



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

Appeal Number: UI-2022-006638

First-tier Tribunal: HU/58149/2021

## **THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 November 2023**

**Decision & Reasons Issued**

15<sup>th</sup> December 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

and

**SAJJAD DILAWAR**

Respondent

### **Representation:**

For the Appellant: Ms A Ahmed, Senior Home Office Presenting Officer  
For the Respondent: Mr P Richardson, Counsel instructed by Lawmatic Solicitors

## **DECISION AND REASONS**

### **Introduction**

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal (Judge Dineen) in which the Judge allowed the appeal of the Appellant (as he then was), a citizen of Pakistan, against the Secretary of

State's decision to refuse leave to remain on human rights ground. Although the Secretary of State is the appellant in this appeal I shall refer to the parties in this decision as they were referred to by the First-tier Tribunal.

2. The grounds of appeal to the Upper Tribunal are simply a repetition of significant extracts from DK & RK (ETS: SSHD evidence; proof) India [2022] UKUT 00112 (IAC) but the clarification in the skeleton argument filed by the Respondent out of time is that the Judge materially misdirected in law by not following DK & RK and gave inadequate reasoning.
3. Permission to appeal was granted by Judge Barker in the First-tier Tribunal on 6 September 2022 on the basis that it is arguable that the Judge did not consider the principles set out in DK & RK. Permission was granted on all grounds.
4. At the hearing before me Ms Ahmed representing the Home Office referred to the skeleton argument and Mr Richardson for the Appellant accepted that he was not prejudiced by the late submission of the clarified grounds.

### **Submissions**

5. For the Respondent Ms Ahmed said that she was happy to proceed on the distillation of the grounds in the skeleton argument. The two grounds run together, the Judge did not follow or apply DK & RK. Ms Ahmed agreed that paragraph 33 suggested that the Judge had followed DK & RK but even so the remaining findings show that he did not apply it. Paragraph 35 is a misdirection in law which by itself may not be material but combined with inadequate reasoning where the judge does not engage with the submission point that there may be other reasons for cheating it becomes material. Where the judge finds the Appellant's evidence consistent and plausible this is not balanced with countervailing evidence. The Judge was influenced by the Appellant's explanation and his good command of English. The Judge's comment about being fortified in this conclusion goes against DK & RK.
6. Mr Richardson for the Appellant said that DK & RK is concerned with the strength of the Secretary of State's case rather than the Appellant's evidence. DK & RK shows that the Secretary of State has provided a case to answer. This is reflected in paragraph 33 of the decision where the Judge accepts that the onus transfers to the Appellant. Paragraph 34 records that the Appellant's account was not shaken in cross examination. The Judge is not barred from believing an appellant.
7. In response Ms Ahmed said that the Judge has not given good reasons. His findings are slim and the suggestion that he was fortified by the critical

evidence of experts may have been more than an afterthought and have unduly influenced his decision.

## **Discussion**

8. The Appellant is a 43-year-old citizen of Pakistan who arrived in the United Kingdom in 2011 with a student visa. Subsequent extensions to that visa were curtailed in 2013 on the basis that he obtained a TOEIC certificate by fraud. There followed a complicated history eventually resulting in the human rights application which is the subject of this appeal and which was made on 22 January 2021. The Appellant's appeal against the refusal of that application came before Judge Dineen on 24 June 2022 and was allowed.
9. The Respondent's criticism of Judge Dineen's decision is twofold but as Ms Ahmed submitted the two grounds are connected. The primary suggestion upon which the written grounds of appeal are based is that the Judge failed to take proper account of DK & RK quoted in detail in the application. The second is that Judge Dineen's reasoning is inadequate.
10. The primary finding of DK & RK is that in TOEIC cases of the type that is the subject of this appeal the Secretary of State's evidence is sufficient to show that the Appellant has a case to answer. Judge Dineen does not make specific reference to DK & RK but it is clear from paragraph 33 that he was alive to the basic principle accepting that the onus was on the Appellant to show absence of fraud.
11. The secondary finding as it relates to this case was that the ability to speak English was not of itself a reason to find that an applicant had no incentive to cheat. In this respect Judge Dineen having heard the Appellant's evidence finds, at paragraph 35, that he would have little incentive to run the risk of fraud. There may be a subtle difference between an incentive to cheat and one not to be caught cheating but in the context of this case I do not find that difference to hold any weight. I do note however that this finding was based not simply on the Appellant's ability to speak English but on his having obtained a postgraduate diploma.
12. If this was the only finding causing the First-tier Tribunal to accept the Appellant's evidence there would be some cause to suggest that the Judge had not had due regard to DK & RK but it is not and this is where the two grounds of appeal must be looked at together. Judge Dineen's credibility findings look brief but when taken in the context of the evidence that he heard and recorded in his decision it is difficult to find fault. The evidence is recorded in paragraphs 14 to 25. Although this is inevitably a summary it is clear that the evidence given was quite detailed. The Judge records in his findings that this evidence was consistent, plausible and not shaken in cross examination. In short the Judge, having heard the Appellant's evidence, accepted that evidence to the required standard.

13. The authority of DK & RK provides that the strength of the Home Office evidence in a TOEIC case is such that the onus will normally move to the Appellant. In this regard I accept Mr Richardson's submission that it is concerned with the strength of the Respondent's case rather than with the Appellant's evidence. It does not and could not suggest that the Appellant is put to a higher standard of proof. DK & RK enables the judge in a TOEIC case to take a short cut by not individually examining the Home Office' evidence and moving on to the evidence of the Appellant to whom the burden has effectively passed. This is what the Judge did in this case and indeed this is what the First-tier Tribunal is all about. It is a fact finding Tribunal and the Judge in this case has made finding upon the facts. There is nothing inadequate about the reasoning. The Judge has heard the evidence, found it to be consistent, plausible and not shaken by the Respondent's cross examination. The Respondent does not suggest that these findings are irrational and indeed any argument of irrationality would have been bound to fail.
14. The reference in paragraph 37 to being fortified in a decision already made by the critical evidence of experts presented to the parliamentary committee is in my judgment very clearly an afterthought with no relevance either to the decision or to this appeal.
15. In conclusion I am satisfied that there was no misdirection in law and the reasoning is adequate.

**Conclusion**

16. The decision of the First-tier Tribunal did not involve the making of a material error of law.
17. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed:  
2023



**Date: 11 December**

**J F W Phillips**  
**Deputy Judge of the Upper Tribunal**