Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/37543/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 February 2016	**On 29 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

ABDUL RAQIB
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr. S. Whitwell, Home Office Presenting Officer
For the Respondent: Mr. D. Sellwood of Counsel, instructed by Malik and Malik

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge O'Malley promulgated on 25 August 2015 in which she allowed Mr. Raqib's appeal against the Secretary of State's decision to curtail his leave to remain.

2. For the purposes of this decision I refer to the Secretary of State as the Respondent and to Mr. Raqib as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. Permission to appeal was granted as follows:

> "It is arguable that the judge has not placed the correct construction upon the evidence submitted by the Respondent in respect of the circumstances whereby the Appellant obtained his TOEIC. It is arguable the categorisation of "invalid" has not been given sufficient weight and that insufficient analysis has been furnished by the Judge as to the foundations for the Respondent's claims as to invalidity."

4. The Appellant attended the hearing. I heard submissions from both representatives, following which I reserved my decision, which I set out below with reasons.

Error of law

5. In paragraph [8] the judge refers to the evidence which she has considered, which includes the Respondent's bundle. In paragraph [13] she sets out the Respondent's representative's submissions. She states that he relied on the witness evidence in the Respondent's bundle, and refers specifically to the evidence of Matthew Howard "dealing with how ETS considers the irregularities in tests".

6. In paragraph [20] the judge sets out the law, and in paragraph [22] sets out where the burden of proof lies. In paragraph [21] she refers to having considered the case of R (Gazi) v SSHD [2015] UKUT 00327 (IAC).

7. In paragraph [23] she states that she has considered the "totality of the evidence before me" including the witness statements on behalf of the Respondent. In paragraph [25] she sets this out in more detail, referring to the statements of Rebecca Collings and Peter Millington, and the statement from Matthew Harrold, together with the annex identifying the Appellant's result.

8. In paragraph [26] she finds that she is satisfied that it is reasonable for the Respondent "to rely on the information from ETS in the first instance". In paragraph [28] she reiterates that she has concluded that the Respondent has met her initial burden.

9. Although the judge does not set out the Respondent's evidence in full, nor does she go through the witness statements in detail, it is clear from the decision that she has taken the evidence of the Respondent into account in its entirety, which has led her to find that she is satisfied that the Respondent has discharged the initial burden of proof. It is not necessary for her to repeat and rehearse this evidence. It is clear from the decision that she has taken it into account.

10. In paragraphs [28] to [30] the judge turns to the evidence of the Appellant and gives reasons for why she considers that he has discharged the burden on him. Paragraph [28] states:

"Having concluded that the respondent has met the initial burden I need to consider whether the appellant has discharged the burden on him. I have considered his statement, which provides specific evidence of the place he attended, the process for completing the test and his recollections which I found compelling. I also note the documents in the bundle including letters from the college he was attending in 2012 which specifies his results, his attendance and which state "this was a full time course and was taught and assessed in English", "Mr Raqib has successfully completed the BA (Hons) in Business Studies Programme. The course was studied and assessed in English. His attendance was 94%."

11. The judge finds the Appellant's statement "compelling". She notes that he has provided specific details of taking the test. She takes account of the letter from his college. In paragraph 29 she states that she has taken account of his ability to give evidence in English, but then goes on to say that she notes that the hearing is some time after the date on which he took the test. She does not place any weight on his English language ability at the hearing as indicated by the fact that she states "Similarly, I did not place any weight on the letter of support from his current college….". She has not placed any weight on the fact that he was able to speak English at the hearing, nor on the letter of support from his current college, as opposed to the letter from the college which he had been attending at the time of the test.

12. In paragraph [30] the judge gives her reasons for finding in the Appellant's favour.

"The appellant has satisfied me that he obtained his TOEIC without any deception. I find the analysis in **Gazi** helpful and I note there is no evidence of the expertise of the person checking the recordings. I considered the recommendations in paragraphs 46-48 of **Gazi.** I have given significant weight to the appellant's ability to give cogent, specific evidence about the tests he undertook, particularly as my conclusion is that this is consistent with the remainder of the evidence including the evidence given in the interview on 22 August 2014."

13. She refers to the case of Gazi. She states that she has considered the recommendations in that case. She then states that she has given significant weight to the Appellant's evidence, and finds it to be consistent.

14. I was referred by Mr. Sellwood to the case of VV (grounds of appeal) Lithuania [2016] UKUT 00053 (IAC). The headnote states:

"(1) An application for permission to appeal on the grounds of inadequacy of reasoning in the decision of the First-tier Tribunal must generally

demonstrate by reference to the material and arguments placed before that Tribunal that (a) the matter involved a substantial issue between the parties at first instance and (b) that the Tribunal either failed to deal with that matter at all, or gave reasons on that point which are so unclear that they may well conceal an error of law."

15. Mr. Sellwood submitted that the decision came nowhere near the high threshold set out in (b). I agree with this submission. The judge dealt with the issue before her. Her reasons for finding that the Appellant did not use deception are set out. It is clear from the decision that she considered all of the evidence before her, including the Respondent's witness evidence. She was satisfied that the Respondent had discharged the burden placed on her, but then gave reasons for finding that she found the Appellant's evidence compelling.

16. I find that the judge gave adequate reasons. She gave consideration to the Respondent's evidence. It was not necessary for her to set this evidence out in full. She gave reasons for finding the Appellant's evidence compelling, and her reasoning is clear.

Notice of decision

The decision does not involve the making of an error on a point of law and I do set it aside.

The decision of the First-tier Tribunal stands.

Signed Date 24 February 2016

Deputy Upper Tribunal Judge Chamberlain