



IAC-FH-CK-V1

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

Appeal Numbers: IA/42198/2014  
IA/42203/2014  
IA/42202/2014  
IA/42201/2014  
IA/42200/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8 April 2016**

**Decision &  
Promulgated  
On 27 April 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR MUHAMMAD AYAZ**

**MRS ASMA AYAZ**

**[U A]**

**[M A]**

**[A A]**

**(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

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

For the Respondents: Ms J Victor-Mazeli, Counsel instructed by Reliance Solicitors

**DECISION AND REASONS**

1. I shall refer to the respondents as the appellants and to the appellant (the Secretary of State for the Home Department) as the respondent (as they appeared respectively before the First-tier Tribunal). The appellants are a family, a father and mother and three children who are all citizens of Pakistan. On 8 October 2014, the appellants' applications to remain living in the United Kingdom were refused by the Secretary of State, who also made decisions to remove the appellants. The appellants appealed against that decision to the First-tier Tribunal (Judge Maxwell) which, in a decision dated 16 September 2015 allowed the appeal on the basis that the refusal decisions were made otherwise than in accordance with the law and directed that the matter be remitted to the respondent, who "should grant 60 days' leave in order that the first appellant may have the opportunity to submit a fresh application for leave to remain as a Tier 4 Student supported by a valid CAS issued by a Registered Sponsor." The Secretary of State now appeals, with permission, to the Upper Tribunal.
2. I was assisted by Mr Whitwell, for the respondent, who, in his oral submissions to the Upper Tribunal, made it clear that there was, in essence, one ground of appeal. The judge in this ETS case had referred to generic evidence and had found that the Secretary of State had failed to discharge the burden of proving that, on the particular facts of this case, the first appellant had used deception (a proxy) when undertaking an English language test by a recognised provider, ETS. The argument advanced by Mr Whitwell was that the judge had failed to make proper findings on a material item of evidence, namely a spreadsheet annexed to the statement upon which the respondent relied of a Mr Sartorius and which showed the appellant's name together with an assertion that his test result had been "invalid". The grounds of appeal described this evidence as "specific evidence" which identifies the appellant as an individual who had exercised deception.
3. I brought to the attention of both representatives the fact that the Upper Tribunal had, on 5 April 2016, promulgated the decision in *SM and Ihsan Qadir* (IA/31380/2014 and IA/36319/2014 - the case has not yet been reported, so has no neutral citation).
4. I find that the appeal should be dismissed. Had Judge Maxwell made no reference whatever in his written decision to the spreadsheet then that may well have amounted to an error of law. However, at [11] he does refer to the evidence noting that "as a result of [analysis using software and recordings] the appellant's test was found to be invalid and therefore was a false representation." Later at [17] the judge noted that "the voice recognition system employed is capable of invalidating certificates for multiple reasons some of which do not involve fraud or deception ... and the evidence before me does not address this issue in relation to the appellant's case." It is clear that the judge concluded that the "specific" evidence was insufficient in this instance given that no attempt had been made by the Secretary of State to address the problems arising with that

evidence as detailed in the evidence adduced by the appellant. It follows that the judge's conclusion that the burden of proof had not been discharged was available to him on the particular facts of this case and he did not err in law by finding that the appeal should not have been refused for the reasons given in the notices of refusal.

5. The judge did not allow the appeal outright. Instead, he made the direction which I have set out above. Understandably, the first appellant has not done anything regarding new CAS or registered sponsor given that this appeal was pending. For the avoidance of any doubt, I stress that it is now for the Secretary of State to consider the matter further as directed by the First-tier Tribunal and to write to the first appellant regarding the submission of a fresh application giving the first appellant 60 days from the days of any letter sent to him to submit a fresh application supported by a valid CAS issued by a registered sponsor.

### **Notice of Decision**

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 26 April 2016

Upper Tribunal Judge Clive Lane