



Neutral citation number: [2024] UKFTT 1084 (GRC)

Case Reference: FT/IMS/2024/0003

**First-tier Tribunal  
(General Regulatory Chamber)  
Immigration Services**

**Decided at a hearing on 25 November 2024  
Decision given on: 03 December 2024**

**Before**

**DISTRICT JUDGE WATKIN  
TRIBUNAL MEMBER SHLAPAK  
TRIBUNAL MEMBER RENSHAW**

**Between**

**BAKSHSH CONSULTANTS LIMITED**

**and**

**THE IMMIGRATION SERVICES COMMISSIONER**

Appellant

Respondent

**Appearances:**

The Appellant was represented by Mr Ali, director of the Appellant

The Respondent was represented by Mr Mopsa of Counsel

**Decision:** The Appeal is dismissed

## REASONS

1. The Tribunal is satisfied that the Respondent has correctly determined that the Appellant is not fit and competent to provide immigration advice and services at Level 3. The Appellant remains authorised and competent to continue providing immigration advice and services at Level 1.

## THE LAW

2. Section 83 (5) Immigration and Asylum Act 1999 (as amended) states that:

*“The Commissioner must exercise his functions so as to secure, so far as is reasonably practicable, that those who provide immigration advice or immigration services –*

*(a) are fit and competent to do so...”*

3. Schedule 6 Immigration and Asylum Act 1999 states confirms, at paragraph 2 that:

*“(1) If the Commissioner considers that an applicant for registration is competent and otherwise fit to provide immigration advice or immigration services, he must register the applicant.*

*(2) Registration may be made so as to effect –*

*(a) only in relation to a specified field or advice or services;*

*(b) only in relation to the provision of advice or services to a specified category of person;*

*(c) only in relation to the provision of advice or services to a member of a specified category of person; or*

*(d) only in specified circumstances.”*

4. These limitations are set out in the *Guidance on Competence* as published by the Commissioner from time to time and in the ‘levels’ of registration, from Level 1 to Level 3.

5. An applicant aggrieved by a 'relevant decision' of the Commissioner may appeal to the First-tier Tribunal pursuant to Section 87 Immigration and Asylum Act 1999. A relevant decision includes a decision to register an applicant with limited effect (s 87(3)(c)).
6. The Respondent is the Commissioner for the purposes of section 83(5) (section 82(1)).

## **THE BACKGROUND**

7. The Respondent regulates immigration advisers and has a process in place to determine whether applicants are fit and competent to provide Level 3 immigration advice or services. To progress from OISC Level 1 to Level 3, an application must pass the OISC Level 2/3 Competence Assessment ('the Assessment').
8. All OISC Competency Assessments are held online, are in the form of a written exam set and marked by HJT Training Ltd ('HJT'). The Appellant does not challenge the process or the appropriateness of the process. Only the outcome of the Assessment is challenged.
9. On 24 October 2023, the Appellant's director, Mr Muhammad Ali, applied to raise its level of competency from OISC Level 1 to Level 3 and undertook the Assessment on 29 February 2024.
10. On 11 March 2024, Mr Ali was contacted and informed that there had been a problem with the proctoring process in relation to the Assessment.
11. On 20 March 2024, Mr Ali was informed that he had failed the Assessment and on 25 March 2024, the Respondent issued the decision to refuse the Appellant's application (the "Decision Notice") to raise its level of competence.
12. Having been informed that there had been an issue with the proctoring process and then on being informed that he had failed, Mr Ali was concerned that the entirety of his Assessment may not have been received by HJT. He appealed the Decision Notice to the Tribunal on 9 April 2024, requesting that the Tribunal check whether his Answer sheet

was received in full by HJT. He stated that the Respondent was not willing to recheck the results.

13. Within the Appeal Notice, the Appellant requested only that the Tribunal should allow the Appeal for the purposes of the Answer sheet being rechecked by another independent organisation.

### **Strike Out Application**

14. On 13 June 2024, the Respondent applied to the Tribunal to strike out the Appeal on the basis that there was no reasonable prospect of the Appeal succeeding. The Respondent indicated that it does not offer feedback to candidates and that the exam markings awarded by HJT were correct, objective, and reliable.
15. The Respondent appeared to have no regard to the fact that Mr Ali had real concerns that had arisen from being contacted and informed that there had been a problem uploading the Answer sheet.
16. The Application to strike out was heard by the Tribunal on 16 September 2024, at which point the Respondent was not able to satisfy either Mr Ali or the Tribunal that the Answer sheet that had been marked by HJT was complete, as had been requested by Mr Ali in the Appeal Notice. As such, the application to strike out was dismissed, and the Tribunal ordered the Respondent to provide the Answer sheet and the marking scheme to the Tribunal in a closed bundle in time for the final hearing.

