



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

**Appeal Number: IA/49725/2014**

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**Decision & Reasons**

**On 19<sup>th</sup> November 2015**

**Promulgated**

**On 4<sup>th</sup> January 2016**

**Before**

**UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**MR MANZUR RASUL**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mrs U Sood, of Counsel

For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant a citizen of Pakistan born 15<sup>th</sup> November 1986 appeals with permission, to the Upper Tribunal, in respect of a decision of the First-tier Tribunal (Judge G Cox) promulgated on 24<sup>th</sup> March 2015, dismissing the Appellant's appeal against a decision of the Respondent dated 21<sup>st</sup> November 2014 refusing to vary his leave to remain as a spouse and deciding to remove him from the UK under S. 10 Immigration and Asylum Act 1999.
2. By way of background, the Appellant came to the UK as a student. He entered on 20<sup>th</sup> April 2011 having obtained entry clearance abroad. He

subsequently obtained further leave as a student which was granted until December 2014. During the currency of his leave he formed a relationship with Rebecca Stevenson a British citizen. They married on 2<sup>nd</sup> April 2014 and he applied for leave to remain as a spouse, within the currency of his previous leave as a student. The application was made on 27<sup>th</sup> October 2014 and refused by the Respondent on 21<sup>st</sup> November 2014.

3. On 21<sup>st</sup> November 2012 the Appellant apparently took an English Language Test, or at least that is what he says he did. The Secretary of State contends that a third party proxy test taker took the test on his behalf. The Appellant was originally awarded a certificate in recognition of this apparent success but, subsequently, the Educational Testing Services (ETS), an organisation which administers tests and reviews English language test results reported its view that the test results for this Appellant, had been obtained through deception. This led to a cancellation of the ETS Certificate. The Appellant had relied upon the grant of this certificate when applying earlier to vary his leave to remain as a student (granted on 8<sup>th</sup> March 2013) and had also submitted this certificate to obtain the Biometric Residence Permit (BRP) also issued on 8<sup>th</sup> March 2013.
4. The Appellant applied on 27<sup>th</sup> October 2014, for leave to remain as a spouse. In a refusal letter of 21<sup>st</sup> November 2014, the Respondent said that the Appellant did not satisfy the suitability Section of the Immigration Rules because of the deception surrounding the English language test. As a consequence he did not meet the eligibility section either, though it was accepted by the Respondent that his relationship with Rebecca Stevenson was genuine. The Secretary of State then went on to consider the possible application of paragraph EX.1 of Appendix FM to the Immigration Rules but decided the requirements contained therein were not met either. It was said that there were no exceptional circumstances such as to justify granting the application under Article 8 of the ECHR in circumstances where the requirements of the Immigration Rules were not met, so the spouse application was refused.
5. The Appellant's appeal against that refusal was heard by the First-tier Tribunal (Judge Cox) on 4<sup>th</sup> March 2015. The Appellant gave oral evidence. He relied on a witness statement supplemented by the oral evidence. His wife was not present. Documentary evidence concerning the English Language Test Certificate was produced on behalf of the Secretary of State namely the statement of Hillary Rackstraw who is a Senior Caseworker employed by the Home Office. Annexed to her statement is a copy of an excerpt from an ETS spreadsheet showing the Appellant as one of those identified within the ETS system as having his English Language Test Certificate cancelled because of using a proxy test taker. In addition there were statements from Peter Millington and Rebecca Collings both of whom have been heavily engaged in overseeing the delivery of a secure English Language Test System on behalf of the Home Office.

