



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA509872014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12 May 2016

Oral Decision & Reasons Promulgated  
On 9 June 2016

**Before**

**UPPER TRIBUNAL JUDGE JORDAN**

**Between**

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

Appellant

**and**

**MRS MINA BASNET**

Respondent

**Representation:**

For the Secretary of State: Mr S Walker, Home Office Presenting Officer  
For the Respondent: Mr E F Ogbonna, Dorce Funmi & Co.,  
Solicitors

**DECISION AND REASONS**

1. This is another of those cases which is the fall out from the examination which has been taking place now over a number of years of the way by which ETS process English language test certificates. In this case the judge, First-tier Tribunal Judge

Grice whose decision was promulgated on 29 July 2015, allowed the appeal. She did so as a result of making a number of findings of fact.

2. I shall refer to Mrs Basnet as the appellant as she was before the First-tier Tribunal.
3. The appellant first entered the United Kingdom on 23 July 2010 as a spouse and was granted a visa valid until 23 October 2012. She then made an application for an extension and the respondent required an English language test certificate. On appeal, she was granted leave to remain until 11 December 2015.
4. On the strength of that grant of leave, she left the United Kingdom and returned from Belgium on 21 December 2012 having accompanied her husband on a trip. She was stopped at the border by the Border Force Agency at Heathrow and at that stage confronted with the fact that the English language certificate had been fraudulently obtained. Directions were made to cancel her leave to remain and for her removal. It was that process which precipitated the appeal.
5. The issue for the judge to consider was whether the Secretary of State had properly established that the English language test certificate had been obtained by fraud. The appellant herself denied that a proxy test taker had been used and she gave detailed evidence about how she had set about obtaining the test. She got, in fact, a bargain price because she both took the ESOL test and also the TOEIC test. She gave evidence that she was provided with a discounted price of £400 for that. She described how she went to the test centre in Watford; she described what happened in the test; how many people were attending the test at the same time. She described how she did the listening module first. She then went on to say that she repeated the test at a later stage and she successfully passed it. In addition to that she passed her Life in the United Kingdom test in February 2015.
6. In adding greater detail, she and her witness spoke about what happened; described the journey to the test centre; the route that was taken and the walk that was necessary from the Docklands Light Railway Station.
7. There was therefore a great deal of circumstantial evidence which the judge listened to and evaluated. Clearly the judge accepted the evidence that was provided by the appellant and her witness.
8. She considered the evidence that was provided by the Home Office and that included the evidence of Matthew Harold, a senior caseworker, and the references that were made to Peter Millington's witness statement as well as the witness evidence statement of Rebecca Collings.
9. She weighed up therefore the competing claims and took into account the classification that had been provided by ETS that this test result in the appellant's case was "*invalid*". Having heard that evidence she also considered the evidence that the ETS system was not foolproof, that there were false positives and finally concluded that the evidence provided by the Home Office was generic in character,

whilst the evidence provided by the appellant was direct and credible. On that basis she allowed the appellant's appeal.

10. The grounds of appeal assert that the judge should have attached more weight to the classification of this test result as being invalid because that was the description provided by ETS where the same voice had been detected on multiple tests. However, one cannot entirely disregard the fact that the evidence of Peter Millington and Rebecca Collings has subsequently been questioned and that there was in the public domain by the early part of 2015 evidence from Dr Harrison that the system was flawed. That was material which the judge did not have before her but which would certainly have supported her conclusions. It will inevitably feature were there to be any rehearing of this appeal, or indeed any requirement on the part of the Secretary of State to make a fresh decision.
11. I am satisfied that the decision that was made by the Immigration Judge was one that was properly open to her on the basis of the material that was provided to her. Consequently I dismiss the Secretary of State's appeal against that decision.
12. I have to say that her decision has recently been vindicated by the question marks that have been placed about the evidence of Mr Millington and Ms Collings. No material error of law is found.

### DECISION

The decision of the First-tier Tribunal discloses no error on a point of law and shall stand as the lawful disposal of the appeal.

No anonymity direction is made.

ANDREW JORDAN  
JUDGE OF THE UPPER TRIBUNAL  
12 May 2016