



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/27984/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 13th April 2015

Decision & Reasons Promulgated
On 22nd April 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MR SALEH AHMED
(ANONYMITY NOT RETAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Hashmi
For the Respondent: Mr Harrison

DECISION AND REASONS

Introduction

1. The Appellant born on 1st February 1990 is a citizen of Bangladesh. The Appellant who was present was represented by Miss Hashmi. The Respondent was represented by Mr Harrison, a Presenting Officer.

Substantive Issues under Appeal

2. The Appellant had made application on 16th January 2014 for leave to remain in the United Kingdom as a partner under Appendix FM. The Respondent had refused that application on 30th June 2014 on the basis that the Appellant failed to meet the suitability requirements namely S-LTRP2.2 as the Respondent considered the Appellant had sought leave to remain in the United Kingdom by deception following information provided by ETS that an anomaly with his speaking test indicated the presence of a proxy test taker. The Appellant had appealed that decision and his appeal was heard by Judge Williams, a judge of the First-tier Tribunal at Manchester on 1st October 2014. The judge had found the Appellant met the suitability requirements and accordingly allowed the appeal under the Immigration Rules.
3. The Respondent had sought application to appeal the grounds stating that the judge had failed to give proper consideration to evidence provided by the Respondent to prove that the test certificate was obtained through deception.
4. Permission to appeal was granted by Upper Tribunal Judge Deans on 9th December 2014 who noted that the relevant evidence referred to by the Respondent was missing and therefore it was difficult to follow the points made by the Respondent in the application but it was arguable the judge had misconstrued the sequence of the language test and the CAS and therefore all grounds should be regarded as arguable.
5. The matter came before me in accordance with directions set to firstly decide whether or not an error of law had been made by the First-tier Tribunal.

Submissions on behalf of the Respondent

6. Mr Harrison kindly provided me with a copy of the additional bundle that the Respondent had provided to the First-tier Tribunal Judge in order to demonstrate that there had been deception used by the Appellant on an earlier occasion to gain entry to the UK, in respect of his English language test certificate. Mr Harrison relied upon the Grounds of Appeal.
7. Having discussed the contents of that additional bundle with Mr Harrison and Miss Hashmi it was not necessary for me to hear any further submissions on the Appellant's behalf from Miss Hashmi. I indicated that I found no material error of law made by the First-tier Tribunal Judge but would provide my decision with reasons in writing. I now provide that decision.

Decision and Reasons

8. The First-tier Tribunal Judge had rightly identified that the issue in this case was the assertion made by the Respondent that the Appellant fell for refusal under S-LTRP2.2 as he had used deception to provide an English language test certificate as part of his necessary documentation for obtaining a CAS that granted him entry to the United Kingdom as a student on an earlier occasion.

9. The judge at paragraph 9 had set out the burden and standard of proof required in immigration and human rights appeals as being on the Appellant and on a balance of probabilities. In general and in most circumstances that is correct. Whilst the judge had not specifically referred to the burden passing to the Respondent initially, where allegations of deception/dishonesty are made it is clear from paragraph 11 of the decision that the judge was mindful of the need to examine the evidence in order to ascertain whether that demonstrated the Appellant had acted dishonestly.
10. The judge had considered the evidence presented by the Respondent within the additional bundle which specifically dealt with that assertion. The bundle presented in this case is a familiar bundle that I have seen in several other cases. The judge found at paragraphs 11 to 14 that there was an insufficiency of evidence presented by the Respondent to demonstrate the Appellant had used deception or acted dishonestly. He was entitled to reach that conclusion. The documents relied upon by the Respondent are inadequate in either allowing the Respondent to discharge the initial burden of proving deception or indeed proof of deception at all.
11. By way of background it would appear that in February 2014 a television programme revealed a widespread abuse of language testing within UK test centres. For reasons which are unknown that appears to have caused surprise to the Home Office as a result of which they sent a team to America to visit ETS which is an educational testing company contracted to perform testing services to a large number of organisations which includes the administering of the test of English as a foreign language.
12. The Respondent's bundle essentially consists of two generic witness statements from two individuals from the Home Office who attended a presentation in America by ETS. Their statements refer to the process used by ETS to discover where it is said an individual has dishonestly obtained a test result. Attached to the bundle is then a short email which simply includes the details of this Appellant with the statement that they have an invalid result for that individual. The author of the email and to whom it was sent has been deleted. The name and details of the Appellant are no doubt extracted from a lengthy list of alleged invalid test takers. Whilst the witness statements within the bundle present an account of what the authors were told by the team in America as to their techniques for spotting irregularities, those statements are generic in nature. There is no evidence within the email or any other document to demonstrate why or how it can be said that this Appellant's results were invalid or obtained by deception/dishonesty. That additional Respondent's bundle presents an inadequacy of evidence to establish the assertions made by the Respondent and I am bound to observe that that has been the case in other appeals. The judge was entitled therefore to conclude that he was not satisfied there was any evidence the Appellant had acted dishonestly in taking and passing his examination.
13. Further whilst there may have been a little confusion in the judge's understanding of what the Respondent was alleging it is clear that the judge had correctly noted that the CAS was assigned on 12th August 2013 and the examination was undertaken on 5th June 2013 and accordingly the CAS was issued after the examination. That is

correct. The judge may have mistakenly believed the Respondent was asserting that the test had been taken after the CAS had been assigned. That was not an assertion made by the Respondent and indeed was not the sequence of events. Had the CAS been assigned with test results attached prior to the test having been taken that would of course have been cause for concern and it may have been in the judge's mind that that was part of the Respondent's concern in this case. However the judge had accurately stated and it was clear in his own mind as to the correct sequence. That sequence therefore does not in itself demonstrate a ground of concern. The judge also was entitled to refer to the fact that the Respondent had offered the Appellant a further opportunity of taking a fresh test which the Appellant had done and had passed that examination with distinction.

14. In summary therefore the judge had carefully and properly looked at the evidence available and had reached the conclusion that not only had the Respondent failed to discharge an initial burden of proof that there was simply no evidence in support of the assertion that the Appellant had acted dishonestly and therefore no proper basis for the refusal of the Appellant's current application under the suitability requirements.

Notice of Decision

There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Lever