



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/38894/2014

THE IMMIGRATION ACTS

Heard at Field House  
On 7 June 2017

Decision & Reasons Promulgated  
On 15 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SARUAR JHAHAN  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms Z Ahmad, Senior Home Office Presenting Officer

For the Respondent: Ms A Christie, Counsel, instructed by Bindmans LLP

DECISION AND REASONS

1. I shall refer to the parties as they were before the First-tier Tribunal. Thus the Secretary of State is once more the Respondent, and Mr Jhahan is the Appellant.
2. This is an appeal by the Respondent against the decision of First-tier Tribunal Judge S J Clarke (the judge), promulgated on 14 November 2016, in which she allowed the Appellant's appeal. That appeal arose from a decision of the Respondent dated 9 October 2014, cancelling his leave to remain and refusing leave to enter.
3. The Appellant had come to the United Kingdom some years previously as a student. His last grant of leave to remain in the same category ran from 26 March 2013 to 30

November 2015. Upon return from a family holiday in Bangladesh the Appellant was stopped at port and in his circumstances examined. The Respondent alleged that he had provided false English language test certificates and that as a result of this paragraph 321A of the Immigration Rules applied, namely that he had made false representations or submitted false documents in relation to the application.

### **The judge's decision**

4. The judge's findings and conclusions begin at paragraph 10 of her decision. She notes at the outset that there were discrepancies as between the actual English language certificates and the Respondent's evidence provided in support of the allegation that the Appellant had practised deception. The judge referred to the other evidence provided by the Respondent and categorised that as being "generic" (that evidence consisted of witness statements from Rebecca Collings, Peter Millington and Professor French). She noted the absence of any live witnesses for the Respondent despite there being a request for this by the Appellant.
5. The judge looked in detail at the nature of the interview conducted with the Appellant at port, and concludes that it was conducted in a hostile manner at a time when the Appellant was particularly tired and nervous. As a result the judge specifically finds that no weight was to be placed upon apparent admissions made by the Appellant in the course of that interview.
6. The judge notes the absence of any particular evidence in relation to the Appellant's English language tests. She concludes that the Respondent has discharged the evidential burden. She goes on to find that in securing his place at Hertfordshire University he had not submitted English language certificates as there was no need to do so: that institution made its own assessment of his English language ability. The judge specifically finds that the Appellant had not made false representations in respect of obtaining the CAS.
7. At paragraph 30 the judge sets out the Appellant's academic history insofar as it was relevant to the issue of his proficiency in the English language. Ultimately, the judge concludes that the Appellant had not been dishonest in any respect and that the Respondent had failed to discharge the legal burden resting upon her.

### **The grounds of appeal and grant of permission**

8. The grounds of appeal are very narrow in their remit. They assert that the judge had not provided adequate reasons for finding that the Respondent had failed to discharge her legal burden. Reliance was placed on the generic evidence put before the judge and the apparent admission made by the Appellant during the port interview.
9. Permission was granted by First-tier Tribunal Judge Parkes on 3 May 2017.

### **The hearing before me**

10. Prior to the hearing I had carefully considered all the relevant materials on file including a Rule 24 response and a skeleton argument prepared by Ms Christie.
11. At the outset of the hearing Ms Ahmad confirmed that she was effectively conceding the appeal. She stated that she could not rely upon the grounds of appeal in this case and was not making any application to amend those grounds.

### **Decision on error of law**

12. In light of Ms Ahmad's position at the hearing I conclude that the judge's decision contains no material errors of law and it shall stand.
13. I am bound to say that even if Ms Ahmad had sought to maintain the grounds of appeal I would have no hesitation in concluding that the judge's findings and conclusions were entirely open to her. She was fully entitled to take into account the absence of any live witnesses on the Respondent's behalf. She was fully entitled to conclude that the witness statements of Mr Millington and Ms Collings were generic in nature. She was entitled to take into account the Appellant's impressive academic history and the relevance of that to his ability to speak English, and in turn the absence of any reason for him to have cheated in respect of the English language tests.
14. She was fully entitled to take into account the fact that the Respondent's own evidence contained within the Lookup Tool was inconsistent with the actual certificates, thus rendering what specific evidence there might have been on the Respondent's part to be unreliable. The judge was fully entitled to reach the finding that no reliance should be placed upon the port interview. That point, I note, had not been challenged in the grounds, a failure which is significant.
15. The judge was entirely correct in finding that the University of Hertfordshire had in fact made his offer and provided the CAS on the basis of their own assessment of the Appellant's ability to speak English. She was correct in finding that the Appellant had not in fact submitted the TOEIC certificates when obtaining the CAS: there was no need to do so on the basis that the relevant institution was conducting its own assessment. The judge was fully entitled to find, as she did in paragraph 29, that the Appellant had not made false representations.
16. In light of what I have set out above, not only were the judge's findings and conclusions open to her, but the grounds of appeal lacked any merit whatsoever. It is difficult, for my part, to see why permission to appeal was granted in the first place.
17. There is a further point here raised by Ms Christie in her Rule 24 response and skeleton argument. The Appellant had not in fact submitted any of the language test certificates when making his application in 2013. As the judge found, the Appellant had been issued with a CAS based upon the University of Hertfordshire's own assessment of his language abilities. Further, there had been no application made

when the Appellant sought to re-enter the United Kingdom in October 2014; he had extant leave, and this acted as entry clearance. As a result of the foregoing it could not be said that paragraph 321A(2) of the Immigration Rules applied at all. Therefore, on any view of this case, the Respondent's challenge to the judge's decision was always bound to fail.

### **Additional Comments**

18. Ms Christie has asked me to include a number of additional comments in my decision relating to what will happen next. She has referred me to paragraph 25 of her skeleton argument, which refers to the Upper Tribunal decision in Mohibullah [2016] UKUT 00561 (IAC). Ms Ahmad has no objection for me including these comments in my decision. What follows are not directions, but observations which I would expect the Respondent to take into account fully:

- i. If the Appellant makes a further application for leave to remain by 7 August 2017 the Secretary of State shall treat that application as having been made in time, in other words, at a time when the Appellant had leave to remain in the United Kingdom as a Tier 4 Student;
- ii. The Secretary of State shall waive the requirement that the Appellant must be applying for leave to remain for the purpose of studies which commence within 28 days;
- iii. Should the Secretary of State refuse that application on the sole ground that she considers that the Appellant obtained his 2012 TOEIC certificates by deception then that will not be taken into account in relation to the sponsoring university's refusal rate for the purpose of Tier 4 sponsorship requirements;
- iv. The Secretary of State shall not refuse any further application by the Appellant for leave to remain in the United Kingdom by reason only of his not having had leave to remain between 30 November 2015 and 7 August 2017.

### **Notice of Decision**

**The First-tier Tribunal's decision does not contain any material errors of law.**

**The decision of the First-tier Tribunal stands.**

**The appeal of the Secretary of State to the Upper Tribunal is dismissed.**

No anonymity direction is made.

Signed

Date: 13 June 2017

Deputy Upper Tribunal Judge Norton-Taylor

**TO THE RESPONDENT**

**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140.00. He has continued to be successful in his appeal.

Signed

Date: 13 June 2017

Deputy Upper Tribunal Judge Norton-Taylor