



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/43205/2014**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 October 2015**

**Decision & Reasons  
Promulgated  
On 29 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

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

Appellant

**And**

**ABDUL NAVEED**  
(ANONYMITY ORDER NOT MADE)

Respondent

**Representation:**

For the Appellant: Ms A Everett (Senior Home Office Presenting Officer)  
For the Respondent: Mr M Rana (Sabz Solicitors)

**DECISION AND REASONS**

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal allowing Abdul Naveed's appeal against the decision of the Home Office to curtail his leave to remain on 1 November 2014.
2. The Respondent is a citizen of Pakistan born 15 September 1989, who was granted leave to enter the United Kingdom as a student in February 2011 until 25 May 2012, that leave being extended until May 2013 and then again until February 2016. The Respondent's leave to remain was curtailed as he passed through immigration control on 1 November 2014 whilst returning from his brother's wedding in Pakistan, because, it subsequently came to light (no reasons being provided to him at the time), of information provided by Educational Testing Service Limited

(ETS) that there had been some impropriety in his examination process, as had been shown by the results having been shown as questionable as part of their general survey into test results in recent years: thus the decision maker inferred that false evidence of English language proficiency had been relied on in the course of the application made in 2012 and again in June 2013.

3. The Respondent's case as put to the First-tier Tribunal was that he had never used a false TOEIC certificate (thus referencing the Test of English for International Communication by which language proficiency is measured), having attended for his test and completed it successfully at a test centre at Gant's Hill in March 2012: he had not been helped by any proxy test taker, and he had previously successfully passed a TOEIC test upon which he had relied when he originally entered this country; he was fluent in English, having obtained a MBA from Sunderland University taught in the language.
4. Having noted that the Secretary of State had only provided a "poorly copied bundle" that had been served late, containing three witness statements made in relation to the well-known ETS scandal, which did not deal with the specifics of the Respondent's case. The First-tier Tribunal concluded that there was no evidence before it that could discharge the burden of proof that lay on the Secretary of State to establish dishonesty, noting that he had not been cross examined nor given an adequate opportunity to challenge the contents of the witness statements relied upon by the Home Office. There was no reason to think that Mr Naveed was a dishonest witness or that he would, as a fluent English speaker, have found reason to cheat in his English language test.
5. An application for permission to appeal was made by the Secretary of State, the supporting grounds contending that the reasoning of the First-tier Tribunal was inadequate, pointing to the generic witness statements as potentially cogent evidence which had required more detailed consideration it had in fact received, failing to give adequate reasons for accepting Mr Naveed's credibility, and failing to consider that there might be reasons why a person able to speak English might nevertheless employ a proxy to take a test on their behalf. Judge Hollingworth of the First-tier Tribunal granted permission to appeal on 13 August 2015. At the hearing before me Ms Everett relied on the grounds of appeal. For the reasons that follow I did not find it necessary to call on Mr Rana to make oral submissions.

### **Findings and reasons**

6. The appeal falls to be considered against Rule 321A(1) of the Immigration Rules:

**"Grounds on which leave to enter or remain which is in force is to be cancelled at port or while the holder is outside the United Kingdom**

**321A.** The following grounds for the cancellation of a person's leave to enter or remain which is in force on his arrival in, or whilst he is outside, the United Kingdom apply;

(1) there has been such a change in the circumstances of that person's case since the leave was given, that it should be cancelled; or

(2) false representations were made or false documents were submitted (whether or not material to the application, and whether or not to the holder's knowledge), or material facts were not disclosed, in relation to the application for leave; or in order to obtain documents from the Secretary of State or a third party required in support of the application ..."

7. I do not consider that the First-tier Tribunal, on this occasion comprised of a Panel of experienced Immigration Judges, made any error of law in its disposal of the appeal. Its reasons are perfectly clear: absent cross examination, and given the Respondent's command of English established by the material before it and his outright denial of dishonesty, it found that the Secretary of State had failed to discharge the burden of proof on her to make good her allegation. As was stated by Maurice Kay LJ in *MS (Sri Lanka)* [2012] EWCA Civ 1548 at [14]:

"It is important to recall that, throughout the course of the litigation in the FTT and the UT, the Secretary of State's representatives declined the opportunity to cross-examine the appellant. That has the necessary consequence that the Secretary of State must be taken to accept, or at least not to dispute, the appellant's factual account."

8. As was observed by Richards LJ in *Giri* [2015] EWCA Civ 784, whilst there is a single civil standard of proof, it is flexible in its application and the more serious the allegation or its consequences the stronger must be the evidence before a court would find it made out on balance of probabilities. Given the severity of the allegation made against Mr Naveed, the First-tier Tribunal was entitled to find that this relatively demanding threshold was not made out given the failure of the Secretary of State to probe the evidence of Mr Naveed by cross examination. In the circumstances, the grounds of appeal amount to no more than a disagreement with the conclusions of the First-tier Tribunal, and identify no material error of law. In these circumstances the grounds of appeal amount to mere disagreement with the conclusions of the Judge below.

Decision:

The making of the decision of the First-tier Tribunal contains no error of law.

The appeal is dismissed.

A handwritten signature in black ink, appearing to read 'M. A. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Signed:

Date: 2 November 2015

Deputy Upper Tribunal Judge Symes