Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/44508/2014**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 26th January 2016	**On 12th February 2016**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

MR GURJENDRA SINGH
(ANONYMITY ORDER NOT MADE)
Respondent

Representation:

For the Appellant: Mrs R Pettersen (Senior Home Office Presenting Officer)
For the Respondent: Ms L A Turnbull (Counsel)

DECISION AND REASONS

1. The Appellant in this appeal to the Upper Tribunal is the Secretary of State for the Home Department, hereinafter, "the Secretary of State". The Respondent in this appeal to the Upper Tribunal is Mr Gurjendra Singh, a national of India who was born on 12th April 1989, hereinafter, "the claimant". The Secretary of State has appealed, with permission, to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Colyer) promulgated on 13th February 2015, allowing the claimant's appeal against

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the Secretary of State's decision of 30th October 2014 to remove him from the United Kingdom.

2. By way of background, the claimant obtained entry clearance abroad and came to the UK on 7th December 2009 as a Tier 4 (General) Student Migrant. He subsequently obtained two further grants of leave on a similar basis, the latter one taking him up to 21st June 2014. On 28th May 2014 he married Dr Mandeep Kaur Bhandal, who is a British citizen, and on 13th June 2014, therefore within the currency of his existing leave, he applied for leave to remain as her spouse.

3. The Secretary of State considered the claimant's application under Article 8 of the European Convention on Human Rights (ECHR) both within and outside the Immigration Rules. However, with respect to those Rules, the Secretary of State decided that the claimant did not meet the suitability requirements because, it was said, when undergoing an English language test on 15th January 2013 at the Premier Language Training Centre, for the purpose of a leave application, he had practised deception. Specifically it was claimed by the Secretary of State that he had used a proxy test taker. The Secretary of State concluded that such was fatal to the application under the Immigration Rules and that it also meant he had failed to show that there were "exceptional circumstances" such as to enable him to succeed outside the Rules.

4. The claimant appealed to the First-tier Tribunal and there was a hearing which took place, at Nottingham, on 20th January 2015. He gave oral evidence at the hearing as did his spouse. Both parties were represented. The sole issue of dispute was that relating to the Secretary of State's view that the claimant had practised deception. He denied it and said that he had taken the relevant English language test himself. At the hearing the Secretary of State provided additional evidence in the form of witness statements of one Peter Millington, an assistant director employed by the Home Office, and one Rebecca Collings, a Home Office civil servant. Those statements addressed aspects of the English language testing system, compliance measures which had been taken to protect their integrity and evidence of abuse of the system. The content of those statements is, in fact, now quite widely known as they have been used in judicial review proceedings and other appeals which have addressed similar issues and concerns. There was some further documentation handed in with the statements, being a printout of an online search relating to the Appellant and a MIDA matched data printout.

5. The judge, having considered the evidence and having received submissions from the representatives, concluded that it had not been shown that the claimant had been involved in any deception and had not used a proxy test taker. The judge said that he had found the oral evidence of the claimant and his spouse to be "very credible". He allowed the appeal.

6. An application for permission to appeal to the Upper Tribunal followed. The grounds contained assertions that the judge had erred in finding the

witness statements and the other documentary evidence unpersuasive, in failing to give "due consideration to the specific evidence" which it was said identified the Appellant as an individual who had exercised deception and in failing to provide adequate reasons for rejecting the Secretary of State's arguments. The application was initially refused by a Judge of the First-tier Tribunal but was then granted by the Upper Tribunal. The salient part of the grant reads as follows;

> "In the determination at [18]–[21] the judge referred to the further evidence provided by the Respondent. Specifically at [21] there is reference to an on-line search document and a 'MIDA' data sheet. As to the latter, the judge concluded that although it refers to some numbers, there is no indication as to whom or what they relate. However, on the other side of that data sheet is details of the Appellant's test, with his name and other details and the word 'invalid' recorded in one of the columns. It may be that the judge in fact overlooked that part of the document, and therefore did not appreciate its arguable significance.
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> It is arguable therefore, that unlike in some other cases, there was before the First-tier Judge specific evidence from the Respondent in relation to the two 'general' witness statements, the data sheet indicating that the test taken by the Appellant on 15th January 2013 was invalid. Notwithstanding the other reasons given by the judge for resolving the appeal in favour of the Appellant in terms of the allegation of deception, I consider it arguable that the First-tier Judge erred in law in overlooking evidence specific to this Appellant in relation to the allegation of deception in the obtaining of the English language test certificate".

7. There was then a hearing before the Upper Tribunal (before me) to consider whether the decision of the First-tier Tribunal contained an error of law and, if so, what should follow from that. I was addressed by both representatives and have taken into account what each of them has had to say.

