First-tier Tribunal No: HU/51088/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 11 September 2023

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**  
**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**TAREK AHMED**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Shahadoth Karim, instructed by Legit Solicitors  
For the Respondent: Tony Melvin, Senior Presenting Officer

**Heard at Field House on 8 August 2023**

**DECISION AND REASONS**

1. The appellant appeals, with the permission of Upper Tribunal Judge Kamara, against the decision of First-tier Tribunal Judge Aldridge. By his decision of 6 January 2023, Judge Aldridge dismissed the appellant's appeal against the respondent's refusal of his human rights claim. That claim was made by way of an application for settlement on grounds of long residence, under paragraph 276B of the Immigration Rules.

**Background**

2. The route by which the appellant came to apply for settlement is rather unusual. He came to the United Kingdom as a student in 2010. His leave was subsequently extended to 25 May 2013. Before the expiry of his leave, he made an application for further leave to remain as a Tier 1 Entrepreneur. No decision

was ever made on that application and on 16 January 2020, the appellant varied his application so that it became one for settlement on grounds of long residence.

3. The appellant's application was refused under paragraph 276B and on General Grounds because the respondent considered that he had been dishonest in his dealings with her. She reached that conclusion for two reasons. The first was that the appellant had submitted with his application for further leave to remain as a student a TOEIC certificate from Queensway College which had been obtained by the use of a proxy. The second reason was that the appellant had submitted with his application for leave to remain as an entrepreneur a bank statement which had been found to be false. The application was refused under the Immigration Rules for these reasons and the respondent also concluded that the appellant's removal to Bangladesh would not be contrary to the ECHR.

### **The Appeal to the First-tier Tribunal**

4. The appellant appealed to the First-tier Tribunal and his appeal was heard by the judge on 15 December 2022. The appellant was represented at that hearing by Mr O'Ceallaigh of counsel. The respondent was represented by Mr Tamblingson of counsel. The judge heard oral evidence from the appellant and his friend Saiful Islam. He then heard submissions from the advocates before reserving his decision.
5. In his reserved decision, the judge found that the respondent had established both allegations of deception and he dismissed the appeal, finding that the appellant could not meet the requirements of the Immigration Rules and that his removal was a proportionate course for the purposes of Article 8 ECHR.

### **The Appeal to the Upper Tribunal**

6. Permission to appeal was originally sought on grounds of appeal which were settled by the appellant's solicitors. Permission was refused on those grounds (correctly, in our judgment) by Judge Boyes.
7. The grounds in support of the renewed application were settled by trial counsel, however, and persuaded Judge Kamara to grant permission. There are no fewer than five grounds of appeal, which were helpfully summarised by their author in this way:
  - (i) First, the FTT erred in failing to take account of evidence in respect of the Appellant's character before it;
  - (ii) Second, the FTT erred in failing to take account of material factors in deciding whether the Respondent had discharged the burden of proof;
  - (iii) Third, the FTT erred in failing to take account of the fact that the Respondent's evidence showed that innocent test takers could have been caught up in cheating allegations at Queensway College;
  - (iv) Fourth, the FTT erred in concluding that the Appellant should have approached his College when accused of TOEIC fraud; and
  - (v) Fifth, the FTT erred in its assessment of the evidence in respect of the Pubali Bank.

8. No response to the grounds of appeal under rule 24 was filed by the respondent but Mr Melvin produced a skeleton argument shortly before the hearing, in which he invited the Upper Tribunal to uphold the decision of the FtT.
9. We heard submissions from Mr Karim and Mr Melvin before reserving our decision. We will not rehearse those submissions in this decision, but we will make reference to them insofar as we need to do so to explain our conclusions.

