



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/00079/2017

THE IMMIGRATION ACTS

Heard at Field House
On 18 May 2018

Decision and Reasons Promulgated
On 5 June 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR MUHAMMAD TARIQ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Plowright instructed by Thamina solicitors
For the Respondent: Mr Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan born on 12 March 1984 and appealed under section 82 the nationality immigration Asylum act 2002 against a decision dated 15 February 2017, (which afforded the 'old' rights of appeal prior to the amendments in 2014 to the Nationality Immigration and Asylum Act 2002) to refuse leave to remain in the United Kingdom. That appeal was determined by first-tier Tribunal Judge Bart Stewart who dismissed his appeal

Application for Permission to Appeal

2. The application for permission made stated that the determination contained material errors of law.

3. The appellant sought permission to appeal to the upper Tribunal on the grounds that
 - (i) the judge erred in law by improperly making her own assessment of the appellant's English language ability and therefore misdirected herself at paragraph 36. It was contested that it was not for the tribunal to determine the appellant's proficiency English. Had the judge properly directed set out she would not have fallen into error with regard own assessment the appellant's proficiency.
 - (ii) the judge's assessment of the appellant's credibility was insufficiently reasoned and unfair. The judge accepted that given the passage of time is not surprising the appellant was unable to recall the specifics and the passage of time could similarly be applied to the other points. The judge appeared to find that the respondent's evidence referred to the test centre in Leicester whereas the appellant claimed to have taken his test in London. It was the appellant's case that it was the information in relation to the London campus that should be addressed and that there were many educational establishments which had campuses in different cities. The judge had ignored that fact. It was contended that the judge had therefore taken into account irrelevant material and the reasons given by the judge when assessing the appellant's credibility was inadequate.
4. Permission to appeal was granted by upper Tribunal Judge on the basis that the judge may have erred making her own assessment of the appellant language abilities but permission was granted on all challenges.

The Hearing

5. At the hearing, Mr Plowright confirmed that it was correct, as cited in **SM and Qadir v Secretary of State for the Home Department** [2016] UKUT 229 (IAC), that it was right not to turn a blind eye to the obvious, but whatever the judge's assessment of the English language of the appellant, she should have accepted that the appellant was in a court setting and would have understandably been nervous. It was not just people outside the UK who might be affected by such considerations and it was unfair to have assessed the English language of the appellant in the manner undertaken. That was the primary ground.
6. Additionally, Mr Plowright stated that there was a difficulty with the analysis of the judge at paragraph 28 and 33 as it was unclear as to whether the judge had applied and compared the evidence in relation to the college in Leicester or in London where the appellant claimed he had undertaken the test. There was also reference to a 'Project Façade' Report on Colwell College which could not be located.
7. Mr Walker confirmed that there was no document on the Home Office file entitled the 'Project Façade' Report and also noted that this appeared to

encompass the report of Detective Inspector Andrew Carter dated 15 May 2015 on Colwell College.

8. Mr Plowright submitted that had the judge indeed taken into account evidence which was not before the Home Office, nor indeed before the appellant, that would be a procedural irregularity and manifestly an error of law.

Conclusions

9. Despite an extensive search of the file I could not locate any document entitled the 'Project Façade' Report which was said to detail the level of abuse at Colwell College and on which reliance was placed. It does not appear to have been referenced in the Secretary of State's Reasons for Refusal letter. It is unclear from the findings of the judge whether that report related to the college at Leicester or the college in London where the appellant maintains that he undertook the test. The judge made adverse findings of credibility based on the contents of this report and it is not clear that it was indeed before the parties.
10. It is a right to say that on the first ground the tribunal cannot turn the blind eye to the obvious but clearly the judge factored in the level of the appellant's proficiency in English but did not appear to give any credence to the possibility that the appellant may have been nervous or in the court setting or indeed that the test was many years ago. The judge appeared to have adopted the submissions of the presenting officer which Mr Walker agreed was an opinion only.
11. Fundamentally, however, the judge appears to have taken into account evidence which was not within the bundle and neither party could locate that evidence in their files. Mr Plowright was given a short adjournment to check with the solicitors and the case officer with the appellant's legal representatives confirmed that all documents relied on had been sent to Mr Plowright. He did not have the 'Project Façade Report'. Quite rightly Mr Plowright was anxious not to mislead the court in any way but no one could locate the report. It was not apparently in the court file.
12. For the reasons given I find there is a procedural and material error of law in the judge's decision. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signe *Helen Rimington*

Date 18th May 2018

Upper Tribunal Judge Rimington