



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
IA/27282/2015

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 25<sup>th</sup> April 2017**

**Decision & Reasons Promulgated  
On: 12<sup>th</sup> June 2017**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Md Shahin Reza  
(no anonymity direction made)**

Appellant

**And**

**The Secretary of State for the Home Department**

Respondent

**For the Appellant: Mr ZT Simret, Counsel instructed by Simon Noble Solicitors**  
**For the Respondent: Mr K Norton, Senior Home Office Presenting Officer**

**DETERMINATION AND REASONS**

1. The Appellant is a national of Bangladesh date of birth 20<sup>th</sup> October 1986. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge MJ Gillespie) dated 11<sup>th</sup> October 2016 to dismiss his appeal against decisions to refuse to grant him further leave to remain as a Tier 4 (General) Student Migrant and to remove him from the United Kingdom. The Respondent's decisions arose as a result of what was said to be the Appellant's involvement in an 'ETS fraud'.

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<sup>1</sup> Permission was granted on the 3<sup>rd</sup> March 2017 by First-tier Tribunal Judge Colyer

2. It was the Respondent's case that the Appellant had used a proxy to take an English language test on his behalf on the 12<sup>th</sup> December 2012 at the London College of Social Studies. Using voice verification software ETS was able to detect when a single person is taking multiple tests. ETS undertook a check of the Appellant's test and found "significant evidence to conclude" that a proxy had been present. The Appellant's TOEIC certificate, issued as a result of that test, was cancelled as "invalid". The Respondent refused to grant further leave, invoked s47 of the Immigration Asylum and Nationality Act 2006 and applied paragraph 322(1A) of the Immigration Rules, alleging that the Appellant had used deception.
3. When the matter came before Judge Gillespie the Appellant protested that he had taken that test. He described the procedure applied at the test centre, and pointed to his educational history in the UK to submit that it would be very unlikely that he would use a proxy to take his test when he could himself speak very good English. Judge Gillespie describes that as a "grossly unsatisfactory response" to what he found to be persuasive evidence of fraud. The Judge commented that the Appellant's spoken English, "as demonstrated during the course of his evidence, is not such as inspires one with confidence that he is likely to have taken the test and to have achieved the good result reflected on the certificate. His English is heavily accented and reflects a foreign idiom that, with the accent, made it very difficult to follow, even in the orderly and quiet setting of court proceedings". The appeal was dismissed.
4. The Appellant sought permission to appeal on the following grounds:
  - (i) The First-tier Tribunal erred in failing to apply the principles in SM & Qadir v Secretary of State for the Home Department (ETS - evidence - burden of proof) [2016] 00299 (IAC) / Shen v Secretary of State for the Home Department (paper appeals - proving dishonesty) [2014] UKUT 236 (IAC);
  - (ii) The Tribunal further erred in failing to take into account/ give sufficient weight to the Appellant's evidence;
  - (iii) And in failing to identify the weaknesses in the Secretary of State for the Home Department's case;
  - (iv) And in so doing demonstrated bias.

### **Error of Law: Findings**

5. To say that these grounds have no merit would be an understatement. Judge Colyer appears to have been persuaded to

grant permission on the mistaken premise that the First-tier Tribunal had not had the benefit of the Tribunal's judgement in SM & Qadir and as such that it might be arguable that the Tribunal had taken the wrong approach to the burden of proof. The grounds are misleading in that respect. In fact the Tribunal expressly had regard to SM & Qadir [see paragraph 7] and it is quite clear that it applied its guidance on the matter of the burden and standard of proof. The 'generic evidence' supplied by the Respondent is found to be sufficient to discharge the evidential burden: paragraph 10. The Appellant's evidence in rebuttal is rejected and good reasons given why. The Appellant failed to provide a *prima facie* innocent explanation for the evidence of fraud. Unlike the appellants SM & Qadir, he was unable to satisfy the Tribunal that this could all have been an innocent mistake: paragraphs 11-14. The Tribunal was entitled to conclude, having regard to all of this evidence, that the Respondent had discharged the burden upon her.

6. The second ground takes the form of a general complaint that the Tribunal rejected the appellant's evidence to the effect that he did take that test himself. The grounds read as follows:

"He gave witness before the court without taking any interpreter with full confidence, which also proves that he has satisfactory level of speaking capability, did not necessity of taking proxy helper".

Insofar as I understand this point, it is being said that the Tribunal failed to give due weight to the English speaking skills demonstrated by the Appellant at the hearing. There is clearly no merit in that ground, since the Tribunal expressly addressed the Appellant's oral evidence and used its poor quality as a means to reject his contention that he achieved a score of 180 in his TOEIC speaking exam.

7. As to the weaknesses in the Secretary of State for the Home Department's case much was made before me of an issue that arose before the First-tier Tribunal as to whether the Appellant had also used a proxy to take a test with a provider known as 'Bfluent': this is mentioned at paragraph 9 of the determination. Mr Simret submitted that it was an error of law for the Tribunal to have weighed this factor in the balance since there was no evidence produced, for instance by way of photographic ID, that the person recorded as having taken a test with Bfluent was in fact the Appellant. Even if it could be established that the Bfluent matter should have been ignored, it is apparent from paragraph 14 of the determination that this would have made no difference at all to the outcome of the appeal. That is because the Tribunal there gave good reason why the Appellant had not given an innocent explanation as to why the results were as they are in respect of the London School of Social Studies, and why the overall legal burden on the Secretary of State was discharged.

8. There is nothing whatsoever to substantiate the allegation of bias made in the grounds, which amount to no more than a disagreement with the conclusions reached by the Tribunal.

**Decisions**

9. The decision of the First-tier Tribunal does not contain an error of law such that the decision must be set aside. The decision of the First-tier Tribunal is upheld.
10. There is no direction for anonymity.

Upper Tribunal Judge Bruce  
9<sup>th</sup> June 2017