



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

Appeal Number: IA/00805/2016

THE IMMIGRATION ACTS

Heard at Field House

On 25 April 2018

**Decision & Reasons
Promulgated
On 2 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SHANMUGA MANI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr N Bramble of the Specialist Appeals Team

For the Respondent: Mr H Kannangara of Counsel, instructed by Legend Solicitors

DECISION AND REASONS

The Respondent

1. The Respondent, Shanmuga Mani, to whom I shall refer as “the Applicant” is a citizen of India born on 13 March 1985. On 6 February 2015 he entered as a student in which capacity his leave was extended. It appears from the bundle filed for the Appellant to whom I shall refer as “the SSHD” that subsequently the Appellant applied for an EEA residence card. This was granted and later revoked on 3 December 2014. He lodged an appeal

which he withdrew after he had submitted an application for indefinite leave to remain on 10 March 2015 leading to the Respondent's decision of 14 December 2015 to refuse him indefinite leave against which he appealed.

The SSHD's Decision

2. On 14 December 2015 the SSHD refused the Applicant's application by way of reference to paragraph 322(5) of the Immigration Rules because she considered the Applicant had used a proxy to take a TOEIC speaking test with Educational Testing Service (ETS) on 29 August 2012 and for these reasons his presence in the United Kingdom was not conducive to the public good by reference to paragraph S-LTR.1.6 of Appendix FM to the Immigration Rules. The application was also refused by reference to paragraph 322(10) of the Immigration Rules because the Applicant had failed without reasonable explanation to attend for interview on two separate occasions.

Proceedings in the First-tier Tribunal

3. There was no Presenting Officer for the SSHD at the hearing in the First-Tier Tribunal. By a decision promulgated on 24 July 2017 Judge of the First-tier Tribunal R J N B Morris allowed the Applicant's appeal on Immigration grounds. She accepted the explanation the Applicant had given why he had not attended either of the two interviews. She found he had given a sufficient explanation of his attendance on 29 August 2012 in person to take the TOEIC speaking test.
3. The SSHD sought permission to appeal and on 25 January 2018 Judge of the First-tier Tribunal Grant-Hutchison refused permission.
4. The SSHD renewed the application to the Upper Tribunal and on 7 March 2018 Upper Tribunal Judge Kebede granted permission because she considered it arguable that Judge Morris had given inadequate reasons for concluding the Applicant had provided an innocent explanation to rebut the SSHD's allegation of fraud and erred in the weight she had given to his English language speaking facility, having regard to the decision in *MA (ETS- TOEIC testing) Nigeria [2016] UKUT 450 (IAC)*.

The Hearing in the Upper Tribunal

5. The Applicant attended the hearing. Mr Bramble for the SSHD relied on the grounds submitted to the Upper Tribunal for permission to appeal. These referred to the decision in *MA (ETS - TOEIC Testing) Nigeria [2016] UKUT 450* and in particular paragraph 57 setting out reasons why an individual might have adequate facility in English but retain a proxy to take an English language speaking test.

6. Mr Kannangara for the Applicant relied on the Judge's findings about the Appellant's various educational achievements including a first degree from Greenwich University and other UK diplomas and his 2004 IELTS results.

Findings and Conclusions

7. The Judge gave sustainable reasons for finding the Applicant had given an innocent explanation sufficient to rebut the allegation of fraud in his TOEIC English speaking test. The SSHD had not challenged the Judge's findings that the Applicant had given a satisfactory explanation why he had not attended for interview on two separate occasions. The SSHD had not shown that the Judge's findings are not adequately or sustainably reasoned or that they disclose any material error of law. Consequently, I find the Judge's decision should stand to the effect that the Applicant's appeal under the Immigration Rules is allowed. There was no cross-appeal against the dismissal of this appeal on human rights grounds.

NOTICE OF DECISION

The First-tier Tribunal decision did not contain an error of law and shall stand.

The SSHD's appeal is dismissed.

No anonymity direction is made.

Signed/Official Crest

Date 30. iv. 2018

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

The First-tier Tribunal decision stands so there is no requirement for any further fee award to be considered.

Signed/Official Crest

Date 30. iv. 2018

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal