



**The Upper Tribunal
(Immigration and Asylum Chamber)
IA/36980/2014**

Appeal number:

THE IMMIGRATION ACTS

**Heard at Field House
On March 31, 2016**

**Promulgated
On April, 13 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS ISMA SADDIQUE
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Bramble (Home Office Presenting Officer)

For the Respondent: No appearance

DECISION AND REASONS

1. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-tier Tribunal so that for example reference to the respondent is a reference to the Secretary of State for the Home Department.

2. The Appellant is a citizen of Pakistan. The appellant was granted leave to remain in the United Kingdom as a Tier 1 Entrepreneur between December 30, 2013 and December 30, 2016. She returned from Pakistan from a visit on August 6, 2014 and following questioning by immigration officers was given temporary admission. Following a further interview the respondent refused her leave to enter and curtailed her existing leave under paragraph 321A(1) HC 395 and took a decision to remove her under section 47 of the immigration, Nationality and Asylum Act 2006 on September 12, 2014.
3. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on September 25, 2015.
4. The appeal came before Judge of the First-tier Tribunal Kamara (hereinafter referred to as the Judge) on August 3, 2015 and in a decision promulgated on August 26, 2015 she allowed the appellant's appeal under the Immigration Rules.
5. The respondent lodged grounds of appeal on September 8, 2015 submitting the Judge had erred. Permission to appeal was refused by Judge of the First-tier Tribunal Kelly on December 28, 2015 on the basis the grounds amounted to nothing more than a disagreement with the Judge's findings. Permission to appeal was renewed to the Upper Tribunal and Upper Tribunal Judge Goldstein granted permission on January 18, 2016 on the grounds the Judge's reasoning in allowing the appeal was flawed.
6. The matter came before me on the above date and on that occasion there was no appearance by either the appellant or her representatives. I was satisfied that both had been properly served with due notice of the hearing having been sent to them by first class post on February 18, 2016.
7. The First-tier Tribunal did not make an anonymity direction and I see no reason to make one now.

SUBMISSIONS

8. Mr Bramble acknowledged the Judge's decision was thorough and considered the evidence presented. In adopting the grounds of appeal he tentatively suggested the Judge may have erred in her approach in paragraph [26] of her decision when she found "the respondent had not satisfied on the balance of probabilities that the appellant had practised deception". He argued that this conclusion went contrary to the findings in R (Gazi) v SSHD (ETS-judicial review)

IJR [2015] UKUT 00327 (IAC) because the Tribunal had found in that case that the evidence submitted (identical in this appeal) just satisfied the burden of proof. However, he acknowledged that any error may not be material in light of the Judge's further findings in paragraph [27]. He further submitted that as there was a final decision due in the test case on ETS cases I could adjourn it to that date.

DISCUSSION AND FINDINGS

9. The Judge's decision contained robust reasons to support her findings and those findings included a detailed examination of the respondent's evidence as well as the appellant's own evidence-oral and written.
10. For reasons contained in paragraphs [10] to [30] of her decision the Judge considered the various elements of the appeal including consideration of both of the respondent's witness statements, the appellant's own test scores in both this test and others taken at that time and the appellant's interview record and she concluded that whilst there was evidence to show deception had taken place in the system the respondent had failed, in this case, to show this appellant had practised deception.
11. Mr Bramble handed to me a copy of the court's summary of judgement in linked appeals recently heard by the President, the Honourable Mr Justice McCloskey and Deputy Upper Tribunal Judge Saini. The preliminary conclusions included the following:
 - a. The respondent's evidence (the two witness statements) is intrinsically limited. Neither witness possesses any relevant qualification, credentials or expertise in what is ultimately a scientific field.
 - b. There was no direct evidence from the ETS organisation.
 - c. The appellant's expert evidence was persuasive and impressive. His opinion was not challenged by any competing expert witness. The tribunal accepted his evidence in all material matters in full.
 - d. The Secretary of State had not discharged the legal burden of establishing that either appellant procured his TOEIC certificate by dishonesty.
12. Nothing in that decision in my view impinges on the decision taken by the Judge in this case. If anything, the Judge, without the benefit of expert evidence, carried out a similar assessment and concluded the respondent had failed to prove the appellant had cheated.
13. There was therefore no error in law.

14. I did not adjourn the matter because I was satisfied that on the facts of this case an adjournment for the full text of the “test” case would not have assisted me.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the original decision and dismiss the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I uphold the fee award as I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis