



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

Appeal Number: IA/36028/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 28 May 2015**

**Decision & Reasons Promulgated
On 8 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUHAMMAD UZMAN SHAFIQ
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr R S Walker, Home Office Presenting Officer
For the Respondent: Ms Manjit Dogra, Counsel

DECISION AND REASONS

1. The appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-tier Tribunal, with the Secretary of State referred to as “the respondent” and Mr Shafiq as “the appellant”.
2. No application for anonymity has previously been made in these proceedings and no material has been put before me today to suggest that such an order is required.

3. The appellant is a citizen of Pakistan born 10 December 1989. He first entered the United Kingdom on a Tier 4 student visa on 30 May 2011 to study an English language course at B2 Level at West End College. He completed this course on 13 May 2012. Subsequently he passed a TOEIC examination at Level B2. He took the two components of this course on 25 August 2012 and 20 June 2012 and then applied for further leave to remain as a Tier 4 General Student. He was granted this in order to study a Diploma in Business Management at Westlink College. That course began on 26 February 2013. His leave was due to expire on 10 January the following year. However on 15 September 2013 after a trip to Pakistan for a holiday he was detained at Heathrow Airport and interviewed. The entry clearance that he had previously obtained which operated as leave to enter was curtailed on the basis that his English language skills were inadequate. He was refused leave to enter but granted temporary admission into the United Kingdom. This was by way of paragraph 321A of the Immigration Rules HC 395 (as amended). It was on the basis that he had made false representations or that his circumstances had changed since his leave was granted. A further explanation for this was that he was unable to answer questions in English that were put to him by the Immigration Officer. Not only did the appeal turn on the issue of the appellant's language ability when seeking re-entry but also on the basis that his TOEIC certificates had been obtained by fraud. This was on the basis that produced to the First-tier Tribunal Judge was a printout of TOEIC results with the candidate ID number 5180431 and the date of birth 10 December 1989 and that this states "No examination results were found".
4. The appellant appealed the respondent's decision. Following a hearing at Taylor House Judge of the First-tier Tribunal Wilshire, in a decision promulgated on 16 January 2015 allowed the appellant's appeal. His conclusions are to be gleaned from paragraph 5 of his decision where he states he does not accept that an oral discussion with the Immigration Officer at the airport is sufficient in itself to establish that the appellant obtained his certificates by fraud. An Immigration Officer is not a skilled expert and the level of English required is only B2 which is only basic. The judge found that it was plausible that the appellant might find it difficult to speak English after a long flight and that there were all sorts of explanations as to why he found it difficult to answer the questions put to him. In the absence of evidence that the TOEIC results were indeed obtained fraudulently the Judge concluded that he was not prepared to accept that the burden of proof had been discharged.
5. The respondent sought permission to appeal which was granted by Judge of the First-tier Davidge in a decision dated 7 April 2015. Her reasons for so doing are:-
 - "1. The Respondent seeks to appeal a decision of the First-tier Tribunal, Judge Wilsher, promulgated on 16th January 2015, in which the Appellant's appeal, determined at an oral hearing where both parties were represented, was allowed. The judge found that the Respondent had failed to establish that the Appellant had obtained his English language certificate by fraud or that the Appellant's circumstances had changed so as to justify curtailment.
 2. The grounds assert that the judge failed to deal with the conflict in the evidence that was put before him. In particular the judge failed to recognise that the print-

out from TOEIC revealed that the examination results reflected by the alleged two certificates must be forged because the organisation had confirmed that those results did not exist. The judge has missed the import of that position and is mistaken in apparently expecting further documentary evidence by the Respondent or a letter from TOEIC referring and comparing the certificates adduced by the Appellant.

3. I find that it is at least arguable that the judge failed to appreciate the nature and weight of evidence.
4. The grounds are arguable.”
6. Thus the appeal came before me today.
7. Mr Walker relied on the grounds for seeking permission to appeal. The main thrust of which was that at interview the appellant’s command of English was very poor and after three attempts by the Immigration Officer to speak to him in English the appellant stated that he did not understand and requested that the Interviewing Officer speak to him in the Urdu language. The appellant was not only unable to speak to a level required to study but was also unable to give details of his course and that in failing to accept this evidence the judge materially erred. Likewise the judge further erred in finding that the respondent had not demonstrated that the TOEIC certificates were obtained through fraud. The judge had a printout from TOEIC to show no examination results were found against the appellant’s name and date of birth and coupled with his inability to speak or understand English to a basic level there was ample evidence for the judge to conclude that the very high score TOEIC certificates were obtained by fraud.
8. Ms Dogra argued that there was no material error as asserted by the respondent. The judge was able to take into account that it was plausible after a long flight that the appellant would fail to speak English and need to revert to Urdu. This did not mean that he failed to satisfy the English language requirements. The judge has not disregarded the additional material from TOEIC in relation to the appellant’s certificates and examination results. He was entitled to conclude that there were insufficient evidence when looking at the totality of the material to support the burden placed upon the respondent to prove forgery. She relied on the authority of **RP (Proof of forgery) Nigeria [2006] UKAIT 00086**.
9. The appellant was refused under the general ground of refusal namely paragraph 321A of the Immigration Rules. It states:-
 - ‘321A. The following grounds for the cancellation of a person's leave to enter or remain which is in force on his arrival in, or whilst he is outside, the United Kingdom apply;
 - (1) there has been such a change in the circumstances of that person's case since the leave was given, that it should be cancelled; or
 - (2) false representations were made or false documents were submitted (whether or not material to the application, and whether or not to the holder's knowledge), or material facts were not disclosed, in relation to the application for leave; or in order to

obtain documents from the Secretary of State or a third party required in support of the application or,

