

**Upper Tribunal
(Immigration and Asylum
Chamber)
Number: IA/32441/2014**



Appeal

THE IMMIGRATION ACTS

**Heard at Bradford
On 29th June 2015**

**Decision & Reasons
Promulgated
On 12th August 2015**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR MUHAMMAD USMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Shah
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Turnock made following a hearing at Bradford on 26th January 2015.

Background

2. The Appellant is a citizen of Pakistan born 8th February 1987. He entered the UK on 24th February 2011 with entry clearance as a Tier 4 (General) Student valid until 17th May 2013. An extension to this leave was granted until 14th June 2014.
3. On 19th May 2014 he applied for leave to remain as the spouse of a British citizen. The Respondent refused his application on 27th July 2014 after

having considered Appendix FM and paragraph 276ADE to 276DH of the Immigration Rules.

4. In particular the Respondent was not satisfied that the Appellant had met the requirements of the Immigration Rules, concerning the English Language Test. As set out above, the Appellant applied for (on 2nd May 2013) an extension of his student visa which was granted until 14th June 2014. In support of that application the Appellant submitted the results of a TOEIC test taken on 10th April 2010 and administered by Educational Testing Service (ETS). The test result however was cancelled by ETS as set out in the Respondent's refusal letter which says,

“During an administrative review process ETS have confirmed that your client's test scores was (sic) obtained through deception. Because the validity of your client's test results could not be authenticated, your client's score from the tests taken on 14th April 2014 have been cancelled. Your client is specifically considered a person who has sought leave to remain in UK by deception following information provided to us by Educational Testing Service (ETS) but an anomaly with your client's speaking test indicated the presence of a proxy test taker.”
5. In assessing the Appellant's Article 8 ECHR Human Rights, the Respondent maintained that as the Appellant could not meet the suitability requirements under the Immigration Rules there were no compelling circumstances such as to outweigh a consideration under Article 8. Having assessed the evidence before him, Judge Turnock dismissed the Appellant's appeal both under the Immigration Rules and Article 8 ECHR. The Appellant appealed that decision. Permission was granted by the FtT. Thus the matter comes before the Upper Tribunal.

Upper Tribunal Hearing

6. Mr Shah who attended on behalf of the Appellant relied upon the grounds seeking permission. The main thrust of his argument centred around [20] of the Judge's decision. He argued that the Judge had erred in relying on statements supplied by the Respondent in relation to the methodology used to identify where the deception had taken place and which he set out in his determination. It is the Appellant's case that he never used a proxy test taker and has not used deception. Mr Shah added that the Judge had relied too heavily on the statement submitted by the Respondent because there was no corroborating evidence to what were in effect generic statements. He said that as there was no such evidence the Respondent should have provided an opportunity to the Appellant to retake the test. Further, the Judge had failed to take into account the fact that the Appellant is genuinely married to a British citizen and the validity and subsistence of the marriage has not been challenged.
7. Mr Diwnycz in replying relied on the Rule 24 response. He submitted that the response was clear. The Appellant could not meet the Immigration Rules whatever, because as Judge Turnock had outlined in [24] when the Appellant had applied for leave to remain as a spouse, he was not relying on the test which had been taken for the purposes of renewing his student

application. The document that he sent with his application to remain as a spouse was a different test certificate. It was one from EMD (Qualifications) Limited dated 14th April 2014. This test supplier was not on the recognised list. Therefore the Appellant could not meet the English language requirement whichever test certificate he was relying on.

Error of Law

8. Contrary to the assertions made in the grounds of appeal I am satisfied that Judge Turnock's decision was based upon a very careful and rounded assessment of the evidence and was supported by clear and cogently reasoned findings. He has fully engaged with the evidence which was before him. The grounds are misconceived, because they focus too heavily on the cancelled ETS test, rather than looking at the EMD test; the result of which was that the Appellant could not meet the Immigration Rules because he had provided an English language test certificate from a test provider which was not approved by the Home Office.
9. The Judge having properly found that the Appellant could not meet the requirements of the English language test (and therefore the Immigration Rules) went on to consider whether there was evidence before him sufficient to show that refusal of leave to remain as a spouse, would amount to a breach of the Appellant's rights under Article 8 ECHR. After fully considering all the evidence before him, he found that there would be no breach of Article 8. That was a decision open to him on the evidence before him.
10. For the foregoing reasons the decision of Judge Turnock discloses no error of law and this appeal is accordingly dismissed.

Decision

11. Appeal dismissed.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated