



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-000468  
First-tier Tribunal Nos:  
HU/54141/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 6<sup>th</sup> of December 2023**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**Tajinder Singh**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Duffy, of Farani Taylor Solicitors  
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

**Heard at Field House on 13 November 2023**

**DECISION AND REASONS**

1. The appellant did not attend the hearing. Mr Duffy, who appeared on his behalf, stated that he did not have instructions and was not seeking an adjournment. I asked Mr Duffy if he intended to make any submissions on behalf of the appellant and his only response was that he relies on the appellant's witness statement.
2. There has not been compliance with the directions I gave in my decision dated 17 July 2023, including the direction that the appellant's solicitor file and serve a witness statement explaining his firm's conduct and why a wasted costs order should not be made. Remarkably, Mr Duffy did not appear to even be aware of these directions, and his only explanation for non-compliance was that he was without instructions.

3. Given the absence of any argument on behalf of the appellant, and that the appellant did not make himself available for cross-examination, it was not necessary for me to hear from Mr Tufan.
4. The central issue in this appeal is whether ETS is correct that the appellant cheated on an English language test that he took in December 2013.
5. The appellant's case, in short, as set out in his witness statement, is that he did not cheat. In his witness statement, he describes engaging an agent to book the test, preparing for the test and travelling to the test centre in Birmingham. He describes in his statement the journey that he took to the test centre and the room in which he took the test, as well as the waiting room.
6. In my decision of 9 May 2023, setting aside the decision of the First-tier Tribunal, I preserved the unchallenged findings of the First-tier Tribunal that the appellant travelled to and was present at the test centre on the day of the hearing, that he instructed an agent to assist him, and that he spoke a good level of English at the time the test was taken.
7. These preserved findings do no more than show that he attended the test centre on the day of the test and spoke a good level of English at that time. It is clear from *DK & RK (ETS SSHD evidence; proof India)* [2022] UKUT 00112 (IAC) that these findings do not significantly assist the appellant. This is because the way cheating occurred frequently involved candidates attending the test centre whilst the test was taken by someone else. See paragraph 11 of *DK & RK* where reference is made to candidates standing aside from the computer terminal allowing the fake sitters to take the oral and written parts of the exam on their behalf. Therefore, the fact that the appellant is able to give a detailed account of travelling to the test centre does not indicate that he took the test himself. Paragraph 108 of *DK & RK* makes it clear that the appellant's ability to speak English is not, in and of itself, strong support for a contention that a person did not cheat.
8. As *DK & RK* makes clear, the evidence provided by ETS is relatively strong, such that it is "clear beyond a peradventure" that the appellant has a case to answer. In the absence of the appellant making himself available for cross-examination, I am left in the position of weighing what amounts to no more than a mere assertion of honesty against documentary evidence that, according to *DK and RK*, constitutes a "highly probable fact". Accordingly, I am satisfied that the respondent has discharged the burden of establishing that on the balance of probabilities the appellant cheated on the test and engaged in deception.
9. Mr Duffy did not argue that in the event I found the appellant engaged in deception it would breach article 8 for him to be removed from the UK. I will nonetheless, for completeness, address this question and carry out an article 8 proportionality assessment. Weighing against the appellant is the public interest in the effective immigration controls. I attach significant weight to this public interest because of the appellant's deception. Weighing for the appellant is that he has spent a considerable amount of time in the UK where he has made friendships and a life for himself. These factors, however, can attract only little weight in the light of the appellant's immigration status when his private life in the UK was established: see section 117B of the 2002 Act. The appellant's witness statement states that he would face a range of problems on return to India. I am unable to give this any weight because the appellant has not made

himself available to be cross-examined and therefore this is untested. In any event, even if I take the appellant's evidence about his private and family life, as set out in his witness statement, at its very highest, his private and family life would still not outweigh (by a significant margin) the public interest in his removal.

10. As Mr Tufan did not pursue the issue of a wasted costs order, I have decided to not make one. However, I wish to record my concern about the conduct of the appellant's representatives, who not only failed to comply with a direction to provide a witness statement, but sent a representative to the hearing who seemed to be unaware of this direction and whose only response was to state that he was without instructions. This is conduct that falls a long way short of the minimum expected of professional representatives.

### **Notice of Decision**

I previously set aside the decision of the First-tier Tribunal. I remake the decision by dismissing the appellant's appeal.

**D. Sheridan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**21.11.2023**