



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore Judgment

Case No: UI-2024-003445

First-tier Tribunal No: HU/54596/2023
LH/03427/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 06 November 2024**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**Qurban Ali
(ANONYMITY ORDER NOT MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr P Nath, Counsel instructed by Connaught Law Limited
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

Heard at Field House on 21 October 2024

DECISION AND REASONS

1. The appellant, who is a citizen of Pakistan, is appealing against the decision of Judge of First-tier Tribunal Chowdhury, dated 6 June 2024.
2. The central issue in dispute before the judge was whether the appellant cheated in an ETS English language test taken in 2012.
3. The judge found that the appellant cheated in the test. She also found that the appellant would not face very significant obstacles integrating in Pakistan and that removing him to Pakistan would not represent a disproportionate interference with his rights under Article 8 ECHR.
4. In the First-tier Tribunal, to support his case that he did not cheat, the appellant relied on an expert report by Mr Stanbury, an expert in computing and database programming. Mr Stanbury's report is said by the appellant to cast doubt on the integrity of the process by which ETS identified tests where a test taker had cheated. The judge placed little weight on the report in the light of the

assessment of it in an unrelated case where similar issues arose: *Varkey & Joseph (ETS – Hidden rooms) v SSHD* [2024] UKUT 00142 (IAC). The judge set out part of paragraph 131 of *Varkey* and stated that in the light of this he placed little weight on Mr Stanbury’s evidence. Paragraph 131 of *Varkey* states:

131. Mr Stanbury expresses the opinion that the first appellant’s test recording was never made because the LCSS was falsifying all tests, or if it was made, it was lost, replaced or confused with another recording later in the process, either deliberately or accidentally. In either case, that was done potentially without the knowledge or involvement of the first appellant. We are unable to attach any weight to his opinion. Although we accept the opinions expressed by Mr Stanbury regarding matters that are within his expertise, the difficulty with much of the evidence of Mr Stanbury is that he is prone to speculation. His opinion is based upon what he considers to be possible. He accepts however that he did not know what was actually happening at test centres in 2012. Any opinion expressed by him as to what the LCSS did strays beyond his knowledge or expertise. It is not for him to speculate as to what may have happened to any recording made.

5. The appellant advanced four grounds of appeal. However, permission was granted only in respect of ground 2 (and on the basis of procedural fairness in respect of the issue identified in ground 2).
6. Ground 2 argues that the judge fell into error in his approach to Mr Stanbury’s report. It is argued that the judge failed to give sufficient reasons why the report was rejected. It is also noted in ground 2 that *Varkey* was not a reported decision at the time of the appeal.
7. The grant of permission states:

“It is arguable that the reasons given as to why the Chris Stanbury report was rejected, seemingly out of hand, are inadequate and insufficient, and fail to address the matters of relevance in this particular case. In addition, if the assertion in the grounds is correct, the First-tier Tribunal judge appears to have dismissed the report on the basis of case law which had not as of then been reported, and therefore without the benefit of seeking and/or considering submissions on the point.”
8. The respondent submitted a Rule 24 response. It is noted in the Rule 24 Response that, although *Varkey* had not been reported at the time of the hearing, it had been promulgated and at the hearing permission had been sought - and was granted - to rely on it.
9. I am not persuaded that ground 2 (or the associated procedural fairness submission, as articulated in the grant of permission) has merit, for the following reasons.
10. It might have been procedurally unfair for the judge to have relied on *Varkey* if one or more of the parties was unaware that he might do so. In such circumstances, procedural unfairness might have arisen from a party not being aware that *Varkey* needed to be addressed and not having had an opportunity to address the case. That, however, is plainly not what occurred in this case. As set out in the Rule 24 response, not only was *Varkey* raised at the hearing thereby giving the appellant an opportunity to address the case, permission was granted by the judge to rely on it. In these circumstances, the appellant’s representatives had a sufficient opportunity to address *Varkey* and there is therefore no basis to contend that there has been procedural unfairness.

11. The reason given by the judge for not placing weight on Mr Stanbury's report was that he agreed with the assessment of the report in *Varkey*. *Varkey* is a detailed Upper Tribunal decision by a Presidential Panel where Mr Stanbury's evidence was considered comprehensively. It was open to the judge to agree with the Panel's assessment of Mr Stanbury's evidence and relying on that assessment constitutes an adequate reason for attaching little weight to the report.
12. For these reasons, the appeal is dismissed.

Notice of decision

13. The decision of the First-tier Tribunal stands and the appeal is dismissed.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5.11.2024