



**The Upper Tribunal
(Immigration and Asylum Chamber)
number: IA/50931/2014**

Appeal

THE IMMIGRATION ACTS

Heard at Manchester

Decision & Reasons

Promulgated

On December 14, 2015

On January 4, 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR SHAHRAM AMIRI
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms Johnstone (Home Office Presenting Officer)
For the Respondent: Mr Lynch, Counsel, instructed by KD Chambers

DECISION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant, citizen of Iran, appealed against the decision to cancel his leave to remain on the basis that false representations were employed or material facts were not disclosed for the purpose

of obtaining leave to enter. That application was refused on December 5, 2014 and the appellant appealed this decision on December 23, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. The appeal came before Judge of the First-tier Tribunal De Haney on May 22, 2015 and he allowed the appeal in a decision promulgated on June 11, 2015.
4. The respondent sought permission to appeal that decision on June 18, 2015 on the ground the Tribunal had failed to solve a material conflict. Permission to appeal was granted by Judge of the First-tier Tribunal Kelly on August 25, 2015 on the basis it was arguable there was a contradiction in the Tribunal's decision.
5. The matter came before me on the above date and on that date I heard submissions from both Mr Lynch and Ms Johnstone.
6. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I make no order now.

ERROR IN LAW

7. Ms Johnstone relied on the grounds of appeal and submitted the Tribunal had erred by allowing the appeal. The Tribunal's decision should clearly set out why a decision was taken and there was a clear conflict between paragraphs [9] and [13] of its decision. There was no dispute the ETS certificate had been cancelled and the refusal set out the inconsistencies in the evidence. The Tribunal's decision was both unclear and unsafe and the Tribunal had wrongly assumed he had passed an exam earlier because in his own interview he agreed he had not completed his test. She invited me to set aside the decision.
8. Mr Lynch submitted that Ms Johnstone's submissions were mere semantics. Whilst it was possible there was a typographical error it was also arguable that "appropriate cross examination" meant none was necessary. The real issue was whether there was any confusion in the Tribunal's mind when considering the evidence and he submitted the Tribunal made relevant findings that were open to it. Save for the reference in paragraph [9] of the decision to cross examination the grounds revealed no arguable error. He invited me to dismiss the appeal.

DISCUSSION AND FINDING

9. The respondent had cancelled the appellant's leave to remain because she was not satisfied his qualification had been obtained

correctly. This issue was raised in the refusal letter and the matter went to an appeal hearing.

10. The appellant attended and was asked extensive questions by his counsel. The respondent was represented and the Tribunal's notes make clear that no questions were put to the appellant by her representative.
11. Whilst the Tribunal erroneously referred to the "cross-examination" in paragraph [9] of its decision I am satisfied that the Tribunal's decision made it clear in paragraph [13] of its decision that the respondent's representative chose not to cross-examine.
12. Ms Johnstone submitted the position was unclear but the fact her colleague's notes contained no cross-examination details and the Court record makes clear there was no cross-examination leads me to the conclusion that the respondent would have been in no doubt that there was no cross-examination.
13. The only other issue arising out of this appeal was whether the findings made by the Tribunal in paragraphs [13] to [17] were open to it. In those paragraphs the Tribunal considered the issues raised by the respondent in the refusal letter and findings were made that were clearly open to it on the evidence presented and in the absence of any cross-examination by the respondent's representative. At paragraph [17] the Tribunal firmly concluded the appellant had taken the test himself and rejected the respondent's claim that false documents had been submitted.
14. Ms Johnstone's final submission related to the Tribunal's observations in paragraph [18] but these comments do not impinge on the earlier findings made by the Tribunal about the test document.
15. I refuse the application to appeal.

DECISION

16. There was no material error and I uphold the earlier decision allowing the appeal.

Signed:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I uphold the fee award.

Signed:

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis