



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001053
First-tier Tribunal Nos:
HU/54624/2021
IA/11629/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE B KEITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ASHRAF JAHAN
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr R Sharma, Counsel, instructed by Londonium Solicitors

Heard at Field House on 6 October 2023

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of Judge of the First-tier Tribunal Hussain dated 9 December 2022.
2. The Secretary of State appeals against the decision in the case of Ashraf Jahan where the First-tier Tribunal Judge allowed Mr Jahan's appeal in relation to Article 8.
3. Permission was granted by Upper Tribunal Judge Lane in a decision dated 20 June 2023.
4. It is unfortunate in the First-tier Tribunal that the Home Office was not represented and that may have caused some confusion. However, Mr Tufan has put forward today on behalf of the Home Office the single ground of appeal which is that the First-tier Tribunal Judge did not properly take into account the case of **DK and RK (ETS: SSHD evidence, proof) India [2022] UKUT 00112 (IAC)**

which it is said found that there was widespread fraud in ETS cases and that the background is relevant to the individual claim or appeal. This is yet another case in the long line of ETS cases and Judge Hussain examined the evidence provided by the Home Office and by Mr Jahan in a carefully reasoned judgment.

5. There is it is said one error. At paragraph 31 of the judgment the judge says: "Taking all the points above, the clear conclusion to which I have come is that the respondent has not discharged the initial evidential burden".__It is said by Mr Tufan that that was not in fact correct and that the background evidence was sufficient to discharge the evidential burden. In my judgment that is irrelevant because the First-tier Tribunal Judge then goes on to consider the alternative. The remainder of paragraph 31 reads as follows:

"If I am wrong about that, then I am satisfied that the appellant has adequately explained how he did indeed sit for the test himself personally. As said earlier, over the years I have heard many appeals involving the issues as in this appeal, from this I got the distinct impression that the appellant gave a cogent and coherent narrative of how it is that he went about sitting for the test. The appellant also prayed in aid his previous attainments in English which he suggests means that he had no incentive to use a proxy test taker. I appreciate that that point is not decisively in his favour because many people with ability and for many reasons choose to use a proxy test taker. However the general position is one that whilst I take into account, it is not sufficient in this case for me to be satisfied that this particular appellant used a proxy to take the speaking test in his place".

6. Mr Tufan submits that the failure to take into account the background evidence in **DK and RK** means that the judge should have applied greater scrutiny and scepticism to the evidence of Mr Jahan. In my judgment the First-tier Tribunal Judge has carefully examined and listened to the evidence before them, has made an assessment of credibility which I am unable to interfere with, there is no good reason as there is no evidence that the judge is plainly wrong in relation to the assessment of credibility. In those circumstances the judge was entitled to find Mr Jahan credible, entitled to believe his evidence and entitled therefore to grant Article 8 protection and allow his appeal.
7. For all the above reasons I find that there is no error of law in the First-tier Tribunal judgment and I dismiss the Secretary of State's appeal.

Disposal

8. The appeal of the Home Office is dismissed.

Ben Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

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12 October 2023