



IAC-AH-DN-V2

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

Appeal Number: IA/27483/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17<sup>th</sup> September 2015**

**Decision & Reasons Promulgated  
On 21<sup>st</sup> October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR SHAMINDER PREET SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Iqbal, Counsel

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of India born on 9<sup>th</sup> December 1988. On 3<sup>rd</sup> March 2014 the Appellant made a combined application for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant under the points-based system (PBS) and for a biometric residence permit (BRP). That application was refused by the Secretary of State in a Notice of Refusal dated 9<sup>th</sup> July 2014. The basis for refusal was that the Appellant had claimed 30 points for Confirmation of Acceptance for Studies (CAS) but the Secretary of State was not satisfied that the Appellant's Tier 4 Sponsor had ensured that the Appellant was either competent in English

language at a minimum level of B2 of the Common European Framework of Reference for languages or that the Appellant was a person who met an alternative requirement. Consequently the Secretary of State was therefore not satisfied that the Appellant met the requirements of the 30 points to be awarded under Appendix A. In making that decision the Secretary of State was aware that on 28<sup>th</sup> November 2010 the Appellant had been granted leave to enter the United Kingdom as a Tier 4 (General) Student until 28<sup>th</sup> March 2014.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Adio sitting at Hatton Cross on 19<sup>th</sup> February 2015. In a determination promulgated on 20<sup>th</sup> February 2015 the Appellant's appeal was allowed on the grounds that the Respondent's decision was not in accordance with the law. Judge Adio's findings of fact and conclusions are set out in detail at paragraphs 8 to 15 of his decision.
3. On 12<sup>th</sup> March 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds made two contentions. Firstly, whilst the judge of the First-tier Tribunal had allowed the appeal to the extent the decision was not in accordance with the law, the appeal before him was against a Tier 4 refusal and a Section 10 decision. The grounds contend that the judge found that deception had not been made out by the Secretary of State for the Home Department and so the Section 10 decision was unlawful. They also note that the judge found that the refusal decision under the Immigration Rules was also unlawful and contend that the judge erred in both respects. It is the Secretary of State's argument that even if the deception had not been made out the fact remains the Appellant did not have a valid English language test and that the Appellant was not awarded points for a valid CAS because:

"As the examination process used to assess your English language ability was confirmed to be not genuine, your Tier 4 Sponsor's assessment does not meet the requirements of Appendix A and Appendix O of the Immigration Rules. It has therefore been decided that you have not met the requirements and no points have been awarded for your CAS."

The grounds contend that the Appellant accepted that his English test had been declared invalid by the provider (ETS) but disputed the basis for that and it remained therefore that he did not have a valid CAS and his Tier 4 application was therefore rightly refused.

4. Secondly the grounds contend that the judge was also wrong to allow the appeal against the Section 10 decision on the basis of the ETS evidence before him and that the evidence before him was cogent enough on the balance of probabilities to prove that the Appellant had exercised deception.
5. On 6<sup>th</sup> May 2015 Judge of the First-tier Tribunal P J M Hollingworth granted permission to appeal. Judge Hollingworth concluded that it did not follow, arguably, that the decision was not in accordance with the law because

the Respondent had failed to make out a case of deception and that a further arguable error may have arisen in relation to the absence of a CAS and the consequences thereof.

6. There was no Rule 24 response served by the Appellant's legal representatives. I note there has been a change of the Appellant's legal representatives and that new solicitors place themselves on the record on 11<sup>th</sup> September 2015. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State but for the purpose of continuity throughout the legal process the Secretary of State is referred to herein as the Respondent and Mr Singh as the Appellant. The Appellant appears by his instructed Counsel, Mr Iqbal. Mr Iqbal is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer, Mr Bramble.

### **Submissions/Discussion/Analysis of Gazi**

7. Mr Bramble refers to the two specific grounds in the Grounds of Appeal and contends that the certificate is not genuine and that as the test is accepted as invalid the Appellant does not have a valid CAS and therefore the appeal should have been dismissed. They indicate that documentary evidence by way of witness statements from Rebecca Collins and Peter Millington were relied upon. He seeks to place reliance on the decision in *R (on the application of Gazi) v Secretary of State for the Home Department (ETS - judicial review) IJR [2015] UKUT 327 (IAC)*.
8. It is clear from the submissions/discussion that it is appropriate to give due consideration to *Gazi*. *Gazi* is authority for stating that a challenge to the strength and quality of the evidence underpinning the Secretary of State's decision to remove a student from the United Kingdom under Section 10 of the Immigration and Asylum Act 1999 on the ground of fraud in procuring a TOEIC English language qualification, is best suited to the fact-finding forum of the First-tier Tribunal and is unsuitable for determination by an application for judicial review.
9. Mr Bramble takes me to the evidence in *Gazi* and to the conclusions to be found at paragraphs 34 and 35. Relying on an analysis that the Respondent's evidence provide an adequate foundation for the decision under Section 10 of the 1999 Act and that nothing has been produced by the Appellant. His submission is that taking *Gazi* at its simplest it is necessary to analyse the Appellant's claim and the Appellant has put forward no evidence that would refute the findings of the Secretary of State.
10. In response Mr Iqbal states that *Gazi* was an in-country appeal and the issue was jurisdictional. He takes me to paragraph 13 of the First-tier Tribunal Judge's determination pointing out the witness statements therein at best can be described as generic and none of the witness statements

remotely say that the Appellant obtained his ETS by deception. That is to be found conclusively in the findings of fact of the First-tier Tribunal Judge and that they are findings that he was entitled to make. He points out the witness statement from Mr Sartorius is at its best hearsay and points out that he was not called to give evidence and was not cross-examined. He submits there is nothing that links the reference to a spreadsheet with the Appellant's ETS. So far as the second ground is concerned he points out that this is mere disagreement. He asked me to dismiss the Secretary of State's appeal.

## **The Law**

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings**

13. This is a well considered and well constructed determination. The judge has given due and full consideration to the witness statement of Mr Sartorius and has considered it at some length particularly at paragraphs 9, 10 and 13. He has also considered the generic witness statement of Miss Collins in some detail at paragraph 14. Further he has considered the generic witness statement of Mr Millington as expressly set out at paragraph 10. The judge has made findings that there was no satisfactory evidence from ETS other than the details of the Appellant and the fact his results are regarded as invalid. The judge has made findings of fact at paragraphs 12 and 13 setting out why it is not possible on a balance of probability to conclude that a case of deception has been made out

against the Appellant and has made full findings at paragraph 13 that he was entitled to.

14. Consequently I am satisfied that this ground discloses no material error of law and that the judge was entitled to make his conclusions that there had been no proof of fraud. In such circumstances the appropriate step was to award leave to the Appellant to get an alternative CAS and that the judge was correct to conclude that whilst the Appellant had not met the requirements of paragraph 245ZX of the Immigration Rules the correct and just approach was to adopt that taken by the First-tier Tribunal Judge and to allow the appeal to the extent that it was remitted back to the Respondent.
15. So far as the second Ground of Appeal is concerned this is not addressed in any great detail in submission. Mr Bramble does little more than rely on the Grounds of Appeal. Mr Iqbal indicates that the ground amounts to little more than disagreement. I agree with the view expressed by Mr Iqbal. All the Secretary of State seeks to do is to disagree with the findings made by the First-tier Tribunal Judge. Such an argument does not find favour with me and does not constitute a material error of law.

### **Decision**

The decision of the First-tier Tribunal does not disclose a material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

### **TO THE RESPONDENT** **FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris