



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

Case No: UI-2024-002874

First-tier Tribunal No: HU/53359/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 25th of September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RINKU KUMAR

(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms S. McKenzie, Senior Home Office Presenting Officer

For the Respondent: Mr P. Nath, Counsel on behalf of Connaught Law Ltd

Heard at Field House on 17 September 2024

DECISION AND REASONS

Introduction

1. The Appellant in these proceedings is the Secretary of State for the Home Department but for ease of reference I will refer to the parties as they were at the First-tier hearing.
2. The Respondent has appealed the decision of Judge Oxlade (hereafter “the Judge”) who allowed the Appellant’s human rights appeal on 29 April 2024.

Permission was initially refused by the First-tier but granted after renewal by Upper Tribunal Judge McWilliam.

The Respondent's grounds of appeal

3. The Respondent contends that the Judge acted unlawfully in finding that the Appellant had not used deception when obtaining his TOEIC for a speaking test at 'All Education Limited' on 18 April 2012 despite ETS cancelling the test as invalid, see §3.
4. The Respondent avers that the Judge erred on the following bases:
 - a. The Judge failed to have regard to the 'look-up tool' provided by the Respondent which "*showed that the test could not be relied upon as it illustrates deception has taken place*".
 - b. The Respondent was disadvantaged by the Tribunal placing the appeal on the float list.
5. I have also had sight of the further development of the argument in the renewed grounds and the skeleton argument authored by Ms Young dated 26 July 2024.

The error of law hearing

6. I heard oral submissions from both representatives of which I have kept my own note and at the end of the hearing I reserved my judgment which I now give with reasons.

Findings and reasons

7. In coming to my conclusions, I have had regard to the bundle compiled by the Respondent for these proceedings and the stitched bundle from the proceedings at the First-tier Tribunal.

Ground 1

8. In my view there is no merit at all to the Respondent's first ground, even with the evolution of the argument as developed in Ms Young's skeleton argument.
9. It is clear that the Judge expressly understood that the Respondent's case was that the Appellant had used deception when obtaining the TOEIC of his speaking test result on 18 April 2012 and detailed this specifically at §3.
10. The Respondent does not explain what more the Judge could have gained from expressly referring to the look-up tool - this document merely confirms that the Appellant's test result was cancelled by ETS which the Judge obviously already knew.

11. Ms McKenzie offered no further argument on this point other than by reference to the additional assertion in the skeleton argument that the Judge did not consider the Respondent's documentary evidence (see para. 3 onwards).
12. I also find that there is no merit in this point: the Judge expressly records that she took into account the evidence supplied by **both** parties at §6.
13. Furthermore, the Judge applied the most recent reported guidance in DK and RK (ETS: SSHD evidence, proof) India [2022] UKUT 112 (IAC) – see §10 onwards which itself considers and assesses the standard documentary evidence provided by the Respondent in ETS appeals. Ms McKenzie did not argue that the Upper Tribunal's later reported decision in Varkey & Joseph (ETS - Hidden rooms) India [2024] UKUT 142 (IAC) departs from the conclusions of the panel in DK & RK and I therefore find that the Judge applied the correct Tribunal guidance.
14. Ms McKenzie did not assert that there was anything new in the material provided to the First-tier in this appeal and so the Judge's findings are legally sufficient. I also add that the Judge expressly states at §24 that she took into account the totality of the evidence and acknowledged the very low error rate accepted by the experts in DK. The Judge therefore properly reflected on the weight to be given to the Respondent's evidence which is not in any event determinative of the allegation of deception despite the erroneous suggestion in the Respondent's grounds as I have quoted above.

Ground 2

15. There is equally no merit in this argument. Firstly, Ms McKenzie accepted in the hearing before me that this ground was effectively an assertion that the Judge had acted procedurally unfairly. Secondly, Ms McKenzie also fairly accepted that the Respondent had provided no evidence of the existence of Tribunal "guidance" relating to the kinds of cases to be included on the float list – see para. 2 of the skeleton argument.
16. In my judgment Ms Young has failed to provide any evidence to support the assertion that the Tribunal does not as a matter of its own procedure/policy list ETS cases on the float list and the Respondent's argument therefore fails from the start.
17. The Upper Tribunal can furthermore take judicial notice of the fact that the Respondent is given advanced notice of appeals which are listed to be heard in the Tribunal. The Respondent **has not** argued that the Tribunal did not give prior notice of this appeal in advance, nor has she asserted that she asked for the appeal to only go ahead with a representative from the Respondent present.
18. Furthermore, the Respondent has not argued that the Judge's decision is deficient for the failure to explain why she proceeded in the Respondent's absence at §5.

19. For these reasons I find that the Respondent's second ground is meritless.

Notice of Decision

The Respondent's appeal is dismissed.

I P Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 September 2024