



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-001616
First-tier Tribunal No: HU/54632/2021
IA/11621/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 March 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

Nasir Ahmed
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Turner
For the Respondent: Mr Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 11 November 2022

DECISION AND REASONS

1. The appellant is a male citizen of Pakistan born on 24 July 1986. He appeals against a decision of the First-tier Tribunal (Judge Howard) dismissing his appeal against a decision of the Secretary of State dated 23 July 2021 refusing him leave to remain in the United Kingdom. As the grant of permission notes, the Secretary of State considered that the appellant is 'not a suitable person [because] he had cheated in an English as a second or other language test administered by ETS in 2012, the certificate for which was used in support of an application for leave made on 23 January 2013. His leave had been curtailed in the summer of 2012. Since then he has made several applications and appeals all of which have been unsuccessful [in particular, see Judge Aujla's decision of 2017]: see paragraph 9

of the Judge's decision.' The appellant now appeals, with permission, to the Upper Tribunal.

2. Mr Turner's grounds of appeal are admirably short. He contends that the judge failed to consider the appellant's account of what he claimed had happened at the language test on 21 November 2012. He criticises the judge for not accepting 'that [the Appellant] could have been [at the test centre] as one of a small number of innocents oblivious to the cheating going on around him.' The grounds observe that the judge's comment implicitly acknowledges that there must have been candidates at the test who were not cheating. The judge also failed to give any reason for rejecting the appellant's account of the test.
3. I find that the judge has not erred in law. First, I do not accept that the judge ignored the appellant's account of the test. The judge gives a summary (admittedly brief) of the appellant's account at [19]. There is no reason to consider that the judge failed to read the written statement. Secondly, whilst I agree with Mr Turner that the judge has failed to refer to the leading Upper Tribunal decision in *Devasseelan* [2002] UKIAT 00702*, that failure does not amount to a material error of law because it is clear, as Mr Tan submitted, that any application of the principles of *Devasseelan* assist the respondent and not the appellant. The judge quotes the refusal letter at [15] which, in turn, quotes from Judge Aujla's 2017 decision:

The respondent's remains that expressed in the instant decision and expressed thus:

Your application falls for refusal on grounds of suitability under Section S-LTR because the Secretary of State is satisfied that you made false representations for the purpose of obtaining leave to remain or in order to obtain documents from the Secretary of State or a third party in support of the application for leave to remain. In an application dated 23 January 2013 you used an ETS certificate dated 21 November 2012 which upon checking, ETS (Educational Testing Service) confirmed was invalid. On the basis of the information provided to her by ETS, the SSHD is satisfied that your certificate was fraudulently obtained and that you used deception in your application of 23 January 2013.

On 08 February 2017 Judge P S Aujla of the First Tier determined the following:

"The Appellant has not provided any credible evidence to dispute the Respondent's findings which, I find, were evidence-based. In view of the incontrovertible 3 Appeal Number: HU/54632/2021 evidence provided by the Respondent, I find that the Appellant's credibility was totally damaged. I do not accept what he had stated in his witness statement. I find that the Appellant has fraudulently obtained an English language test certificate which he had used in order to obtain a CAS which he used in support of his application for further leave to remain. Accordingly, I am satisfied that you have made false representations in a previous application for leave to remain. Having considered all of the circumstances of your application in light of these false representations there are no exceptional circumstances which make it appropriate to exercise discretion in your favour. You do not meet the requirements for leave to remain because paragraph S-LTR.4.2. of Appendix FM of the Immigration Rules applies."

Mr Turner submitted that, because Judge Aujla had determined the appeal without a hearing, the oral evidence which the appellant had given before Judge Howard should supersede Judge Aujla's findings on the appellant's credibility. I disagree. Judge Aujla determined the appeal before him fairly and on the evidence. He reached findings as to the appellant's cheating in the test which the appellant did choose not to challenge. I see no reason why I or Judge Howard should deny Judge Aujla's decision full *Devasseelan* 'weight' simply because the appeal was determined on the papers. Whilst Mr Turner submitted that Judge Howard had erred by not stating whether he adopted the findings of Judge Aujla, he offered no reasons why, under the principles of *Devasseelan*, he should not have followed those findings. Having considered Judge Aujla's decision, I can identify nothing in it which should have led Judge Howard to depart from applying in full the *Devasseelan* principles.

4. Judge Howard followed *Sharif Ahmed Majumar and Ihsan Qadir v. SSHD* [2016] EWCA Civ 1167 (see his decision at [17]). The judge's reasoning at [24] is a little hard to follow but Mr Turner's submission that the judge has failed to consider whether the appellant was of the 'small number of innocents' in the examination room ignores Judge Aujla's decision and the weight which the judge clearly thought should attach to the respondent's evidence of the appellant's dishonesty. In short, the entire reasoning of Judge Howard's decision shows that he did not consider it likely that the appellant had been one of the 'innocents'.
5. Mr Turner also submitted that the judge had erred by not finding a motive for the appellant's cheating. I reject that submission. at [22] the judge wrote:

22. The tests taken before the 2012 test, specifically relied upon are his GCSE equivalent pass in English and the IELTS test that he took in September 2010. In those tests he successfully negotiated all aspects of the English language. The latter was fully two years before the offending test and does call into sharp focus what possible motive he might have for, as the respondent suggests, employing a proxy.

Isolated from the remainder of the decision, paragraph [22] is, as Mr Turner characterised it, 'somewhat Delphic.' However, in the context of the whole decision and, in particular, [25] it is clear that the judge adequately resolved the question of motive:

25. The appellant further suggests he had no motive. It is not for me to determine a motive or lack thereof; however guaranteed success is capable of amounting to a safety net should he have failed in the more onerous tests.

6. For the reasons, I have given, I find that the judge has not erred in law such that his decision should be set aside. Accordingly, the appeal is dismissed.

Notice of Decision

The appeal is dismissed.

C. N. Lane

Case No: UI-2022-001616
First-tier Tribunal No: HU/54632/2021

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 16 January 2023