



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

Appeal Number: IA/34408/2015

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 23 May 2017**

**Decision Issued
On 01 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SHARIB GULL
(NO ANONYMITY ORDER)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: Ms H Masih, instructed by Heritage Solicitors

DECISION AND REASONS

1. The appellant Secretary of State appeals with permission to the Upper Tribunal against the decision and reasons statement of FtJ Shergill that was issued on 12 October 2016.
2. No anonymity direction was given in the First-tier Tribunal and there is no reason to make such an order now.
3. At the outset of the appeal, Mr Mills informed me that the application for permission to appeal was misplaced. He explained that the author of the grounds of application would only have had sight of the reasons for refusal

letter and Judge Shergill's decision. It was likely the author of the grounds focused on the fact the judge recorded at [12] that there had been one invalid ETS result and had overlooked the fact that the results overall were identified as being questionable.

4. Having examined the file, Mr Mills admitted that the focus in the grounds was incorrect. He informed me that where an ETS result was found to be questionable, as in this case, the correct approach would be for the Home Office to interview the applicant to decide whether there was a reasonable basis for concluding that deception had been used by the person to obtain the result. That had not happened here, and therefore the Secretary of State had not discharged the evidential burden as required. Mr Mills advised me there was no legal error in relation the Judge Shergill's finding that the Home Office had failed to discharge the evidential burden.
5. Even if there had been some doubt on this point, Mr Mills admitted that the fact the appellant had British citizen children meant that the public interest would be outweighed by their best interests and the appellant's private and family life rights. The findings of Judge Shergill on those issues were correct in law.
6. Mr Mills informed me that in his opinion Judge Shergill's decision should not have been challenged. Unfortunately, because this is an ETS case, he does not have authority to withdraw the appeal.
7. Ms Masih, who relied on her skeleton argument, agreed there is no legal error.
8. I conclude that there is no legal error in Judge Shergill's decision and reasons statement and his decision stands.
9. Ms Masih said she was without instructions about whether to apply for a wasted/unreasonable costs order. I rule that no application for costs has been made and therefore I can make no decision regarding costs.

Decision

There is no legal error in the decision and reasons statement of FtT Judge Shergill and his decision stands.

Signed

Date 23 May 2017

Judge McCarthy
Deputy Judge of the Upper Tribunal