



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

Appeal Number: IA/36307/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 May 2015**

**Decision Promulgated
On 29 May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VIKAS NARENDRABHAI PANCHAL

(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Ms A Nizami, Counsel

DECISION AND REASONS

1. The respondent to this appeal, Mr Panchal, is a citizen of India born on 9 February 1976. The appellant is the Secretary of State for the Home Department, who has appealed with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal O'Hagan, allowing Mr Panchal's appeal against immigration decisions to refuse him leave to remain as a Tier 4 (General) Student Migrant and to remove him on the ground he had used deception in seeking leave to remain.

2. It is more convenient to refer to the parties as they were before the First-tier Tribunal. I shall therefore refer to Mr Panchal from now on as “the appellant” and the Secretary of State as “the respondent”.
3. I was not asked and saw no reason to make an anonymity direction.
4. The appellant came to the UK in on 24 June 2009. He was granted two extensions of leave as a Tier 4 student both of which were curtailed. The appellant submitted an application for further Tier 4 student leave on 25 January 2014. His wife and child applied for further leave as his dependants. The applications were refused and the appellant appealed.
5. The First-tier Tribunal identified the key issue to be whether the respondent had established the appellant had in fact sat his English test by means of a proxy, as alleged by the test provider, ETS. The evidence relied on by the respondent consisted of two witness statements made by Home Office officials, Rebecca Collings and Peter Millington, which contained generic evidence of the type of behaviour of which the appellant was accused and steps taken to investigate and prevent such abuses. However, the judge found this evidence of no assistance in establishing the appellant had personally used deception. The respondent also relied on a print-out confirming the view of ETS that the appellant’s test results were considered invalid. The judge regarded this evidence as a bare assertion which was not sufficient to establish deception.
6. The respondent sought permission to appeal, arguing there were two errors in the decision. Firstly, it was argued the judge had failed to engage properly with the respondent's evidence. Secondly, the judge wrongly described the respondent as exercising a “quasi-judicial” role and abrogating all responsibility to the test provider.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Scott-Baker.
8. The appellant did not file a response.
9. I heard submissions as to whether the First-tier Tribunal had made a material error of law. Mr Tarlow relied on the grounds seeking permission to appeal and argued the judge had not engaged adequately with the respondent's evidence. Ms Nizami argued that there was no material error of law in the judge’s decision and he had been entitled to allow the appeal for the reasons he gave.
10. I find no material error of law in the First-tier Tribunal’s decision. My reasons for this conclusion are as follows. The judge correctly identified the sole issue for determination. He was plainly aware of the evidence submitted by the respondent in support of her decision that the appellant did not meet the Suitability requirements of the rules because he had exercised deception. The judge considered that evidence with

care and in detail. He correctly directed himself as to the burden and standard of proof in these circumstances. Having done so he was perfectly entitled to conclude that the generic evidence consisting of the witness statements and the bare assertion made by ETS in the print-out were not sufficient to discharge the burden resting on the respondent.

11. The First-tier Tribunal's decision does not disclose any material error of law and shall stand.

NOTICE OF DECISION

The First-tier Tribunal did not make a material error on a point of law and its decision allowing the appeal under the Immigration Rules shall stand.

No anonymity direction has been made.

Signed

Date 28 May 2015

**Judge Froom, sitting as a Deputy Judge of
the Upper Tribunal**