



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/21897/2015

THE IMMIGRATION ACTS

Heard at Birmingham  
On 10 May 2017

Decision & Reasons Promulgated  
On 16 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

TARIQ MEHMOOD  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Respondent: Mr A Salam, Solicitor

For the Appellant: Mr A. McVeety, Senior Presenting Officer

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Graham whereby she had allowed the Appellant's appeal based on Appendix FM of the Immigration Rules. To ease following this decision I shall continue to refer to Mr Mehmood as the Appellant although it is the Secretary of State who brings this appeal.
2. The Judge had noted that the parties had accepted that the only issue before her was whether or not the ETS certificate in respect of English was genuine or not.

3. The Secretary of State's grounds of appeal submitted:
  - (1) The Judge had misapplied the standard of proof because she had said the standard of proof was higher than the balance of probabilities; and
  - (2) The Judge said the witness statements of Ms Collins and M Millington were to be given minimum weight and that that the spreadsheet taken in isolation fell short of providing evidence to prove deception.
4. Mr McVeety said in his submissions that he relied on the grounds of appeal. He said in addition one needed to look at paragraph 18 of the Judge's decision. It was a misunderstanding by the Judge. It is not the Secretary of State who validates it. He referred to the decision of **Secretary of State for the Home Department v Qadir** [2016] EWCA Civ 1167 in respect of the initial burden of proof.
5. Mr Salam said that there was a misunderstanding about what was said by Judge Graham. In respect of the case of **Qadir** if the Appellant could speak English and had no reason to cheat then that is the approach that the Judge had followed at paragraph 17. The Judge was entitled to find what she did. The broader picture, namely the ability in respect of English had been conceded. He asked what his client had done wrong. He had applied by way of FLR(M). He submitted that there was no error of law in the Judge's decision. The Judge had decided the case on the civil standard. The Judge was entitled to give limited weight as she did at paragraph 21 of her decision.
6. Mr Salam said that even if there was an error of law the question was whether it was material. The result would be the same.
7. Mr McVeety in reply said that the error cannot be said to be immaterial. It was not a slip of the pen. It was submitted that it was noted what the Judge had said and the case could be sent back for reconsideration (within the Home Office).
8. In my judgment, the Judge did not make a material error of law. The case of **AA (Nigeria)** was concerned with the issue of whether 'false' representations means 'dishonest' representations. The Judge referred to this case at paragraph 12 of her decision but it is quite clear that the Judge omitted "no" from her sentence. It should have read, "..the burden of proof is "no" higher than the balance of probabilities". The caselaw did not say anything other than this. It was a clear typographical error by the Judge. I note too that the Judge then observed the case law at that time and set out it in some detail in respect of the English language cases. Ultimately the Judge said at paragraph 16 that she had to take into account the particular circumstances of the case. Finally, she concluded that she was going to give minimal weight to the evidence of Ms Collins and Mr Millington.

9. As is clear from the Court of Appeal's judgment in **Qadir**, the Judge was right to come to that decision. Indeed, the Secretary of State had conceded the case. As was noted by Sales LJ,

"16. The evidence relied on by the Secretary of State in the cases before us is summarised between [8] and [26] of the UT's determination which focuses on the generic evidence. The documentary evidence is summarised at [10]. The statements and oral testimony of Ms Collings and Mr Millington and written evidence by Mr Green, also a Home Office employee, are summarised at [12] to [21] and [24] and [26]. None of these witnesses had expertise in the science of voice recognition. Mr Millington describes several demonstrations by ETS and states that he was a member of the Home Office delegation which met ETS representatives in the United States in June 2014. None of that delegation from this country were voice recognition experts or scientists and the process at the meetings did not include the provision or consideration of any voice recording (see [21] and [22]). Mr Green (see [12]) did not have the expertise to elaborate on the spreadsheet computer printouts about which he gave written evidence and which were stated to record the outcome of ETS's testing of the voice samples which were stated to relate to Messrs Majumder and Qadir."

10. Therefore, there is nothing of substance to the Secretary of State's appeal in this case.
11. Even if there was, I entirely agree with Mr Salam that the Judge's findings at paragraph 17 really do make it abundantly clear that in any event the Judge would have to have allowed the appeal. The Judge noted there that:
- (1) The Appellant was a credible witness;
  - (2) The Appellant had given evidence in English. He was cross examined extensively and his use of English was good;
  - (3) He has passed various exams including his Masters degree in the United Kingdom which had been taught in English
  - (4) The Judge concluded, in reality, that there would have been no reason for the Appellant to have used a false certificate for his English language abilities.
12. Therefore, even if I was to find that there was a material error of law, when using the findings of the Judge from paragraph 17 of her decision, it is clear that there would be no decision other than one which would allow the appeal.

### **Notice of Decision**

There is no error of law in the decision of the First-tier Tribunal.  
The decision allowing Mr Mehmood's appeal therefore stands.

No anonymity direction is made.

Signed  
Deputy Upper Tribunal Judge Mahmood

Date: 11 May 2017