



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

Appeal Number: IA/32190/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision
Promulgated**

&

Reasons

On 26 July 2017

On 09 August 2017

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MR SULTAN AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, Counsel instructed by Simon Noble Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision promulgated on 3 November 2016 of First-tier Tribunal Judge Rowlands.
2. This case turns on an ETS certificate obtained by the appellant on 3 October 2012 which was relied on in a previous application for leave. The respondent maintains that the certificate was obtained by use of a proxy, that deception was therefore used and that the appellant's application for

further leave was properly refused under paragraph 322(2) of the Immigration Rules. The appellant maintains that he took the test himself and did not use a proxy.

3. The First-tier Tribunal Judge found against the appellant, finding that the ETS certificate had been obtained by deception and that the appeal should be dismissed under the Immigration Rules on that basis. The appeal was also refused under Article 8 but there was no challenge to that aspect of the decision.
4. The judge's reasons for finding against the appellant are at [14] to [15]. They read as follows:

“14. I have considered all of the evidence in this case including that to which I do not specifically refer and reach the following conclusion. Having considered the case of **SM and Kadir** (sic) I am satisfied that the starting point is to conclude that the Respondent has at least at the evidential threshold discharged the burden raising the issue of the probability that the test has been taken by a proxy. I have gone on to consider the expert report of Professor Finch and all of the evidence provided by the Appellant and of the circumstances in which he took the test and his reasoning for travelling to London to do so.

15. I have also taken into account the particular evidence of the witness Lesley Singh which is specifically given to address the actual statement by ETS upon this Appellants (sic) test result. Although the Appellant has given evidence of the circumstances of his test and it is clear that he may not have needed to have taken it I am satisfied on the basis of Lesley Singh that the Appellants (sic) test was properly identified by ETS as being invalid and cancelled and that the Appellant had not taken the English language test himself but that it had been done by a proxy and consequently that the certificate provided was false and the Appellants (sic) leave rightly refused to be varied.”

5. The appellant objects to those findings because, firstly, they do not show that the correct three step approach where there is an allegation of deception was followed. The written grounds refer to the case of **Shen (Paper appeals; proving dishonesty) [2014] UKUT 00236 (IAC)** and at the hearing reference was made to the same legal matrix being shown to be the correct approach in the case of **SM and Qadir v SSHD (ETS - Evidence - Burden of Proof) [2016] UKUT 00229 (IAC)**. The appellant maintained that in these cases the respondent bears the evidential burden sufficient to raise the issue of deception, the appellant must then produce an innocent explanation for which there was a low standard, and having done so the burden shifted back to the Secretary of State to establish on the balance of probabilities that the appellant's explanation was not sufficient and to be rejected.
6. The appellant argues here that the three stage process was not followed, albeit it was conceded at the hearing that the evidential burden would have been met had the test been set out and clearly followed.

7. The appellant's second ground is that the judge failed to take into account the appellant's cogent evidence as to an innocent explanation which included a great amount of detail of his academic success, why he would not need to take an ETS test by proxy and his provision in earlier immigration matters of a valid IELTS certificate.
8. It is my view that, albeit compact, the findings of the First-tier Tribunal Judge at [14] to [15] of the decision are sufficient. A judge is not required to set out a formal legal matrix in order for a decision to be lawful. The correct legal matrix must be followed in practice. First-tier Tribunal Judge Rowlands does this in [14] and [15]. In [14] he refers in terms to the respondent having discharged the evidential burden and, as above, the appellant does not dispute that the material relied upon which comprised generic evidence and specific evidence on this appellant was sufficient to do so.
9. Having indicated that he had considered all of the evidence, the First-tier Tribunal judge goes on to indicate that he took into account the appellant's reliance on the expert report of Professor "Finch" (which should read "French"). The end of [14] refers again to "all of the evidence provided by the appellant" being taken into account which included the circumstances in which he took the test and his reasoning for travelling to London to do so.
10. In [15] the judge refers to the appellant's argument that it was "clear that he may not have needed to have taken it", so the fact of the appellant putting forward an explanation to rebut the respondent's case was a matter clearly in the mind of the judge when he made his decision on whether deception had been used. On a fair reading the findings at [14] and [15] make it clear that against the respondent's evidence, the First-tier Tribunal took into account the applicant's explanation but did not find it sufficient in the face of the respondent's case against him.
11. As above, albeit the findings are relatively brief, the judge does enough here to provide the appellant with rational reasons as to why it was found that the respondent had shown that there had been reliance on a false document. The judge followed the correct legal matrix and took into account the appellant's case as to his innocent explanation but found it wanting. In those circumstances no error of law arises.

Notice of Decision

12. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed



Date 8 August 2017

Upper Tribunal Judge Pitt