### **THE ISSUES**

17. The issue for the Tribunal to determine is whether Mr Ali, and, therefore, the Appellant is competent to provide Level 3 immigration advice.

### **THE FINAL HEARING**

18. The final hearing took place remotely by CVP on 25 November 2024.

## **DOCUMENTS**

19. The Tribunal had the benefit of considering a 316-page hearing bundle and a 34 page closed bundle prior to and at the hearing. References to page numbers are to the pages within the open bundle.
20. At the commencement of the hearing, the Tribunal confirmed that it had read the Answer sheet and considered the marking scheme. The Tribunal confirmed that the answer paper did not appear to have been corrupted, all answer fields had been completed, and there were no parts where information appeared to be missing. As such, there was no reason for the Tribunal to consider that the issues relating to the proctoring process had affected the final assessment mark provided to Mr Ali.

## **EVIDENCE**

21. The Tribunal had the opportunity to read witness statements from Mr Ali for the Appellant and Ms Stephanie Jones and Ms Emma McDonald on behalf of the Respondent which were within the open hearing bundle. The Tribunal also received a copy of a witness statement from Dr Mynott, who represented HJT Training Ltd, which was within the closed bundle. Dr Mynott provided insight into the creation of the assessment and marking process, including safeguards to ensure fairness and consistency.

### **Mr Ali**

22. Mr Mopas initially asked questions of Mr Ali. In the main, those questions related to the proctoring process, which Mr Ali confirmed that he understood. He confirmed, as he had done previously, that his challenge was based on whether the complete Answer sheet had been received for marking. Mr Ali confirmed that he understood and respected the process and the need to pass the exam.
23. Mr Ali was reminded that on 8 October 2024, the Respondent had offered him the opportunity to re-sit the Assessment at no further cost. Mr Ali had not accepted. However, the Tribunal is mindful that, at this point, Mr Ali was still not aware of whether his Answer sheet had been fully transmitted to HJT or whether it had been corrupted due to the IT issue. Therefore, it is understandable to the Tribunal that he may not have wished to accept the offer at this time, as it came after the Respondent had failed to have

the Appeal struck out but prior to the Respondent producing any evidence to show that the Answer sheet had not been corrupted.

### **Ms Jones and Ms McDonald**

24. Mr Ali confirmed that, in light of the confirmation of the Tribunal that the Answer sheet did not appear to have been corrupted or affected by the IT issues, he did not have any reason to raise any further challenge in this regard. Therefore, no questions were asked of either Ms Jones or Ms McDonald.

### **Dr Mynott**

25. The Respondent agreed to allow Mr Ali to question Dr Mynott, even though he had not had sight of Dr Mynott's statement.
26. Dr Mynott confirmed his background and explained how an assessment was created. He explained that the Assessment and the marking scheme had been set by him and had been then considered by others from HJT and OISC in a consultation process. He explained it as a team effort but that it had been led by him creating the content in the first instance. He explained that, to the best of his knowledge, the arrangement between OISC and HJT was a contractual one.
27. Dr Mynott confirmed that the marking scheme utilised was similar to that used in the model answer at page 46 of the Appellant bundle and that he had marked Mr Ali's paper. He explained that the only papers that are second-marked are those with marks between 60-68%. It appeared from this answer that those under 60% were not remarked due to it being considered unlikely that any candidate with a score of under 60% would achieve a pass mark of 65% if re-marked. It is noted that Mr Ali's mark was 53%.
28. When asked specifically whether he thought that Mr Ali's Answer sheet could achieve the pass mark if remarked, he confirmed that he was not of the view that any other marker would have awarded a mark of the pass mark or higher, based on the content of the Answer sheet. He also confirmed that he did not consider that there was any room for

differing interpretation within any of the answers. Whilst he accepted that there may be different interpretation in relation to some aspects of the law, he indicated that HJT try to ensure that Assessments are not based on those areas to provide certainty within the answers. The Tribunal agree, from viewing the questions that this does appear to be the case from the questions that were posed within the Assessment and accept Dr Mynott's evidence.

29. Finally, Dr Mynott confirmed that he could see responses to each of the questions in the Answer sheet and that none appeared incomplete. Specifically, in relation to the requirement, in one question, to write a letter, Dr Mynott indicated that he could see the end of the letter, where it was signed off. Therefore, he had no reason to believe that the Answer sheet was incomplete. This accords with the Tribunal's own conclusions from viewing the Answer sheet.