6. Judge Cox also noted that he had before him a report from Dr Philip Harrison a Forensic Consultant specialising in the analysis of speech audio and recordings. This report as I understand it was not commissioned on instructions from the Appellant. Instead the report appears to have been commissioned by Bindmans on behalf of a different appellant. Nevertheless Judge Cox referred to and noted the content of Dr Harrison's report, when reaching his conclusions in the present case.
7. Having considered the evidence, Judge Cox concluded he was satisfied that the Respondent had proved that the Appellant had engaged in deception in using a proxy test taker in his English Language Test. The Judge then reminded himself that what was before him was a spouse application. He looked to see if Article 8 right to private/family life could avail the Appellant. He noted particularly that the Appellant's wife did not attend the hearing or appear to support him by way of a witness statement. He noted that the Respondent accepted the genuineness of the marriage but concluded that there was little evidence to show that family life between the Appellant and his spouse could not reasonably be enjoyed in Pakistan. He therefore dismissed the Appellant's appeal.
8. The Appellant appealed that decision and permission was granted by Deputy UTJ Saini on a renewed application, in the following terms.

"The appellant renews his permission to appeal on the same grounds with embellishment as to the errors in the decision.

I am prepared to grant permission as it is arguable, as stated in the grounds, that the evidence giving rise to the issue of a section 10 decision did not comply with the Respondent's Enforcement Instruction and Guidance which may render the decision not in accordance with the law.

It is also arguable, as stated in the grounds, that the unchallenged evidence of the expert was not the subject of findings against the generic and non-specific evidence from the Respondent as to deception practiced by the Appellant specifically.

Permission to appeal is granted on all bases."

Thus the matter comes before me.

### **Error of Law Hearing**

9. I heard submissions from Mrs Sood and Mrs Pettersen. Mrs Sood's submissions, so far as I understand them, focussed on whether Judge Cox erred:
  - In allowing the Respondent to rely upon evidence of deception when the deception pertained to an earlier application, rather than the present one.

- The issue of whether deception was used should be treated as a discrete one because the Appellant's case has always been that he did not use deception to obtain his English language test certificate.
- The Section 10 decision was incorrect procedurally because the First-tier Tribunal's decision reflects no analysis of the detailed Enforcement Instructions and Guidance (EIG) issued by the Secretary of State as to how officers should exercise their discretion in removal decisions.
- The FtT failed to consider properly the expert evidence in Dr Harrison's report.

Mrs Sood finished her submissions with what amounts to an application to adduce further evidence on behalf of the Appellant, because it is claimed that he is suffering from stress as a result of these proceedings.

10. Mrs Pettersen submitted that the First-tier Tribunal had directed itself appropriately on the burden and standard of proof required in deception cases. The Judge had properly considered the evidence provided from ETS via the civil servants working in the Home Office and the Respondent was fully entitled to make a removal decision under Section 10. The evidence in the removal decision clearly met the requirements of the EIG. The expert's report was not challenged by the Respondent since in the main it accepted that the principles used by ETS were appropriate. Whilst the expert report did provide a critique of the ETS procedures that report itself was also a generic one. The findings that the Judge made in the present case could not be said to be perverse or irrational. The decision should therefore stand.

### **Consideration**

11. I find little merit in the first ground of appeal. This is an in-country appeal. The Judge is entitled to consider all available evidence at the date of hearing. He took a carefully considered approach to the evidence. In [13] [14] and [15] he considers whether he is able to admit the evidence of the deception on the basis that it was used not in the present application but in a prior one. He decides in fact that he should not admit the evidence on the basis that it was used in a prior application, but that he could admit it as evidence of deception used by the Appellant when obtaining the Biometric Residence Permit. In [18] the Judge says the following:

"Having carefully considered S-LTR.2.2 (a), it is my view that the Respondent cannot rely on the main part of the provision, when the alleged false information had not been submitted with the present application. Although the Respondent may have intended to enable a decision maker to take into account deception arising from any application, interpreting the first part of S-LTR.2.2 (a) sensibly and adopting the ordinary and natural meaning of the words, I am satisfied that only false representations, or false information or false documents submitted in support of the present application can be considered within the main part of S-LTR.2.2 (a)."

He goes on in [19] to say:

“On the other hand, I accept the Presenting Officer’s alternative submission. It seems to me that the ordinary and natural meaning of “*a document used in support of the application*”, ought to include the BRP that an applicant has provided. Since the BRP will demonstrate that the applicant has existing leave to remain in the UK and can therefore meet the requirements of E-LTRP.2.1.”

