



IAC-FH-NL-V1

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

Appeal Number: IA/08989/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17 February 2016**

**Decision & Reasons Promulgated
On 8 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**KHAJA MASI UDDIN MOHAMMED
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Wilding, Home Office Presenting Officer
For the Respondent: Mr R Singer, Counsel instructed by Rashid & Rashid
Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision by Judge of the First-tier Tribunal Sweet in which he allowed the appeal by Mr Khaja Masi Uddin Mohammed against a decision by the Respondent dated 24 February 2015 to cancel his Tier 2 general permit issued on 19 August 2014.

2. The Respondent, to whom I shall refer as the Claimant, is a citizen of India, born on 10 April 1987. He came to the United Kingdom in March 2010 on a Tier 4 student visa and undertook a number of courses including a Diploma in Management Studies and an MBA in Innovative Management. He applied for and was granted a Tier 2 general leave which was valid from August 2014 for five years. He left the country to visit India and on his return to the United Kingdom in February 2015 his leave was cancelled at the airport on the basis it was alleged he had submitted a TOEIC English language certificate which was found by the Respondent to be false. The test in question, the listening and reading part, took place in November 2011 and the speaking and writing in December 2011 and it is in relation to the second test that the Secretary of State asserted that the document was fraudulently obtained, hence the Claimant's leave was cancelled.
3. The appeal came before the First-tier Tribunal Judge as a float case on 2 September 2015. Prior to the hearing commencing the Presenting Officer submitted that the case was one that was suitable to be treated as a float case and that the Secretary of State wished to get further evidence from another Presenting Officer, Mr M Sartorius in support of their case. Counsel for the Claimant objected to the case being adjourned and that objection was upheld by the judge who says:

"I saw no reason why this matter could not be heard as a float case as the parties had had sufficient time to prepare and as far as the missing letter from Mr Sartorius was concerned the Respondent has had since April 2015 when the appeal date was fixed for him to provide the missing documentation."

4. The judge heard evidence from the Claimant and submissions from both parties. At paragraph 10 he found that the burden of proof was upon the Claimant and the civil standard is the balance of probabilities. At paragraph 11 the judge held as follows:

"I am satisfied from the evidence produced that there was no reason for the Appellant to deceive the authorities over the test, because he had already obtained a BA in commerce from India (a course which was conducted in the English language) and had obtained a Diploma in management studies in the UK. I also take into account the discrepancies in the Respondent's evidence as set out in the skeleton argument."

And at paragraph 12 the judge said:

"I am satisfied for these reasons that the Respondent's decision should be overturned and the Appellant's leave should be reinstated until August 2019."

5. The Secretary of State made an application for permission to appeal to the Upper Tribunal in time on 17 September 2015. The grounds of appeal asserted that the judge had failed to give adequate reasons for findings on

a material matter and in particular the grounds set out extracts from the evidence submitted on behalf of the Home Office, including witness statements from Mr Peter Millington and Ms Rebecca Collings and an email document from the ETS Task Force dated 10 September 2014. The grounds also asserted that a printout of the relevant section of the ETS spreadsheet was attached at Appendix E of the Explanatory Statement and the spreadsheet identifies the Claimant by name and records that the test taken on 14 December 2011 was invalid and identifies him as having exercised deception and it was asserted for these reasons the judge had failed entirely to provide adequate reasons for making contrary findings in light of this evidence.

6. Permission to appeal was granted by First-tier Tribunal Judge Astle on 18 January 2016 on the basis that it was arguable that the judge failed to give adequate reasons for rejecting the Secretary of State 's evidence.

Hearing

7. At the hearing before me Mr Wilding appeared on behalf of the Secretary of State and the Claimant was represented by Mr Singer. I heard submissions by both parties, in particular Mr Wilding drew my attention to the fact that two test cases are in the process of being heard where the Upper Tribunal were considering all the evidence including that of Mr Millington and Ms Collings and also oral evidence from Dr Harrison who has provided an analysis of the Home Office evidence. It was anticipated there would be a decision in respect of this case by the end of March 2016.
8. Mr Singer attempted to defend the decision of the First-tier Tribunal Judge on the basis that although the reasoning was very short it was adequate.

Decision

9. I find that First-tier Tribunal Judge Sweet did materially err in law in that at paragraph 11 there is simply no engagement with the evidence put forward by either party in respect of the appeal. It may be that there was no reason for the Claimant to deceive the authorities over the test but that was not the key material issue before him *viz* whether in fact the Claimant had fraudulently obtained the certificate by not having taken the test himself, which is a different question.
10. Further, whilst the skeleton argument before the judge analysed the Secretary of State's evidence, it was incumbent upon the First-tier Tribunal Judge to say more than simply "*I also take into account the discrepancies in the Respondent's evidence as set out in the skeleton argument*". He should at least, in my view, have set out a summary of the evidence in question and the submissions in respect of discrepancies in that evidence.
11. For these reasons I find there is a material error of law and the appeal will need to be re-heard. I direct that the appeal is listed for a resumed hearing on the first available date after judgment is handed down in the

ETS test cases. Subject to any application for further oral evidence, the appeal should be limited to submissions only with a time estimate of one hour. The judge's findings as to the evidence which is not disputed by the Secretary of State in terms of the Claimant's educational qualifications are preserved.

Notice of Decision

The appeal by the Secretary of State is allowed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Chapman