- (3) save in relation to a person settled in the United Kingdom or where the Immigration Officer or the Secretary of State is satisfied that there are strong compassionate reasons justifying admission, where it is apparent that, for medical reasons, it is undesirable to admit that person to the United Kingdom; or
- (4) where the Secretary of State has personally directed that the exclusion of that person from the United Kingdom is conducive to the public good; or
- (4A) Grounds which would have led to a refusal under paragraphs 320(2), 320(6), 320(18A), 320(18B) or 320(19) if the person concerned were making a new application for leave to enter or remain (except where this sub-paragraph applies in respect of leave to enter or remain granted under Appendix Armed Forces it is to be read as if for paragraphs 320(2), 320(6), 320(18A), 320(18B) or 320(19)" it said "paragraph 8(a), (b), (c) or (g) and paragraph 9(d)"); or
- (5) The Immigration Officer or the Secretary of State deems the exclusion of the person from the United Kingdom to be conducive to the public good. For example, because the person's conduct (including convictions which do not fall within paragraph 320(2)), character, associations, or other reasons, make it undesirable to grant them leave to enter the United Kingdom; or
- (5) The Immigration Officer or the Secretary of State deems the exclusion of the person from the United Kingdom to be conducive to the public good. For example, because the person's conduct (including convictions which do not fall within paragraph 320(2)), character, associations, or other reasons, make it undesirable to grant them leave to enter the United Kingdom; or
- (6) where that person is outside the United Kingdom, failure by that person to supply any information, documents, copy documents or medical report requested by an Immigration Officer or the Secretary of State.'

10. The headnote to **RP (Proof of forgery) Nigeria [2006] UKAIT 00086** relied upon by Ms Dogra states:-

"An allegation of forgery needs to be proved by evidence and by the person making it. The procedure under s108 of the 2002 Act remains available to respondents. A bare allegation of forgery, or an assertion by an Entry Clearance Officer that he believed the document to be forged can in these circumstances carry no weight. The Tribunal treats a document as forged only on the basis of clear evidence before it. KS (Allegations by respondent: proof required?) Pakistan [2005] UKAIT 00171 should not be read as implying the contrary."

11. The judge's decision is a relatively short one running to some five paragraphs. His findings of fact and reasons are to be found in the latter two.

12. The key to the issue of the appellant's language skills at interview is an analysis of the interview record which was provided to the judge. That appears not to have happened and the judge simply concludes that he does not accept that an "oral discussion with the Immigration Officer at the airport is sufficient in itself to establish that the appellant obtained his certificates by fraud". It is clear from an analysis of the interview record that the appellant's language skills were very poor and after three attempts the Immigration Officer had to move from speaking English to Urdu. The appellant said to him "Please speak Urdu as I do not understand you. I have been in Pakistan for a month and I forgotten my English". The appellant went on to say that he had been in the United Kingdom since 2011 having initially entered to study an English language course. The appellant then was asked about his course and was unable to give an expected level of detail in relation thereto. The appellant was asked how he was able to study when he had great difficulty in answering questions in English and speaking in English. He said that his teacher speaks slowly but when the teacher speaks "fast I don't understand".
13. The judge has materially erred in his assessment of this evidence. Weight should have been given to the interview and there should have been an analysis of the specific questions and answers. Had that occurred the outcome of the appeal would have been different. The circumstances presented to the Immigration Officer at the airport amounted to a change in circumstances entitling him to conclude that there had been such a change in circumstances of the appellant's case since his leave was given that it should be cancelled.
14. The judge had similarly erred in assessing the appellant's TOEIC certificates. Even if he had not, on the basis of the above-mentioned change in circumstances, this appeal should have, in any event, been dismissed. There was ample evidence before the judge to conclude from the printout from TOEIC that the appellant had not sat an examination as claimed. This was particularly so when set into the context of the appellant's inability to speak English as displayed when interviewed by the Immigration Officer.
15. In all the circumstances I find that the respondent has made out her case that the First-tier Tribunal's decision contains an error of law requiring it to be set aside.

Conclusion

16. The making of the decision in the First-tier Tribunal did involve the making of an error on a point of law.
17. I set aside the decision.
18. I re-make the decision in the appeal by dismissing it.

Signed

Date 5 June 2015.

Deputy Upper Tribunal Judge Appleyard