



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

Appeal Number: IA324972015

THE IMMIGRATION ACTS

Heard at Field House

On 25 April 2017

Given orally at the hearing.

**Decision &
Promulgated
On 17 May 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**SAFIA BANO SHAIKH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondent: Mr Z Malik of Counsel instructed by AWS Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with leave against a decision of Judge of the First-tier Hussain, who, in a determination dated 23 June 2016 allowed the appeal of Mrs Safia Bano Shaikh against a decision to refuse her indefinite leave to remain. In this decision I will refer, for ease of reference

to Mrs Safia Bano Shaikh as the appellant, as she was the appellant in the First-tier and for the same reason refer to the Secretary of State as the respondent.

2. The appellant is a citizen of Pakistan born in 1976 who arrived in Britain in October 2004, had various extensions of stay and then applied in August 2013 to extend her leave submitting at that stage a TOEIC English language test certificate that she had taken at BIETTEC College. She was then given an extension until 30 September 2014. On 29 September 2014 she made the application for indefinite leave to remain, the refusal of which is the subject of this appeal. The reason she was refused is because it was alleged that she had used a proxy test taker when taking an English language test in 2013. As is well-known, the decision of the Secretary of State to refuse followed results of the Panorama programme which showed elements of fraud by employees at ETS test centres.
3. The appellant appealed against the decision and produced for the hearing a very lengthy witness statement in which she gave clear details of her qualifications, her experience of teaching and teaching in English and her studies here, as well as details of the events around her taking the test. She said that she had been studying at the college for some time, and that she took the test at that college and that she drove her car there on the day, and so on. She described the tests which she had taken.
4. Before the appeal came before the First-tier Tribunal and detailed directions were given which included the direction that documentary evidence on which both sides wished to rely should be served and lodged with the Tribunal in good time. It appears that this was a float case, but nonetheless there was no reason why, because it was a float case, that it should not have been prepared by the respondent with the appropriate documentary evidence put in, and no doubt instructions to whichever Presenting Officer might pick it up as to what the case was about and what the arguments were that should be put forward.
5. When it came on for hearing the Presenting Officer noticed that relevant evidence was not submitted, in particular evidence from Professor French. He therefore asked for an adjournment. That was refused. The judge, I consider, was entitled to refuse the adjournment. The reality is that the directions had not been followed and there were no cogent reasons given why that was the case. I consider that the reasons for not adjourning were valid. The judge was quite entitled to place weight on the financial costs of the delay to the appellant and it is of course the case that the courts are becoming increasingly strict about the timely service of documentary evidence.
6. The judge considered the evidence and clearly had read the appellant's witness statement. He clearly, I consider, wrote the determination being aware of the fact that the Presenting Officer had conceded the appeal, and I would emphasise that it is clear from the Record of Proceedings that the

Presenting Officer did so and there was no error in the judge pointing that out and relying on that. That fact probably is reflected in the relatively short form of the determination.

7. The judge did place weight on the determination of the Upper Tribunal in **SM and Qadir**. He correctly noted that in that case it was found that the evidence of the appellants was such that it was accepted that they were entitled to leave to remain: in effect, that their test results had not been obtained fraudulently.
8. The judge was aware obviously the evidence that the results from ETS's investigation did not prove to the requisite standard that fraud had been committed as alleged. Mr Avery, of course, is quite right in stating that **SM** was a case decided on its own facts, but clearly it was instructive for the judge in this case. He was indeed entitled to rely on the fact that there was no report from Professor French, nor indeed was the "lookup tool" provided. While it may be said that the analysis of **SM** is sloppy, the reality is that that analysis was carried through into the conclusions of the judge in paragraphs 13 onwards of the determination. He was quite entitled to state in paragraph 13 that the Presenting Officer conceded that he could not meet either the evidential or the legal burden of the case, and that the Presenting Officer proposed that the appeal be allowed.
9. However, the judge did more and set out in paragraphs 14 onwards a number of factors which he clearly took into account. These included the fact that the appellant held a first class degree from Pakistan and had worked as a teacher teaching science there and had resided in Britain continuously and lawfully since October 2004. Moreover, that she had taken an English test in July 2011 which she had passed and the validity of that test and the scores on that test have not been disputed, and he said that those scores are markedly similar to the scores said to have been achieved by the proxy test taker.
10. While I understand Mr Avery's point, there can be many reasons why people would use a proxy test taker, or that there should be similar results in tests taken in July 2011 and 2013. I consider that the reasoning of the judge and the conclusion reached that the appellant had sat the TOEIC English test in June 2013 was open to him. I therefore find that there is no material error of law in the determination of the Immigration Judge and his determination shall stand.
11. The appeal of the Secretary of State is dismissed.
No anonymity direction is made.

Signed



Date 15 May 2017

Upper Tribunal Judge McGeachy