IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/03613/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 February 2016	**On 25 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHAH RUKH IQBAL
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Miss N Willock Briscoe, Home Office Presenting Officer
For the Respondent: Mr S F Khan, N R Legal Solicitors

DECISION AND REASONS

1. This is an appeal brought by the Secretary of State. It relates to a decision of First-tier Tribunal Judge Reid that was promulgated on 24 August 2015. It has been brought pursuant to a grant of permission from First-tier Tribunal Judge Parkes dated 17 December 2015. Put shortly, the appellant before the First-tier Tribunal was a citizen of Pakistan born on 2 November 1986 who applied in July 2014 for leave to remain as the partner of his wife under Appendix FM of the Immigration Rules.

2. His application was refused by the Secretary of State and a decision to remove was made. The reasons given were that it was not considered

that the appellant and his wife were in a genuine and subsisting relationship which qualified under Appendix FM, and particularly that he had not taken an English language test in 2011 with the Educational Testing Services (ETS).

3. It is with this latter aspect that the appeal before me today has been principally concerned. The First-tier Tribunal Judge in examining the matter and coming to certain conclusions had before her material presented by the Secretary of State concerning English language tests. It appears from the tenor of the First-tier Tribunal Judge's decision that that evidence was dismissed out of hand on the basis that it was generic. In paragraph 19 of the decision, the First-tier Tribunal Judge said the following:

> "I find that the respondent did not interview the appellant before making this decision which was accepted to be the usual practice when a test score issue is raised by ETS. This was unfair on the appellant as it meant the decision relied entirely on the generic evidence regarding the claimed deception in the taking of tests and the printout only, without asking the appellant for his version of events or any evidence he might have that it was in fact him who took the test. It is noted that the statement of Mona Shah refers in paragraph 9 to the appellant as having made a Tier 4 application which was not the case for this appellant. It also refers to enforcement action as a result (para 33 Rebecca Collings) which is not what happened to this appellant."

4. The First-tier Tribunal Judge continued at paragraph 20:

> "I therefore conclude that the appellant did himself take the December 2011 ETS test and did not therefore employ any deception, provide any false documents or information or fail to disclose material matters to the respondent prior to this application being made."

5. In many ways I can understand the First-tier Tribunal Judge speaking slightly disparaging in relation simply to generic evidence but I have had the opportunity today of considering the bundle of papers that were before the First-tier Tribunal Judge which include the witness statement of Mona Shah, a further witness statement from Rebecca Collings and a detailed witness statement from Peter Millington. In addition to that there is a computerised record which appears as Annex A which indicates as invalid the score of Mr Iqbal in relation to the test which it is claimed was taken.

6. What troubles me significantly is that in reaching so firm a conclusion in paragraph 20 that the appellant did take the test, the First-tier Tribunal Judge gives insufficient regard to the very detailed content of the three witness statements to which I have made reference. She touches upon the matter with some brevity in paragraph 19 but does not descend properly to deal with the detailed content of those statements which set out in clear terms the scientific methodology adopted in order to enquire through listening to sound recordings whether there was duplicity or dishonesty in individuals putting themselves forward for those tests.

7. The important test of whether a judge has given anxious scrutiny applies just as much in relation to the case advanced by the Secretary of State as

it does in relation to the case which is advanced by an appellant. So cursory is the judge's comment dealing with this significant and detailed evidence that I cannot be satisfied that appropriate anxious scrutiny was given to the powerful and cogent evidence that Mr Iqbal was not the individual who claimed to have taken the test on that occasion. Whatever the decision may be, the judge did insufficient in analysing the evidence to lay the basic building blocks of the robust conclusion which she articulated in paragraph 20.

8. I have had placed before me today a recent bundle of documentation submitted to the Upper Tribunal under cover of a letter dated 4 February. This includes a lengthy witness statement from Mr Iqbal dealing with his confirmation that he did indeed take the test. In addition, clipped to that witness statement are other items of documentation, one of which I am told gives evidence of a parking ticket which was incurred in the vicinity of the location where the test would have taken place on the date in question, and which has Mr Iqbal's name on it.

9. Clearly these are matters which merit proper investigation by a further First-tier Tribunal, when the judge can form an appropriate view based upon the oral testimony of this witness and the documentation provided in support and in particular can give such weight as he or she considers appropriate to the documentary evidence presented by the Secretary of State which gives rise to a prima facie, albeit rebuttable, assertion that this individual was not the person who claimed to have taken the English test on the day in question.

10. Therefore I inevitably come to the conclusion that there is an error of law as identified in the grounds of appeal in relation to the way in which the judge dealt with the evidence concerning the English language test. That error of law is undoubtedly material as it had a key bearing on the outcome of this matter and in consequence this appeal must be allowed.

11. It therefore follows that there needs to be a rehearing of this matter before a First-tier Tribunal which can properly investigate the evidence on both sides of the argument and come to a proper and balanced conclusion having heard and read all pertinent evidence on whether the issue regarding the English language test is made out or otherwise.

Notice of Decision

Appeal allowed. Matter remitted to First-tier Tribunal for a rehearing. No findings preserved.

No anonymity direction is made.

Signed *Mark Hill* Date 20 February 2016

Deputy Upper Tribunal Judge Hill QC