



IAC-AH-DH-V1

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

Appeal Number: IA/46431/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 10 February 2016

**Decision &
Promulgated**

On 5 April 2016

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**NADEEM AHMED
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Ms Khan, instructed by Broadway Solicitors

DECISION AND REASONS

1. The respondent, Nadeem Ahmed, was born on 12 July 1984 and is a male citizen of Pakistan. I shall hereafter refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant had applied in September 2014 for leave to remain in the United Kingdom as the spouse

of a person settled in this country. By a decision dated 31 October 2014, that application was refused. The appellant appealed to the First-tier Tribunal (Judge Shimmin), which, in a decision promulgated on 8 June 2015 allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. There are two grounds of appeal. However, Judge Molloy, granting permission on 9 September 2015, held that the first ground was “unsustainable”. The appeal before the Upper Tribunal, therefore, proceeded on the second ground of appeal only. This is an ETS (Education Testing Service) case. The respondent relied upon an earlier application made by the same appellant which had been rejected on the basis of the respondent’s assertion that the appellant had used a proxy in order to undertake an English language examination. At the hearing before Judge Shimmin, it appears that Mr Archibald (the Presenting Officer) told the court that he did not “have the relevant witness statements to support the evidence relating to ETS.” He sought an adjournment of the hearing which Ms Khan (who also appeared for the appellant before the First-tier Tribunal) resisted. The judge refused the application for the adjournment [15].
3. Notwithstanding the Presenting Officer’s submission before the First-tier Tribunal that the respondent had insufficient evidence to prove its allegations, the grounds of appeal to the Upper Tribunal simply assert that “information provided by [ETS] indicates the presence of a proxy test taker.” That decision has no basis in the light of Mr Archibald’s admission that he was unable to prove dishonesty before the First-tier Tribunal.
4. Further, the judge recorded [27], having heard the appellant give evidence in “good English”, that there was “no evidence from the respondent which would lead me to find that the appellant did not have the ability to pass the test himself.” On that basis, the judge allowed the appeal. The judge went on to note the provisions of paragraph S-LTR2.2(a) which refers to documents submitted in relation “to the application” rather than in respect of a previous application, as in the instant case. The judge observed that, “in this case the document which is alleged was obtained dishonestly, was submitted in relation to an earlier application. Hence I find that even if the earlier certificate was falsely obtained dishonesty cannot be relied on here.” The grounds of appeal challenge that observation. I find the challenge is without merit. I consider the comments of Judge Shimmin at the end of the decision to be *obiter*. There was no need for him to make the observation given that he had already found (as the respondent acknowledged to be the case) that the respondent was unable to prove that the appellant had acted dishonestly. Whether or not the judge was right to observe that and even if there had been previous dishonesty, it was not relevant to the present application. The judge had already concluded for legally valid reasons that the appeal should be allowed.

Notice of Decision

The appeal of the Secretary of State is dismissed.

No anonymity direction is made.

Signed

Date 17 March 2016

Upper Tribunal Judge Clive Lane