



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**  
**Extempore**

Case No: UI-2023-000844

First-tier Tribunal Nos:  
HU/55262/2021  
IA/13175/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 23 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**KAMRAN ASHRAF**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms S Lecointe, Senior Home Office Presenting Officer

For the Respondent: Mr Z Malik KC, instructed by Law Lane Solicitors

**Heard at Field House on 31 May 2023**

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Rea promulgated on 31 January 2023 in which the judge allowed Mr Ashraf's appeal against a decision of the Secretary of State on 27 August 2021 to refuse his application on the basis that an English test he had taken on 20 August 2013 at Westbridge College was deemed invalid on the grounds it had been taken by a proxy. This is a case in which the English test was a TOEIC test administered by ETS. The history to that is well-known, there is no purpose served in going into

detail about that system which has been the subject of several decisions of the Upper Tribunal, most recently DK and RK [2022] UKUT 112.

2. In short, the judge accepted the appellant's explanation for the allegation of fraud put against him by the Secretary of State. The judge directed himself in line with DK and RK at paragraph 6, and set out at paragraph 7 the core of what he found was different about this case. I quote:

"I find that the evidence relied upon by the Respondent is undermined by the following intrinsic matters. Firstly, the computer printout referred to above suggests that the Appellant undertook tests at Westbridge College on five different dates. I find this inherently improbable, particularly given that the scores recorded on the first of those dates, namely 150 in speaking and 180 in writing, were comparable to those achieved on the impugned date of 180 and 170 respectively. Secondly, the evidence of Peter Millington indicates at paragraph 47 that in some cases certificates have been invalidated on the basis of test administration irregularity including the fact that the test was taken at a UK testing centre where numerous other results have been invalidated. Mr Millington states that such cases are clearly distinguished but Mr Thakurdin was unable to reassure me that this possibility does not arise in the Appellant's case. To put it another way, there remains the possibility that the Appellant's test result was invalidated for reasons associated with the integrity of the system rather than evidence of dishonesty on his part".

3. It is at this point important to note that the computer printout relied upon by the Secretary of State attributes twelve tests taken at Westbridge College, two of which are marked as questionable and ten of which are marked invalid including the two tests recorded on 20 August 2013.
4. The judge noted also that the appellant had not obtained the voice recordings and the Secretary of State sought to make an adverse inference on that account which he did not accept. The judge also noted the evidence of an additional witness, Mr Nasir, that they had attended the test on 20 August 2013, noting also that the photograph on the test certificate is that of the appellant.
5. The Secretary of State sought permission to appeal on the grounds that the judge had, and I summarise, failed properly to apply the principles set out in DK and RK stating that there remains the possibility that the appellant's test result was invalidated for reasons associated with the integrity of the system rather than evidence of dishonesty was contrary to the findings in DK and RK at paragraph 80 and 103. It was also submitted that the Tribunal erred in failing to have regard to the ETS voice test instead looking at secondary issues and that had the Tribunal applied the principles of DK and RK it would have reached a different conclusion.
6. In considering whether the decision of the First-tier Tribunal involved the making of an error of law I bear in mind, as was set out HA (Iraq), that the Upper Tribunal should not rush to find an error of law in the decisions of the First-tier Tribunal simply because it might have reached a different conclusion, that where a relevant point is not expressly mentioned by the

First-tier Tribunal the Upper Tribunal should be slow to infer it has not been taken into account. When it came to the reasons given by the First-tier Tribunal the Upper Tribunal should exercise judicial restraint and should not assume that the First-tier Tribunal misdirected itself just because not every step in the reasoning is fully set out.

7. I accept that in this case the judge directed himself carefully in line with DK and RK and indeed he quotes from that decision. I consider that the judge's findings at paragraphs 4 to 6 reflect those principles and as Mr Malik submits the Secretary of State's evidence in cases like this is not conclusive nor as the Upper Tribunal accepted at paragraph 107 in DK and RK is it determinative.
8. There are a number of factors in this case which are significantly different from most of these cases. In this case there is the very large number of apparent tests which have been attributed to the appellant, there is the fact that the tests it is accepted he did take has scores which are similar to and in one case better than the tests which were taken it is said by the proxy.
9. What this judge did was to conduct a highly and careful fact-sensitive assessment of the case and evaluating all the evidence. He did not disregard the evidence of the Secretary of State but rather, as he was entitled to do, concentrated on what appeared to be, if not unique certainly unusual factors of this case, and reached a decision which was open to him on the facts and having properly directed himself and having followed the principles set out in DK and RK.
10. Accordingly for these reasons I am not satisfied the decision of the First-tier Tribunal involved the making of an error of law and I uphold it.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed

Date: 13 July 2023

Jeremy K H Rintoul  
Judge of the Upper Tribunal