## **Analysis**

### *The First Ground*

10. The point raised in this ground is short and simple: the judge heard oral evidence from Saiful Islam and received written statements from other witnesses which were relevant to the appellant's character, but he failed to have regard to that evidence when he concluded that the appellant was dishonest.
11. Mr Melvin answers this submission in two ways. He submits firstly that the judge must have taken account of this evidence because he referred to it at [10] of his decision. He submits secondly that the evidence could not have made a material difference because the judge made clear findings on the documentary evidence at the heart of the case.
12. We reject the first of Mr Melvin's submissions. The judge merely stated at [10] that he had heard evidence from Mr Islam. He made no reference to the content of Mr Islam's evidence. That evidence was relevant, as Mr Karim explained to us, because Mr Islam was able to speak to the bona fides of the investor behind the appellant's Tier 1 application and, more generally, because he had known the appellant for some years and considered him to be an honest man. The evidence about the investor was directly relevant to the question of whether the bank statements were forged, as alleged by the respondent. The evidence about the appellant's honesty was relevant because the Court of Appeal had said in SSHD v Majumder & Ors [2016] EWCA Civ 1167 that account should be taken in such cases of what is known about a person's character: [18] of the judgment of Beatson LJ refers.
13. It was incumbent on the judge to deal with the evidence of Mr Islam, however briefly, to show that it had been taken into account. The passing reference to that evidence at [10] was not legally adequate. There is a substantial qualitative difference between the recitation of a matter and the incorporation of that matter into a process of reasoning: Senthuran v SSHD [2004] EWCA Civ 950; [2004] 4 All ER 365. In any event, the judge made no reference whatsoever to the other individuals who had provided written evidence about the appellant's character. In our judgment, therefore, the judge erred in law in failing to have regard to this evidence.
14. We will consider the materiality of this error in due course.

### *The Second Ground*

15. This ground originally contained two parts. The first relied on a dictum of Richards LJ from 2006 in support of a submission that the judge failed to consider whether the respondent's evidence was cogent. In response to a question from

the Bench, however, Mr Karim confirmed that he was unable to pursue that submission in light of what was said at [58] of DK & RK v SSHD [2022] UKUT 112 IAC.

16. Mr Karim maintained the second part of this ground, however, by which it was contended that the judge had failed to take account of the respondent's delay in considering the appellant's ability to respond to the allegations made against him.
17. We are not satisfied that this ground is made out. It was submitted at [12] of the grounds of appeal that the appellant's relationship with his investor had broken down and that he had been unable, as a result, to obtain anything from the investor's bank (Pubali Bank) in answer to the allegation of forgery. Mr Karim was unable, however, to take us to any part of the evidence in which it was actually asserted that the appellant's relationship with the investor had broken down completely. If it is to be asserted that this was said to the judge in oral evidence, there is no evidence in support of that assertion. The factual premise of this ground is not established, therefore, and we are unable to conclude that the delay had any material bearing on the appellant's ability to address the allegations against him. Whilst it would have been preferable for the judge to have addressed the point in those terms, his failure to do so is immaterial.

#### *The Third Ground*

18. By this ground, it is asserted that the judge failed to consider the fact that the respondent's evidence referred to the discovery of a 'secret room' at Queensway College, in which proxies sat to take tests on behalf of candidates.
19. Mr Melvin accepted that this point was made before the judge and that it was not taken into account. That concession was properly made. The Project Façade report in the respondent's supplementary bundle recorded that

During another audit on 17/09/2013 a 'secret room' was identified where 'pilots' (imposters) were taking the speaking and writing test on behalf of the candidates that were located in the examination room.

20. The judge recorded Mr O'Ceallaigh's reliance on this point at [16] of his decision. The point made was a simple one: if the room was hidden from view, it was possible that some applicants might not have known that a proxy was taking their test. The situation was rather different from the paradigm case documented by Panaroma, in which a proxy sat in the chair whilst the candidate watched.
21. The judge failed to consider this submission at all. Mr Melvin submitted that the omission was not material, given the weight which is to be attached to the Secretary of State's evidence in ETS cases. We will consider that submission in due course.

#### *The Fourth Ground*

22. By this ground, the appellant submits that the judge erred in observing that the appellant had failed to contact Queensway College and had failed to obtain the recordings of his test from ETS. In the first respect, it was submitted in the grounds of appeal that the college had closed down and the appellant had been

unable to do so. In the second respect, it was submitted that the appellant had emailed ETS for a recording of his test and the judge had failed to take account of the email.

