



IAC-FH-AR-V1

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

Appeal Number: IA/42717/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 13 August 2015**

**Decision & Reasons Promulgated
On 18 August 2015**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TAHA ALAM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Mr J Heybroek, Counsel, instructed by Paramount Solicitors

DECISION AND REASONS

1. The appellant in this case is the Secretary of State for the Home Department and the respondent is Mr Taha Alam. I shall refer to the appellant as he was before the First-tier Tribunal. The appellant is a citizen of Pakistan and his date of birth is 24 October 1989. The appellant was granted leave as a student from 17 May 2013 which was due to expire on 8 November 2014.

2. On 13 October 2014 the Secretary of State cancelled the appellant's leave pursuant to paragraph 321A of the Immigration Rules ("the rules") on the basis that he had exercised deception. The decision was made on the basis of information provided to the Secretary of State, by Educational Testing Service (ETS) as a result of a Panorama programme claiming that applicants had sat English tests by proxy at ETS centres and thus English language certificates have been fraudulently obtained. As a result of the programme an investigation was conducted and it was decided by the Secretary of State that the appellant was one of those who had sat the test by proxy and his certificate had been fraudulently obtained.
 3. The appellant appealed against that decision and his appeal was allowed by Judge of the First-tier Tribunal Asjad in a decision that was promulgated on 22 January 2015 following a hearing on 20 January 2015. The appellant attended the hearing and he gave evidence before Judge Asjad.
 4. It is necessary for me to quote the findings of the judge at paragraphs 5 and 6 of the determination:
 - “5. It is for the respondent to establish that the TOEIC qualification obtained from Educational Testing Service (ETS) was obtained by deception and on the evidence before me I am not satisfied that the respondent has discharged its burden of proof. The evidence supplied in this case consists of generic statements prepared by two witnesses that are not specific to this appellant. Reference is made at paragraph 22 of the decision of the Immigration Officer examining ‘relevant sources of evidence, including the ETS Lookup tool and Home Office Records’ – neither of these pieces of evidence has been disclosed to the appellant. The spreadsheet printout is simply that – a print out of the appellant's name against various other entries – purportedly proving the appellant's ‘guilt’. Yet, there is no statement of truth about its accuracy, no information about who has introduced it, and no date for when the test was invalidated and by whom.
 6. The appellant was interviewed twice by officers at Heathrow Airport and I cannot ignore the following statements made by the interviewer:
 - He answered the questions in Basic English
 - He answered in a fluent manner, suggestive of the fact that he had not been coached in providing specific answers by rote
 - He understood the questions well and demonstrated sufficient comprehension to make me believe he could attend classes and complete reports
 - He conversed well and could read relevant documentation
 - He did not lack credibility on any points in interview
 - He was credible
- It is clear from these statements that so far as the interviewer was concerned, he was satisfied that the appellant had proven his English speaking and reading ability.”

5. The judge also took into account that the appellant had provided evidence in the form essays that he had completed as part of his course and in her view this demonstrated his English ability. The judge concluded that the Secretary of State had not established deception and went on to allow the appeal.
6. The Secretary of State was granted permission in a decision of 9 March 2015. In my view the grounds amount to a disagreement with the findings of the First-tier Tribunal and an attempt to reopen the factual findings. The findings of Judge Asjad must be considered in the light of the case of the Crown as in R (on the application of Gazi) and Secretary of State for the Home Department (ETS-judicial review) IJR [2005] UKUT 00327. This case was relied upon by Miss Heybroek and she made specific reference to paragraphs 12, 14 and 15. I take those paragraphs into account.
7. The evidence before Judge Asjad was witness statements from Rebecca Collins and Peter Millington, both of which the judge considered and it was entirely open to her to conclude that this evidence was of a generic nature and that it made no specific reference to the appellant.
8. The judge may have assumed that the spreadsheet printout and the ETS Lookup tool and Home Office records were separate documents when it is clear that in fact the spreadsheet printout was the only other document on which the Secretary of State relied and that it is also referred to as the ETS Lookup Tool and Home Office records. In any event, the judge in my view made clear findings in relation to the print out. If indeed there is any confusion, it had not material impact on the outcome of this case.
9. It was not just as a result of the quality of the Secretary of State's evidence in relation to deception that the judge had to consider, it was also incumbent on her to consider the appellant's evidence and the evidence of interviews. Interviews conducted by officers at Heathrow Airport with the appellant were produced and the judge also took these into account. The judge preferred the evidence of the appellant to that of the Secretary of State and gave detailed and legally sustainable reasons for this.
10. There is no merit in the assertion that the judge did not take into account material evidence in this case or that she took into account irrelevant considerations. The weight to be attached to evidence is a matter for the judge subject to the giving of clear reasons. There is no error of law.

Notice of Decision

The Secretary of State's application is dismissed and the decision to allow the appeal is maintained.

No anonymity direction is made.

Signed Joanna McWilliam

Date 14 August 2015

Upper Tribunal Judge McWilliam