



IAC-FH-CK-V1

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

Appeal Number: IA/00180/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 10 February 2016**

**Decision & Reasons Promulgated
On 3 March 2016**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**MR MOHAMMAD SAIFUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Sayem, Legal Representative, Uzma Law Ltd

For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh and his date of birth is 1 January 1984. The appellant appealed against the decision of the Secretary of State to cancel his leave pursuant to paragraph 321A of the Immigration Rules. The date of that decision is 21 December 2014. His appeal was dismissed by Judge of the First-tier Tribunal Morris in a decision which was promulgated on 24 July 2015 following a hearing on 3 July 2015. During the hearing the judge heard oral evidence from the appellant. The evidence on which the Secretary of State relied comprised a statement from Matthew Harold, a statement from Peter Millington and a statement

from Rebecca Collings. In addition, attached to Mr Harold's statement was Annex A which is a document entitled "ETS SELT Source Data" and "MIDA Matched Data".

2. For the purposes of today's hearing, which came about as a result of the appellant having been granted leave to appeal by Judge of the First-tier Tribunal Page on 9 November 2015, I have taken into account the grounds of appeal and the two skeleton arguments (one drafted by solicitors previously instructed by the appellant and one drafted by Uzma Law).
3. The judge found that the appellant was not credible and that he had in fact submitted a TOEIC certificate from Educational Testing Services ETS which had been obtained fraudulently because a proxy had sat the English language test and not the appellant. This certificate had been submitted in support of a previous application in December 2013. The certificate is dated 14 December 2011.
4. The judge heard the appellant's oral evidence which she recorded at paragraphs 6 and 7. The appellant was interviewed in 2014 about the certificate and the English language test which he claimed to have sat in 2011. In support of the respondent's case a transcript of that interview was relied upon which by any account indicated that the appellant was not able to provide an account of how and when he sat the test in 2011. The judge at paragraph 16 rejected the appellant's evidence that he was unable to answer questions about it because he was tired after a long journey. The judge was entitled to attach weight to the interview and his findings are grounded in the evidence and adequately reasoned.
5. At paragraph 18 the judge took into account evidence of the appellant's English language ability and found that there was no explanation why the appellant had performed seemingly so well in 2011, but had only just passed an English language test in March 2013. There had in fact been a deterioration in the appellant's English language ability evidenced by the certificates that he had produced and the judge was entitled to attach weight to this.
6. At paragraph 19 the judge considered an aspect of the appellant's oral evidence to be inconsistent with that at paragraph 10 of his witness statement. The judge was entitled to interpret the evidence in this way. It was not a matter of her having misunderstood the evidence. There is no support for the assertion that the judge did not properly apply the burden and standard of proof or that she failed to consider the appellant's English language ability having heard him give evidence at the hearing.
7. I have considered the issues raised at paragraph 5 of the most recent skeleton argument which contained issues that were raised before the First-tier Tribunal Judge. The document produced by the respondent and attached to Mr Harold's statement records the appellant's name as Saiful Islam, therefore omitting Mohammad. In my view this is not material and in the light of the decision of the judge, considered as a whole, that the

judge did not make specific reference to this, does not amount to an error of law (I note that the document records the appellant's correct date of birth). The document entitled MIDA indicates that at some stage the appellant has produced a passport. The judge did not refer to this. However, there was no evidence from the appellant which would indicate when it is asserted that he produced his passport and in what circumstances. The judge did not make reference to these matters because they do not advance the appellant's case.

8. The judge was entitled to attach weight to the evidence produced by the respondent and prefer that to the appellant's evidence, particularly in light of the transcript of interview and the findings that had been made by the judge in relation to the appellant's English language ability.
9. There are shortcomings in the evidence as relied on by the Secretary of State and I am aware of the observations of the Upper Tribunal in the case of Gazi, R (on the application of) v Secretary of State for the Home Department (ETS - judicial review) (IJR) [2015] UKUT 327 (IAC). However, the respondent's evidence included the appellant's transcript of interview and the appellant's own evidence was problematic. The judge was entitled to conclude in the circumstances that the respondent had discharged the burden of proof and to dismiss the appeal.
10. There is no error of law and the decision of Judge Morris is maintained.

Notice of Decision

The appeal is dismissed.

Signed Joanna McWilliam

Date 26 February 2016

Upper Tribunal Judge McWilliam