12. I see no error on the part of the Judge in this regard. The evidence was there before him and it formed the centrepiece of the Respondent’s case. The Appellant could not have been surprised by this evidence since he was well aware of what the Respondent was saying about him. The Judge was correct therefore to consider all the evidence before him.
13. The remaining grounds revolve around a criticism of the Judge for relying on the evidence contained in the statements put forward by the Respondent.
14. Mrs Sood made much of saying that this evidence was “unreliable”. This was because it was generic based evidence and therefore the Judge had wrongly found as he did at [32] that the Respondent had acted lawfully and in accordance with the Immigration Rules when exercising her power to exclude the Appellant under the suitability requirements of Appendix FM. She placed into the equation, the report of Dr Harrison which, she said, the FtT had found “impressive.” Given that finding, the Judge had then wrongly placed little or no weight upon it. She suggested that the evidence advanced by the Secretary of State in cases such as this, was generally unpersuasive and referred me to *R v Secretary of State for the Home Department (ETS – Judicial Review) IJR* [2015] UKUT 00327 (IAC) I disagree.
15. The Judge gave very full and careful consideration to the question of whether or not the Appellant had used deception with respect to the test he claimed to have taken. He did so in passages running from [21] to [31]. Amongst the points made were these; the process by which ETS had reached its conclusion was outlined and evidence was put before him confirmed the identity of the Appellant as one of those individuals whose test result had been deemed to be invalid; no argument was made that the Appellant’s certificate issued on 21<sup>st</sup> November 2012 was not the one referred to in the extract of the spreadsheet provided by ETS. Instead the Appellant’s representative at the FtT hearing relied on Dr Harrison’s report. That report was unchallenged by the Presenting Officer and it is correct to say that the Judge found it “impressive” but the Judge clearly decided that that report simply took the matter no further as far as this Appellant is concerned.
16. The FtT noted also, that although the Appellant made a witness statement this did not specifically address the question of whether or not he had submitted a false certificate in support of an earlier application for leave to

remain. As the Judge found the statement was in fact “silent on the matter”. He drew an adverse inference from that.

17. Therefore looking at all the evidence before him and properly directing himself on where the burden and standard of proof lay, the Judge concluded that the Respondent had proved that the Appellant had used deception by engaging a proxy test taker for his English Language Test in November 2012. Those were findings which the Judge was able to make on the evidence before him. They cannot be categorised as perverse or irrational.
18. Having made those findings, the Judge then went on to consider the application of EX.1 and whether the Appellant could avail himself of any Article 8 ECHR private/family life considerations. He noted that it was accepted by the Respondent that the relationship between the Appellant and Rebecca Stevenson is a genuine one and that the Appellant is able therefore to meet the financial requirements of the Immigration Rules. However, as the Judge pointed out in [39] although he was able to attach weight to the Appellant’s relationship with his wife and the fact that the relationship was commenced whilst the Appellant had leave to remain in the UK, nevertheless he was obliged to note at [40] there is a lack of evidence as to her circumstances. She did not attend court nor has she submitted any written testimony in support of the Appellant’s appeal. There is a bare statement from the Appellant that his wife could not go to Pakistan and she does not speak Urdu. In all the circumstances the Judge was driven to conclude that the Appellant had failed to demonstrate that his wife could not reasonably be expected to accompany him to Pakistan. That was a conclusion fully open to him. There was nothing further put before me in evidential terms to show that the Judge was wrong on that point. Likewise no evidence was put forward supporting the proposition that the Appellant is suffering a stress related illness because of these proceedings.
19. For the foregoing reasons therefore the decision of the First-tier Tribunal dismissing the Appellant’s appeal contains no error of law. The decision stands.

### **Decision**

20. This appeal is dismissed.

No anonymity direction is made

**Signature**

Judge of the Upper Tribunal

**Dated**

**Fee Award**

I have dismissed the appeal and therefore there can be no fee award.

**Signature**

**Dated**