



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

Appeal Number: IA/34191/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 9 October 2017**

**Decision & Reasons Promulgated
On 23 October 2017**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HAROT SINGH

(anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Miss A Jones, Counsel instructed by Farani-Javid-Taylor
Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal to allow an appeal by the respondent, hereinafter “the claimant”, against a decision of the Secretary of State to refuse to vary his leave to remain in the United Kingdom and to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.
2. The Secretary of State did not appear before the First-tier Tribunal when the claimant was represented by Counsel (not Miss Jones). The First-tier Tribunal Judge’s decision and reasons shows that the claimant’s application was refused because the Secretary of State decided that he had submitted a TOEIC certificate from Educational Testing Services that was obtained improperly as a result of impersonation. The Judge directed herself, correctly that where an

allegation of dishonesty is made it is for the Secretary of State to lay the evidential foundation necessary to support the contention.

3. The Judge then examined the bundle of documents from the Secretary of State which she considered and summarised. She explained at paragraph 5 of her Decision and Reasons that the Secretary of State had produced a copy of the claimant's application form, form CAS, e-mail correspondence, a copy of the disputed TOEIC certificate and a sheet headed "ETS SELT source data and MIDA match data sheet" and the Reasons for Refusal Letter.
4. The judge noted that the Secretary of State had chosen not to attend and that she decided to continue in the Secretary of State's absence.
5. It is clear from the decision and reasons that the First-tier Tribunal Judge was well aware of the decision of this Tribunal in **SM and Qadir v SSHD (ETS - Evidence - Burden of Proof) [2016] UKUT 00229 (IAC)**. It follows therefore that the Judge knew that the Tribunal had decided that in "ETS cases" what might be called the "usual evidence" establishes a prima facie case that a certificate was obtained improperly. It does not follow from this that every time the Secretary of State asserts that a certificate had been obtained improperly there is evidence to show that the certificate had been obtained improperly and still less does it follow that that evidence was produced to support the Secretary of State's case.
6. Significantly the judge said at paragraph 13 of her decision:

"The difficulty with the refusal letter is that the assertions of "significant evidence" of fraudulent certificate are not supported by any material evidence. The statements made in the refusal letter are just that. The two data sheets merely record the results as being "invalid" against the Appellant's name. However, there is no continuity evidence to show how this conclusion was reached. The burden is initially on the "respondent" to show that fraud has been at play in the application. The Respondent has failed to do this due to a total lack of evidence in this case. For these reasons the appeal succeeds as the refusal was not in accordance with the law."
7. Miss Jones took me through the necessary documents but I could find nothing that established that this claimant had done anything improper in any way. Mr Bramble could not say much against this because Miss Jones and the First-tier Tribunal Judge were right. The evidence actually produced was not enough to show that the claimant was one of those who had been identified as a cheat.
8. The grounds supporting the application assert that the judge has not given proper reasons for her decision that no evidence has been provided. This is quite wrong. A reason has been given at paragraph 13. It is that there a gap in the evidence. This paragraph effectively answers both points.
9. It is profoundly unsatisfactory that the Secretary of State is willing to decide that a person is a liar and a cheat who should not be allowed to remain in the United Kingdom but is not prepared to put up the evidence to support that conclusion. For my part I do not understand why the Secretary of State does not, routinely, assemble the evidence in support of such a contention and identify it properly in the refusal letter before there is any question of an appeal. Such a process might draw the attention of the Secretary of State to a

deficiency in the evidence before a decision was made. The evidence can then be obtained or the decision changed before any harm is done.

10. I have no desire whatsoever for people who cheat the immigration system to be allowed to carry on cheating and if their dishonesty is detected they should expect short shrift but if the evidence is not there the allegation should not be made. It cannot be assumed that evidence exists because the Secretary of State says that it exists. It is within the experience of the Tribunal that there have been occasions where documents have been identified and relied upon which when read carefully and properly do not bear the meaning attributed to them. This is not because the Secretary of State is fundamentally idle or malign but because a lot of cases are processed and sometimes mistakes are made. It concerns me that there is a systemic failure here to identify and prepare the evidence relied upon to show dishonesty *before* reaching the conclusion that a person has been dishonest. This rather casual approach is compounded by failing to turn up in a case where the Secretary of State and to adduce evidence. It is regrettable that claimants are treated like this.
11. I can find no fault whatsoever in the decision of the First-tier Tribunal and I dismiss the Secretary of State's appeal against that decision.

Signed



Jonathan Perkins, Upper Tribunal Judge

Dated: 20 October 2017