



IAC-AH-CJ-V1

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

Appeal Number: IA/37070/2014

THE IMMIGRATION ACTS

**Heard at City Centre Tower, Birmingham
On 10th March 2016**

**Decision & Reasons
Promulgated
On 15th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**ZEESHAN AKHTAR RAJA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Miah, Counsel instructed by Lee Valley Solicitors
For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Pakistan born on 31st October 1986. The Appellant first arrived in the UK on 27th April 2011 when he was given leave to enter as a visitor until 30th August 2013. However, that leave was curtailed as from 19th June 2012. On 29th August 2013, the Appellant applied for leave to remain as a Tier 4 (General) Student. Such leave was granted until 30th January 2015. On 5th July 2014, the Appellant applied for

further leave to remain as the spouse of the Sponsor, Minal Mistry. That application was refused for the reasons given in the Respondent's letter of 9th September 2014. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Somal (the Judge) sitting at Nottingham on 18th May 2015. The Judge allowed the appeal for the reasons given in her Decision of the same date. The Respondent sought leave to appeal that decision, and on 14th September 2015 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The original application was refused under the provisions of Appendix FM and paragraph 276ADE of the Statement of Changes in Immigration Rules HC 395. This was because it was believed that the Appellant had submitted a false document in the nature of a fraudulent English language certificate in the course of a previous application for leave to remain. The Appellant had used a proxy test taker in respect of a test taken on 20th August 2013. That being the case, the Appellant failed to satisfy the suitability requirement given in S-LTR.2.2(a) of Appendix FM.
4. The Judge allowed the appeal because having considered the generic evidence of Peter Millington and Rebecca Collings submitted by the Respondent, and a printout of an ETS search, the Judge found the Appellant to be credible and believed his denial that he had used a proxy test taker.
5. At the hearing, Mr Mills submitted that in reaching this conclusion the Judge had erred in law. The evidence produced by the Respondent at the hearing had not been the best, but the Judge had failed to engage with it and had given insufficient reasons for preferring the evidence of the Appellant. The Respondent had not been represented at the hearing before the Judge, but it was typical of the Judge to deal with cases of this nature in that way. In this respect, Mr Mills produced an unreported Decision under appeal number IA/49165/2014 from which it could be said that the Judge used a template in deciding cases of this nature, indicating that she had not given proper attention to the evidence. The Judge had not explained why she had found that the Respondent had not proved her allegation to the required standard of proof. The refusal letter had given a lengthy explanation of the process whereby the ETS test certificate had been invalidated. At paragraph 15 of the decision, the Judge had shown that she had applied a higher standard of proof than that required by the decision in **Re B (Children) [2008] UKHL 35**. That decision was that there was no heightened standard of proof in deception cases.
6. In response, Mr Miah argued that there had been no such error of law. The fact that the Judge had appeared to use a template did not necessarily mean that she had not engaged with the evidence. The template was just an expedient way of explaining her decision. The previous decision of the

Judge relied upon by Mr Mills was unreported and should not be considered as it was prejudicial.

7. As regards the standard of proof, Mr Miah said that the decision in **Re B** was in a case about care proceedings and therefore had no application to the present appeal. The Judge had correctly relied upon the decision in **RP (Proof of forgery) Nigeria [2006] UKAIT 00086**.
8. Finally, Mr Miah argued that the Judge had come to a conclusion open to her upon the evidence before her and that the grounds of application were no more than a disagreement with that decision. It was significant that the Appellant had given evidence at the hearing in English.
9. I do find an error of law in the decision of the Judge which I therefore set aside. It is unfortunate that the Judge appears to use a template to decide cases of this nature as that gives the impression that she has not dealt fully with the evidence even if that is not the case. However, that is not the error of law which I find. My decision is that the Judge erred in law by placing upon the Respondent the burden of proving that deception was used by the Appellant "to a high degree of proof". The applicable standard is that of the balance of probabilities, and as emphatically pointed out in **Re B** there is only one civil standard of proof which is that "the fact in issue more probably occurred than not". The required standard of proof is no higher than that. I prefer the decision in **Re B** because it is a decision of the then House of Lords, and is later in time than the decision in **RP**. As **Re B** makes clear, there is no spectrum of probability as referred to in **RP**, and therefore no higher degree of proof than that of the balance of probabilities.
10. For these reasons I set aside the decision of the Judge. I decide that that decision be remade in the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statements.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

The decision is to be remade in the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order for anonymity and I find no reason to do so.

Signed

Date

Deputy Upper Tribunal Judge Renton