23. Neither of these complaints are made out, in our judgment. As with ground two, there is no proper factual foundation for the first submission. Mr Karim was unable to show us anything in which the appellant (or anyone else, for that matter) positively asserted that Queensway College had closed. Mr Karim assumed that it had done so, given the level of fraud which was said to have taken place there, but that assumption is not evidence. In the absence of evidence before the judge that the college had closed, we consider that it was open to him to note that the appellant had not made contact with the college about the allegations against him.
24. The second submission is flawed for a similar reason. Although the judge took no account of the email in which the appellant had asked ETS for a copy of his recording, it remains the case that the appellant had not followed the long-established path for obtaining the recordings. It has been known for many years that ETS is willing to provide these recordings and that they are to be requested from Lee Coffey, a partner in the firm of Jones Day Solicitors, who act for ETS in connection with these matters. It is telling that the appellant did not request or obtain the recording in this established way, preferring instead to rely on an assertedly unanswered email to the general enquiry address of ETS. This point was properly open to the judge on the evidence before him, therefore.

#### *The Fifth Ground*

25. By this ground, the appellant submits that the judge failed to engage with a submission made by Mr O’Ceallaigh and recorded by the judge at [15] of his decision. The submission in question was that the evidence from Pubali Bank was incapable of showing that the bank statements were not genuinely issued because the email from the bank merely stated that the ‘attached statements and solvency certificates and account statements is not correct and not issued by our Branch’.
26. Again, Mr Melvin was constrained to accept that the judge had not addressed this submission. He endeavoured to submit that the point was wholly without merit because the British High Commission would have enquired with a central fraud department at the Pubali Bank and it was that department which would have confirmed that the documents were ‘not correct’. On this occasion, it is Mr Melvin’s submission which has no proper foundation in the evidence. The email exchange between the bank and the High Commission appears at page 141 of the respondent’s bundle. The exchange is so heavily redacted that it is not possible to know whether the email was sent to a central department or to a specific branch of the bank. The difficulty which that necessarily presents for the respondent is that it is possible that the branch to which the email was sent merely confirmed that it did not issue the statements, whereas another branch might have done so. That was precisely the submission made before the FtT and it cannot be dismissed as easily as Mr Melvin suggested.

#### **Materiality**

27. We have accepted that the first, third and fifth grounds establish errors of law on the part of the First-tier Tribunal. We have accepted, therefore, that the judge

failed to consider evidence which bore on the appellant's character, that he failed to consider the significance of the 'hidden room' at Queensway College, and that he failed to consider the difficulties with the evidence from Pubali Bank.

28. The materiality of those errors is, in our judgment, to be considered cumulatively. Having done so, we are unable to conclude that the errors were immaterial to the outcome of the appeal. Had the judge considered the evidence of Mr Islam and those who had made statements in support of the appellant's appeal, it would have been open to him to conclude that the appellant did not know about the fraud which took place in the hidden room. Equally, had the judge considered what was said by Mr Islam about the investor alongside the deficiencies in the respondent's evidence from Pubali Bank, it would have been open to the judge to conclude that that evidence did not establish that the investor's statements were forged. We therefore reject Mr Melvin's submission that these errors on the part of the judge were immaterial; had he considered these matters, he might well have come to a different conclusion on the appeal, even taking full and proper account of what was said about the strength of the respondent's evidence in DK & RK (II).
29. The result of our conclusion is that the decision of the First-tier Tribunal must be set aside in full. Given that the next hearing will have to be *de novo*, and given the nature of the errors into which the FtT fell, we consider that the proper course is to remit the appeal to the FtT for consideration afresh.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of errors on points of law. The decision of the FtT is accordingly set aside in full and the appeal is remitted to the FtT for hearing afresh before a judge other than Judge Aldridge.

**M.J.Blundell**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

17 August 2023