8. The judge, in addressing the new evidence which had been provided to him on the day of the hearing, said this;

> "19. The first statement is that of Peter Millington who is an assistant director employed by the Home Office who is responsible for the Network of Sponsor Compliance Officers in the Midlands and North. It is a general statement explaining the history of English language testing and the measures taken in respect of compliance with the requirements of evidential practice. There is no reference to this Appellant or to his testing centre.
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> 20. The second witness statement made in the same proceedings is that of Rebecca Collings a Home Office civil servant working within the UK Visa and Immigration Directorate who supports the delivery of decisions to grant or refuse leave to enter or stay in the UK. Part of her role is to oversee delivery of Secure English Language Testing (SELT) on behalf of the Home Office. Her statement provides a background to this system; she also refers to abuse at test centres and Home Office response. She concludes by referring to deception and Section 10 decisions. However in her statement she makes no reference to this

Appellant. The witness makes no reference to the Appellant's English language test or the test centre.

21. The third document provided on the day of the hearing appears to be a printout of an online search giving Trinity ID; giving the Appellant's name and date of birth and the third one is just his name. It shows no records found matching your search criteria. Attached to that is a MIDA matched data. It refers to some numbers but there is no indication as to who or what these refer to. I find that these documents do not in any way establish that the Appellant has used deception in his English language test".

9. The judge then went on to observe that the claimant had provided evidence to the effect that he had sat an ESOL test on 6th June 2014 which he had passed, that the claimant had, in the view of the judge, acted in the way an innocent individual accused of deception would have done and that he had, in the view of the judge, provided credible oral evidence. In concluding his analysis of the evidence relevant to deception the judge said this;

"27. I find the Appellant to be a credible witness and I form this decision after reading his statement, examining the documents before me and listening to his evidence.

28. I find that there is no credible evidence before me to indicate that this Appellant was not the person who took the test. There is no evidence of his using a proxy.

29. I find that the Respondent's allegation that the Appellant has submitted false information in the form of fraudulent English language certificates and therefore he has attempted to obtain leave by deception has not been established".

10. The judge then went on to consider the various other aspects of the Immigration Rules relevant to the claimant's application and appeal and resolved all of those in the claimant's favour. There has been no challenge to that part of his determination.

11. It does appear, in looking at paragraph 21 of the determination, that the judge only had regard to one side of a two page document which had been handed in to him on the morning of the hearing and which comprised the "MIDA" document. I say that because the judge describes the document as simply being one which "refers to some numbers" and which gives no indication "as to who or what these refer to". That does appear to be an apt and accurate description of one side of the document but the other side does, as was noted in the grant of permission, contain the Appellant's name, his date of birth, his nationality, the date of the relevant English language test and the word "invalid". I suppose that if a party chooses only to hand documentary evidence to a judge on the morning of the hearing then that party does run the risk of such evidence not being considered as carefully as it would have been had it been submitted earlier. Nevertheless, as I say, it does seem to me that the judge erred in failing to consider both sides of the document. However, it does not seem

to me that that really takes matters very much further. Mrs Pettersen was not able to assist me by demonstrating that the information in the document which the judge seemed to have overlooked, could viably have led to any different outcome. The document indicates that the verification systems used by the Home Office had flagged up the particular test as one which had given concerns but there is nothing in the document to indicate, specifically, what those concerns were or why there had been concerns. The judge had clearly given very careful consideration to the evidence of the claimant and had reached a clear view that his oral and written evidence was credible. The judge had attached some weight to his having subsequently passed a different test which appeared to be of a similar standard though I note Mrs Pettersen's observation that that was taken some considerable time after the initial test. However, the judge did not treat the passing of that test as decisive but, merely, one factor amongst others. It was open to the judge to accord importance to the point that much of the new evidence provided was of a general rather than a specific nature and, in my judgment, even if he had considered the full MIDA document his concerns would have remained bearing in mind the limited assistance that document was capable of giving. I accept that the generalised information contained in the witness statements has some force and I accept that other judges might have given more weight to it than did this judge. However, that is not the point. The judge reached findings and conclusions which were open to him and which he adequately explained. His failure to consider the whole of the documentation, as noted above, does not, in my judgment, translate into an error of law, and even if it did, it would not translate into a material one.

12. In light of the above, therefore, my conclusion is to the effect that the decision of the First-tier Tribunal did not involve an error of law and its decision should, therefore, stand.

Notice of Decision

The decision of the First-tier Tribunal did not involve an error of law. Its decision shall stand.

Anonymity

The First-tier Tribunal did not make any anonymity direction, I was not invited to make such a direction and I do not do so.

Signed Date

Upper Tribunal Judge Hemingway

TO THE RESPONDENT
FEE AWARD

The First-tier Tribunal made a full fee award. I make the same award.

Signed Date

Upper Tribunal Judge Hemingway