



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

Appeal Number: HU/15747/2018

THE IMMIGRATION ACTS

**Heard at The Royal Courts of Justice
On 5 August 2019**

Decision & Reasons Promulgated

On 7 August 2019

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

FARHAN ALI

(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Badar, Counsel instructed by Connaughts Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal dismissing an appeal by the appellant against the decision of the respondent refusing him leave to remain on human rights grounds.
2. The appellant is a national of Pakistan. He has been in the United Kingdom since 2009 but his leave ran out and his appeal rights were exhausted on 15 July 2015.

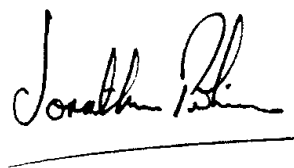
3. Shortly before his appeal rights were exhausted in July, on 24 March 2015, he married a British citizen and they started to cohabit. The application was refused because the appellant was considered to be unsuitable. He had been identified as a person who had taken a TOEIC test of competence in the English language improperly by using a proxy.
4. He was also criticised for using a false address in his dealings with the Registrar of Births, Deaths, Marriages and Civil Partnerships but the First-tier Tribunal ruled against the Secretary of State on that point.
5. Nevertheless, the First-tier Tribunal was satisfied that the appellant had obtained his certificate of competence improperly and was satisfied as a consequence of that that he was not a suitable person to be allowed to remain in the United Kingdom.
6. The nub of the case on dishonesty is that the appellant, at a time that he lived in London, said that he went to a particular test centre in Manchester to take his TOEIC test and on the day that the appellant said that he took his test, which he claimed to have passed, a subsequent investigation had shown that none of the tests taken that day were satisfactory. According to the "lookup tool" there were 88 tests taken at Darwin's College on 16 November 2011, none were "released". The records show that 19, or 22%, were regarded as questionable and 69, or 78%, were regarded as invalid.
7. The First-tier Tribunal Judge did not believe that the appellant had taken a test at Darwin's College. He gave two main reasons for that. First, he did not accept that the appellant would have travelled from London to Manchester to take the test. He did not believe the appellant's explanation that he needed to pass the test because his leave was about to expire. The appellant said he took the test on 15 November 2011 but his leave did not expire until 30 December 2011, some six weeks later. The judge said: "I do not accept that no London college was able to provide a test date within that period."
8. Second, he found that "if he had sat the test himself he would have known there were 4 times as many takers as he recalled." This is a reference to the appellant's claim that he recalled there being some 20 to 25 people taking the test, when the records show that 88 people took the test at Darwin's College on the same day as the appellant.
9. With respect to the First-tier Tribunal Judge I find neither of these reasons at all satisfactory. There was no evidence to support the claim that no London centre was able to provide the test within the six week period. I have absolutely no idea how far in advance tests had to be booked. I do remind myself that the Judge in the First-tier Tribunal is a respected immigration practitioner and may have knowledge on this point (and no doubt a great deal else) that I do not, but this is not a matter that can be dealt with satisfactorily by way of judicial notice. There was no evidence to justify that conclusion and it is not obviously right.

10. Second, the contention that the appellant would have known that there were about 88 people taking the test rather than between 20 and 25 assumes that everyone took the test at the same time. I see no justification whatsoever for that assumption. If that assumption is not right (there is no evidence for it) then the point falls away.
11. I have reflected very carefully on whether these findings can be described properly as perverse. They are consistent with one view of the evidence but they are based on assumptions that cannot be justified on the evidence before me and, as indicated above, they are not obviously right. I have concluded that these findings are unsound in law.
12. Mr Lindsay made much of the appellant travelling to Manchester but the appellant said that he had relatives there and was able to have overnight accommodation. It does not strike me as bizarre or inherently unbelievable that he would have travelled to Manchester to take the test and certainly not if he found it difficult to arrange a test in London as he has claimed and he could combine taking the test with a family visit.
13. The grounds of appeal, anticipating a decision of the kind I have to make here, contended that I should order that certain findings to be preserved. I have no reason to go behind the First-tier Tribunal's finding that the marriage is genuine and subsisting and that the appellant meets the eligibility requirements assuming that he is suitable. Those findings, and the finding that the appellant had not been dishonest with the registrar about his place of residence, are sound findings and should be preserved.
14. However, there is an element to this appeal that puzzles me considerably. In the bundle described as the supplementary bundle, which Mr Badar may not have seen at all, there is an ETS "SELT source data" in which the appellant has identified as someone who took the test at Darwin's College and the result was "invalid". When this case is looked at again, the significance of that finding, if any, is something about which the Tribunal will want assistance from the parties.
15. Nevertheless, for the reasons given, I find the decision unsatisfactory. The core findings are made on unjustified assumptions and are therefore perverse.

Notice of Decision

16. I set aside the decision of the First-tier Tribunal. I substitute a decision allowing the appeal to the extent that I direct it be heard again in the First-tier Tribunal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 6 August 2018

