



IAC-AH-SC-V1

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

Appeal Number: IA/43026/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 28 September 2015**

**Decision & Reasons Promulgated
On 16 December 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**RAHEEM AHMED AMEEQ
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Diwnycz, a Senior Home Office Presenting Officer

For the Respondent: Mr Hussain, instructed by Whitefield Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant is a male citizen of Pakistan who was born on 5 May 1983. He was refused leave to remain as the spouse of a British citizen, the subject of a decision to make removal directions on 12 October 2014. He appealed against those decisions to the First-tier Tribunal (Judge Myers) which, in a decision promulgated on 17 February 2015 allowed his appeal.

The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The respondent asserted that the appellant could not meet the suitability requirements for leave to remain as a spouse because he had used deception in a language test which he had undertaken in June 2012. Suspicions had been raised regarding test results produced testing service, ETS, following a BBC Panorama programme in February 2014. That programme had revealed instances of proxies sitting examinations on behalf of applicants together with other abuses. None of the evidence put before the First-tier Tribunal Judge in this appeal related specifically to the appellant. The judge noted that fact and also noted that:

“Whilst recognising there may be situations where a person uses deception without needing to do so, I nevertheless place weight on the fact that the appellant passed an English language test prior to obtaining his visa to enter the UK [and] he subsequently passed another test in March 2014 and he was able to give his evidence and respond to cross-examination [before the First-tier Tribunal] in English. [20].”

3. The judge was aware of the fact that the appellant may have improved his English language skills since 2012 but she concluded, on the standard of proof of a balance of probabilities, that the respondent (upon whom the burden of proof rested) had failed to prove that the appellant had used deception.
4. The grounds of appeal take issue with the judge’s findings. The judge considered that voice recognition technology could have been used by the respondent to link this particular appellant with the alleged deception and that the Secretary of State is arguably right to submit that it was unnecessary for her to produce such evidence in each and every ETS refusal. Having said that, the respondent’s evidence in this particular appellant’s appeal was entirely generic whilst I have noted above an instance where the judge has identified evidence which favours the appellant; the judge has not simply, as the grounds assert, allowed the appeal because the respondent has failed to perfect her evidence to the Tribunal’s satisfaction.
5. It may well be the case that, faced with similar evidence, another judge may have found in favour of the Secretary of State. However, that is not the point. Judge Myers has not fallen into the trap of allowing the appeal because evidence which ideally could have been before her was not adduced. Had she done so, she may have fallen into legal error. Her observation regarding voice recognition technology is no more than that; it was not the reason she allowed the appeal. On the other hand, she has evaluated such evidence as she did have before her and has reached a conclusion which was plainly available to her. The respondent may rely on generic evidence but that evidence may be outweighed by evidence in favour of an appellant in an assessment determined according to the standard of the balance of probabilities. Moreover, the Upper Tribunal should hesitate before tinkering with a judge’s reasoned analysis

conducted in accordance with relevant legal principles. In the circumstances, this appeal is dismissed.

Notice of Decision

6. The Secretary of State's appeal is dismissed.
7. No anonymity direction is made.

Signed

Date 20 November 2015

Upper Tribunal Judge Clive Lane