



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

Appeal Numbers: HU/22971/2016
HU/22977/2016, HU/22982/2016
HU/24597/2016, HU/22976/2016
HU/22981/2016, HU/24594/2016
HU/24599/2016

THE IMMIGRATION ACTS

Heard at Birmingham

On 23 August 2018

**Decision & Reasons
Promulgated**

On 02 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS NOOR [A]
MR HAMDULLAH [A]
[K A]
MR MOHAMMAD [A]
MISS BASBIBI [A]
MR AMIR [A]
MR GULAB [A]
MR RAHMAT [A]
(ANONYMITY ORDER NOT MADE)**

Respondents

Appearances:

For the Appellant: Ms Aboni, Senior Presenting Officer
For the Respondents: Mr M Trevelyan, Counsel

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondents are referred to as the Claimants. The Claimants appealed decisions of the Secretary of State originally made by a decision dated 22 September 2016 to refuse leave to remain and a human rights based claim was also refused. A supplementary decision letter of 9 November 2017 was produced by the Secretary of State but it does not substantively add to the issues so much as iterates to a degree the general claim that the First Claimant had used a proxy test taker in order to obtain an English language certificate.
2. Before the Judge the issue was raised as to whether or not she had ever take a test let alone paraded a certificate. The Judge received evidence and heard oral evidence which presumably was cross-examined to by the Secretary of State's representative at the hearing. The Judge heard submissions and made an assessment of the evidence and it is fair to say he accepted the statement and evidence of the Claimant that she had not used a proxy test taker but in fact had sought from the outset an extension of time which was allowed then under the Rules in order to take the test once qualified leave had been granted. That was an issue plainly before the Judge.
3. It was fully open to Mr Venables, the Home Office Presenting Officer and Mr Neville, Counsel who appeared for the Claimants, to argue this issue which they seemingly did. The Judge concluded that a proxy test taker had not been used and gave full and adequate reasons why that view was reached and the decision D42-44 addressed the issues as did address the look-up tool issue in paragraph 45 of the decision.
4. The circumstances therefore were that the Judge was entitled to take the view, as she did finally and set out at paragraph 60 of the exercise, that there was no question that the First Claimant and indeed the other

Claimants had poor immigration histories. The First Claimant had acted correctly in making the application she did with a request to be given time and the Judge found as a fact when the issue was plainly before her that Mrs Bibi did not employ a proxy test taker.

5. It is trite to say that the Judge did not ignore the generic evidence but simply reached the view in the light of the material that, if there was such a person as claimed to be the applicant and used the applicant's identity, it was not the claimant who had taken the test which was a view the Judge was entitled to reach. I see no basis on which there is a lack of rationality or perversity in that conclusion reached. It is not for me to substitute a different view even if I was to have formed one. Therefore I concluded when the Judge went on to address the proportionality of the decision in the context of an Article 8 ECHR claim, the Judge properly took into account the best interests of the child Claimants, properly took into account the considerations that arise in relation to the conduct of the parents and the case of *EV (Philippines) and Others [2014] EWCA Civ 874*.
6. The Judge did not make reference to *MA (Pakistan) [2016] EWCA Civ 60*, nor to other case law which moves along the issue of conduct pertinent to the consideration of requiring qualifying children to leave and also the relevance to the overall assessment of proportionality.
7. This was after all a human right based appeal and the Judge was entitled in assessing that matter, I find, to set out the factors that she did and the answer to the question of whether or not there was a proper consideration of it was that adequate and reasoned decisions were given. I conclude that there was no error of law in the Judge in assessing proportionality by not following the Respondent's line that a proxy test taker had been used and therefore deception and dishonesty were material to the exercise and weight to be given to the public interest.

8. It is clear the Judge did consider the public interest and in this case therefore I find nothing to suggest there is a material error of law by the Judge in the Article 8 ECHR considerations that she gave. It should be noted that the Respondent, despite being directed to produce the test certificate, never did so and never gave by way of any supplementary material an answer to the general point that had always been made that a test certificate had not been provided with the application.
9. In the circumstances it is extremely unfortunate, but this is no criticism of Ms Aboni, that the Secretary of State sought to challenge the decision. It is evidence that the person who drafted the appeal grounds from the Specialist Appeals Unit probably did not have the bundle of documents that were before the Judge: In particular the evidence which the Judge had accepted, putting aside the oral evidence, of the fact that the First Claimant had not used a proxy test taker, quite simply because she did not take a test at all.
10. Ultimately I find therefore the Original Tribunal made no material error of law. The decisions stand. The appeals of the Secretary of State against the various decisions are dismissed.

ANONYMITY ORDER

No anonymity order was previously made and none has been sought and I see no reason to impose one now.

DECISION

The Original Tribunal's decisions stand. The appeals of the Claimants are allowed on Article 8 ECHR grounds.

The Secretary of State's appeals are dismissed.

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Signed
November 2018

Date 01

Deputy Upper Tribunal Judge Davey