



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

Appeal Number: IA/36840/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 5th May 2015**

**Decision & Reasons Promulgated
On 18th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**HAU ZHANG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Islam

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge Dickinson issued on 28th January 2015 allowing under the Immigration Rules the Appellant's appeal against the decision of the Respondent made on 10th September 2014 to cancel the Appellant's leave under the Immigration Act 1971 and paragraph 321A of the Immigration Rules. Refusal was on the basis that the Respondent believed that the Appellant had fraudulently obtained his ETS English language

certificate submitted as part of his previous application for leave to enter/remain in the United Kingdom as a Tier 4 (General) Student.

2. It is submitted in the grounds seeking permission that:

- (i) Judge Dickinson failed entirely to give adequate reasons for his material finding that the Appellant had not committed any act of deception and that he had on 1st and 3rd May 2013 sat and passed the TOEIC English language examinations administered by ETS.
- (ii) In reaching this conclusion he had relied on findings that are materially flawed and unsustainable, i.e.:
 - (a) At paragraph 14 that the Appellant had been consistent in his account and is thus credible. The evidence of the Appellant was entirely uncorroborated so only very limited weight could be attached to it. He had taken into account his view that if the Appellant had not participated in the exam process he would not have been able to account for the details which he recalled to the authorities.
 - (b) His finding that there was no evidence before him to discount the version of the examination process as described by the Appellant was clearly factually incorrect because the Secretary of State had provided documentation purporting to demonstrate that the Appellant did not attend the English language test as claimed.
 - (c) At paragraph 17 the Judge found that the evidence in support of the deception allegation is generic and provides no evidence relating to the Appellant's personal circumstances. It is submitted that this is incorrect. As well as the witness statements produced the Secretary of State provided an ETS Lookup Tool Document which gave details of this Appellant and showed that his English language test had been invalidated.
 - (d) At paragraph 18 the Judge said that it was unclear to him as to the precise reason as to why the Appellant had his certificate invalidated by ETS as there is no elaboration on this issue. This finding is factually incorrect as the witness statements of Peter Millington and Rebecca Collins detail the process and procedures which resulted in the English language test scores being invalidated.
 - (e) At paragraph 20 the Judge had found himself to be satisfied that there remains a possibility that invalidation had been due to an irregularity at the particular testing centre used rather than any specific evidence of dishonesty but this failed to take account of Peter Millington's subsequent statement that in these cases the individual would usually be invited to take a free re-test and there is nothing to suggest that the Appellant was offered any

such test. He failed to take this into account including the fact that Peter Millington had also said that these cases are clearly distinguished by ETS in its spreadsheets provided to the Home Office.

- (f) The finding at paragraph 51 that the Appellant successfully completed a diploma in business law and social sciences and that that in itself demonstrates a sound grounding in English has little bearing on the Appellant's ability to sit and English test in May 2013 and whether a proxy was used for the sitting.
- (g) At paragraph 22 the finding that the Appellant's current level of English language is inconsistent with the allegation of deception is irrelevant to a test done in May 2013.

My findings on error of law

- 3. I have given careful consideration to the above Grounds and to the submissions of the representatives. I note that the Tribunal has dealt with many of these cases in which the same general and generic evidence is provided by the Respondent.
- 4. Judge Dickinson gave ten reasons for finding that the Appellant had validly sat the ETS test. The main reason for his decision was that there was no evidence before him to discount the version of the examination process as described by the Appellant which satisfied him that the Appellant had been involved in the process as claimed. He was satisfied that the Appellant had given truthful evidence. It is undisputable that the two statements provided by the Respondent as evidence in these cases are generic. There is nothing in them to establish specifically that the Appellant was involved in the deception. In the circumstances I can find no material error of law in the determination of Judge Dickinson and I uphold his decision.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law and is upheld.

The Appeal of the Respondent is dismissed.

Signed

Date: 11th May 2015

N A Baird
Deputy Judge of the Upper Tribunal