## **SUBMISSIONS AND ANALYSIS**

30. Mr Mopsa reiterated that the issue that had arisen with the proctoring process did not and could not affect the marking, as confirmed by the Respondent's witnesses, including Ms Stephanie Jones and Dr Mynott. He further emphasised that Mr Ali failed the Assessment and, therefore, is not competent to provide Level 3 immigration services or advice.
31. Mr Ali confirmed that he did not challenge the processes but was concerned that his Answer sheet had not been marked correctly. He added that his remaining concerns arose from the apparent lack of rechecking of the Answer sheets, particularly in circumstances where specific concerns had been raised and whether it was appropriate for the checking of the Answer sheets to be left to one person. Mr Ali was concerned that there was not sufficient oversight of the process.
32. It is apparent to the Tribunal that it is the IT issues had led Mr Ali to challenge whether this Assessment had been correctly registered and received by HJT. On being informed by the Tribunal that the Answer sheet appeared to be complete, with data in each answer box and no incomplete sentences or text that appeared to be missing, Mr Ali accepted that he did not intend to progress that part of the Appeal. He confirmed that his only remaining challenge was whether there should have been an opportunity for the Answer sheet to be

remarked and whether there was room for any alternative interpretation within the questions.

33. Mr Ali explained that he had concerns about accountability. He was concerned about whether it was appropriate for the Assessments to be set by a private, unregulated company and by one person who drafts the questions and answers. However, the Tribunal notes that HJT are performing the function of setting the Assessments as agents of the Respondent, a regulated public authority, and that the Assessments are prepared in consultation within other members of HJT and the Respondent. In any event, the Appellant has not taken issue with the substance of any of the questions.
34. Mr Ali also raises concerns about whether there can be a fair outcome to the process as there may be more than one correct answer to any of the questions. The Tribunal accepts the evidence of Dr Mynott in this regard, particularly in light of the Tribunal's own consideration of the Assessment.

## **THE DECISION**

35. Mr Ali is experienced in immigration law, and he recalls answering each of the questions. In circumstances where he was given reason to believe that there may have been issues with the download of his Answer sheet, it is understandable for him to be concerned about whether his complete Answer sheet had been received or whether it had become corrupted because of technical issues of which he had been informed.
36. Due to these concerns, and the confidential nature of the Assessment content and marking scheme, it has been necessary for the Tribunal to consider the Answer sheet and the marking scheme to give Mr Ali the reassurance that the Answer sheet had not been corrupted.
37. While it is regrettable that this matter required Tribunal intervention, the Appellant's concerns regarding the integrity of the assessment process are acknowledged. Although the Tribunal understands the difficulties in relation to disclosing the Answer sheet to Mr Ali, it is disappointing that an alternative approach could not have been agreed. One option may have been for the Assessment to be re-marked, as requested by Mr Ali. On occasion, where concern had been caused by a technical issue on the part of one of the



Respondent's agents, an exception could have been made may have avoided the Appeal. Whilst re-marking may not have altered the outcome, it may have given Mr Ali peace of mind.

38. Furthermore, if Mr Ali had been provided with the opportunity to receive specific feedback in relation to the Assessment, this may have enabled him to understand the outcome and to progress towards successfully increasing his level of competency without the delays that have been caused by these proceedings.
39. At the hearing, Dr Mynott acknowledged that the exam failure could have been influenced, in part, by a lack of effective examination techniques or preparation strategies. Had the Appellant received constructive feedback on this issue, he might have opted to focus on improving his approach to examinations rather than pursuing the appeal route, which is both time-consuming and costly to public resources. It is disappointing that neither of these things occurred, leaving the Applicant believing he had no alternative but to apply to the Tribunal for clarity.
40. Nonetheless, the Tribunal has now considered the Answer sheet and, whilst it considers that it would have been prudent of the Respondent to offer a remarking of the paper, and/or feedback, this would have been from a customer satisfaction and litigation avoidance approach. The Tribunal does not believe that it would have altered the outcome, based on the content of the Answer sheet and the marking schedule.
41. The Tribunal concludes that, having failed the relevant Assessment, the Appellant has not been able to show that he is fit and competent to provide Level 3 immigration advice or services.
42. The Appeal is therefore dismissed.

## **APPEAL**

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, General Regulatory Chamber. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 42 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

District Judge Watkin