



IAC-FH-NL-V1

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

Appeal Numbers: IA/50932/2014
IA/50927/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27 October 2015
Oral decision given**

**Decision & Reasons Promulgated
On 20 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR JAGAN NATH
MRS NARGIS VOHRA
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Ms J Isherwood, Home Office Presenting Officer
For the Respondents: Mr M Blundell, Counsel instructed by Malik & Malik
Solicitors

DECISION AND REASONS

1. This is the respondent's appeal. I shall refer to the parties as the Secretary of State who is the appellant in this matter and to the claimants who were the appellants in the First-tier Tribunal. The claimants are husband and wife. The main claimant made an application for leave to

remain under the Tier 2 points-based scheme with his wife as a dependant.

2. In a Decision and Reasons promulgated on 9 April 2015 the First-tier Tribunal (Judge Mozolowski) allowed the appeal on immigration grounds. The issue under appeal was the validity of the English language test. The Secretary of State alleged that the test was taken by a proxy tester and thereby the claimant had used deception. The Secretary of State relied on generic evidence in concluding that the test taken by the claimant was invalid. There was also an issue of credibility that arose at the hearing.
3. The First-tier Tribunal (FtT) took into account expert evidence in the form of a report from Dr Harrison. Dr Harrison was unable to reach any conclusion because there was insufficient information. In addition, the claimant adduced evidence of an English language test, his skills and abilities taken before the date of decision. The FtT found the burden of proof on the claimant had been discharged and that he had met the requirements of the Rules.
4. The Secretary of State argues in grounds that the FtT gave inadequate reasons for its conclusion that the refusal decision was not justified. The Secretary of State produced sufficient evidence to show that the test had been done by proxy and found to be invalid. The FtT failed to give adequate reasons for concluding that the claimant did not rely on a fraudulent certificate.
5. Permission to appeal was granted by Upper Tribunal Judge Eshun on 14 August 2015. The matter has come before me this morning to consider whether or not there was a material error of law. I have taken into account the guidance in **R (on the application of Gazi) v SSHD (ETS.JR) [2015] UKUT 00327** in which it was concluded that a simple rejection of the generic evidence produced by the Secretary of State would amount to an error of law but there would be no error where the Tribunal concluded that overall the evidence was insufficient to show deception has been practised and was also entitled to take into account the claimant's ability to speak English.
6. I am satisfied that the First-tier Tribunal decision disclosed an error of law to the extent that it concluded that the claimant had discharged the burden of proof that he meets the requirements of the Rules. I find that this was not a material error however. I have taken into account the oral submissions made in the detailed and helpful Rule 24 response prepared by Mr Blundell. As was pointed out this morning the burden of proof is in fact on the respondent to show that there was deception practised by the claimant. However, in reaching a decision I am satisfied that the First-tier Tribunal found and concluded on the evidence overall that the Secretary of State had not discharged that burden to show that the claimant had practised deception by using a proxy tester. The FtT relied on the expert report of Dr Harrison who was unable to reach any conclusion on the available information and on the claimant's own evidence of his English

language abilities. That evidence was capable of showing and indeed the FtT found that the generic evidence was insufficient to establish deception.

7. Whilst accepting that the FtT did not carry through the analysis of the evidence as regards deception and make a final conclusion in that regard, I am satisfied that it is nevertheless clear from the decision as a whole that the FtT concluded that the Secretary of State's evidence was inadequate and insufficient to discharge the burden appeal in this case. Therefore I conclude that whilst there was an error in the approach of the FtT, it was not material to the outcome of the decision. The Secretary of State's [appeal] is dismissed and the FtT Decision and Reasons shall stand.

Notice of Decision

The appeal is dismissed.

The decision and reasons shall stand.

No anonymity direction is made.

Signed

Date 18.11.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 18.11.2015

Deputy Upper Tribunal Judge G A Black