



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

Appeal Number: IA/41114/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 October 2015**

**Determination Promulgated  
On 26 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

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

Appellant

**and**

**SHAOHUI CAI  
(ANONYMITY ORDER NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Willocks-Briscoe (Senior Home Office Presenting Officer)

For the Respondent: No appearance (Chancery Legal Services are on the record)

**DECISION AND REASONS  
ERROR OF LAW HEARING**

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal allowing the original appeal of Shaohui Cai, a citizen of China born 7 April 1992, against the decision to cancel his entry clearance of 16 February 2015.

2. The application was refused because the Educational Testing Service Limited (ETS) had provided the Secretary of State with their conclusion that “there was significant evidence to conclude that your certificate was fraudulently obtained.” This was considered conduct which would have brought the general refusal reasons into play as a material misrepresentation had it been known to the Home Office when granting the application originally, on 7 November 2013. Additionally he was found, when searched, to be in possession of a paper headed “Preparation Questions on TOEIC investigation” (thus referencing the Test of English for International Communication by which language proficiency is measured) containing 25 questions he was likely to be asked, and a copy of the TOEIC Examinee Handbook, materials which it was thought he had no adequate explanation for having with him. Nottingham Trent University had now withdrawn his sponsorship on 26 September 2014, which was additionally a circumstance justifying cancellation of his leave, and so that was duly done under Rule 321A(1) of the Immigration Rules:

**“Grounds on which leave to enter or remain which is in force is to be cancelled at port or while the holder is outside the United Kingdom**

**321A.** The following grounds for the cancellation of a person’s leave to enter or remain which is in force on his arrival in, or whilst he is outside, the United Kingdom apply;

(1) there has been such a change in the circumstances of that person’s case since the leave was given, that it should be cancelled; or

(2) false representations were made or false documents were submitted (whether or not material to the application, and whether or not to the holder’s knowledge), or material facts were not disclosed, in relation to the application for leave; or in order to obtain documents from the Secretary of State or a third party required in support of the application ...”

3. The First-tier Tribunal allowed the appeal, concluding that the Home Office had provided no evidence to justify their conclusion that a proxy or other deception had been used, whereas Mr Cai had established that he had strong English language skills and provided supporting documentation to such effect, having studied in English and obtained a foundation course, diploma and second year of an honours degree, at Nottingham Trent University. There was no sinister inference properly to be drawn from the Appellant's possession of documents relating to the TOEIC process: that was an understandable precaution for a person who had taken legal advice and who had prepared thoroughly for the relevant examination.
4. The Secretary of State appealed on the ground that the First-tier Tribunal had failed to provide adequate reasons for its conclusion, and had overlooked witness statements from Peter Millington and Rebecca

Collings, and an email from the ETS Taskforce of 10 September 2014. First-tier Tribunal Judge Grant-Hutchison granted permission to appeal on the basis that the grounds showed an arguable material misdirection given the failure to make findings on the spreadsheet provided.

5. Mr Cai did not attend today's hearing, neither he nor his representative providing any explanation for their absence. I deemed it in the interests of justice to proceed.

### **Findings and Reasons**

6. Contrary to the perception of the First-tier Tribunal, there was in fact evidence of the information upon which the Secretary of State relied, by way of printouts titled "ETS Search" recording that Shaoui Cai, born 7 April 1992, had had two test results declared "invalid". Rebecca Collings' statement at [28] explains that "any tests categorised as cancelled (which later became known as invalid) had the same voice for multiple test takers".
7. It seems to me that there was sufficient evidence here to found a prima facie case that, via reliance on systems believed to be highly reliable if not infallible, serious issues had been raised as to the validity of Mr Cai's English language tests. These might well not raise insuperable obstacles to his appeal succeeding (the President in *Gazi* (IJR) [2015] UKUT 327 (IAC) remarks upon features of the generic evidence that potentially detracts from its cogency), but they do require assessment against the positive features of his evidence such as his English language proficiency and his account of not having sought to cheat the system. The First-tier Tribunal overlooked this evidence, which is unmentioned in its decision, and that was a material error of law given that it represented the principal issue that demanded resolution on the appeal.
8. As this conclusion means that the appeal will have to be fully redetermined without any factual findings being preserved, it seems to me that it is appropriate for remittal for hearing afresh before the First-tier Tribunal.

### Decision:

The making of the decision of the First-tier Tribunal was flawed by material error of law.

The appeal is remitted for hearing afresh.

A handwritten signature in black ink, appearing to read 'M.A.S. Symes'. The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Signed:  
Deputy Upper Tribunal Judge Symes

Date: 22 October 2015