



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

Appeal Number: IA/36301/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
on 5th May 2015**

**Determination Promulgated
On 7th May 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TARA PRASAD PUN

Respondent

Representation:

For the Appellant: Mr Smart - Senior Home Office Presenting Officer

For the Respondent: Ms Manning instructed by Super Immigration Services Ltd

DETERMINATION AND REASONS

1. In a determination promulgated on the 18th December 2014 First-tier Tribunal Judge O R Williams allowed Mr Pun's appeal against the decision to refuse leave to remain in the UK as a spouse under Appendix FM.
2. The detailed refusal letter of the 4th September 2014 raised a number of issues one of which was the use of a proxy to undertake an English language test according to a report received from the Educational Testing Services (ETS). The Judge found (a) there was no direct evidence from ETS of an anomaly with the speaking test [10] (b) the statements of Mr Millington and Ms Collins are generic in nature and in reference to an entirely different matter and make no reference Mr Pun [11] (c) Mr Pun gave credible and consistent evidence as to the type of English language examination he undertook and the fact his wife did not completely corroborate the test centres he mentioned was accepted as being genuine error [12].

Discussion

3. Permission to appeal was sought on a number of grounds one of which was the failure of the Judge to determine a number of other issues raised in the refusal letter which went beyond the ETS issue. These included Suitability, Eligibility, EX.1., paragraph 276ADE and the existence of exceptional circumstances such that removal would result in an unjustifiably harsh outcome as per Nagre [2013] EWHC 720.
4. This ground has no arguable merit for the Judge noted at the commencement of the hearing that the Presenting Officer confirmed that the ETS issue was the only live issue upon which a decision was required. As the Presenting Officer conceded the remaining issues the Judge was not required to determine them.
5. The remaining ground challenges the decision in relation to the ETS element. The key finding by the Judge on this matter is that the evidence provided did not warrant a finding that the Secretary of State had proved what she was alleging in relation to the use of deception. The witness statements set out the methodology used by ETS in assessing the test results and the work undertaken by the Home Office but it fails to make a specific connection to Mr Pun.
6. Today Mr Smart brought with him a copy of a printout from the Secretary of States data system showing information received from ETS and specifically naming Mr Pun as a person in relation to whom it was stated a proxy had been used to take the English language test.
7. This is evidence that was not produced before the Judge and it has not been shown it was material that was not available at the time. It cannot be an error for the Judge not to consider something of which he or she was not made aware. No satisfactory explanation for the failure to provide this material to the First-tier Tribunal has been provided and it has not been shown that on the basis of the evidence the Judge was asked to consider that the decision was outside the range of permissible decisions.
8. Ground 2 refers to the fact three witnesses gave evidence yet only two are mentioned and the third failed to mention the second English language test. This may be so, but it is clear the Judge considered all the evidence made available and has give adequate reasons for the findings made. It has not been arguably established that this piece of evidence carries such weight that the decision should have been reversed. It has not been shown the decision is unsustainable on this basis.

Decision

9. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

10. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such order.

Costs.

11. Miss Manning sought costs against the Secretary of State on the basis the application was unwarranted in light of the concession made that is not referred to in the grounds seeking permission. The application was refused as it has not been established that the application is an abuse of process or totally without merit. The first point of note is that permission was granted to bring the appeal on the basis it appeared arguable. The concession is not mentioned which made the first ground unarguable but Ground 2 was arguable and not affected by the concession even though the claim eventually failed for the reasons set out above.
12. It not an appropriate case in which to make a costs award.

Signed.....
Upper Tribunal Judge Hanson

Dated the 6th May 2015