



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/15501/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 November 2018**

**Oral Decision & Reasons  
Promulgated  
On 7 January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JORDAN**

**Between**

**MR JATHEESAN SIVARASA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R. Soloman of Counsel, Jain Solicitors  
For the Respondent: Mr D. Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is another appeal where a decision was made by the Secretary of State to refuse the application for further leave on the basis that, in the past, an ETS certificate had been provided in support of a prior application which had been demonstrated to be false. I need not set out the way in which these cases have been approached in any detail but, simply to say, that there is an initial evidential burden placed upon the Secretary of State which can then be the subject of comments by the appellant, such that on consideration of both the evidence which is provided by the Secretary of State and the evidence provided by the appellant, the Secretary of State

either succeeds or fails in his establishing the legal burden which is, throughout, placed upon the Secretary of State.

2. In this case we have the generic evidence which is provided by Rebecca Collings and Peter Millington and there was, in addition, Professor French's evidence which shows that the likelihood of there being a mistake is very much reduced. The crucial piece of material, which is produced by the Secretary of State, which is the evidence of ETS, is in the form found at page E1 of the respondent's bundle. It contains two lines. The first line refers to a record which plainly involves the appellant. It stated 'Jatheesan Sivarasa'. It deals with his date of birth, being 26 December 1989. It records his nationality as Sri Lankan but it also refers to a test that was conducted at the London College on 9 January 2013 which resulted in what has been described as a '*questionable*' result.
3. The second line is a record of the same appellant, a different certificate number but the same date of birth. However, it shows his nationality as being Swedish. It records a result which was classified as being '*invalid*'. It refers to a test centre, the Westbridge Centre and a test that was taken on 6 February 2013. It is common ground that the first line of the certificate is wrong. Although the appellant is properly identified and although his date of birth is properly identified and although his nationality is properly identified, he did *not* sit a test on 9 January 2013 at the London College. Consequently, whether or not whoever this certificate relates to produced a questionable result, it was *not* this appellant. Consequently, his score of 190 for the speaking score and 170 for the writing score is immaterial.
4. The second deficiency in the certificate is whether or not the reference to Sweden as to the appellant's nationality (which is plainly incorrect) is merely a quite understandable error made by someone presumably using a drop down list of countries and pressing the scroll-down button inaccurately. That is something of an assumption but it seems that it is an assumption that could properly be made. In my judgment, where one has to deal with the somewhat tenuous links between an individual and his acting dishonestly in going to a test centre or using a proxy to go to a test centre, one has to look very carefully at the spreadsheet which is provided. It was submitted on behalf of the Secretary of State with some force that what you should do is blue pencil those parts which are plainly wrong and that leaves intact the appellant, his name and the invalidity which is attributed to the results of the test centre at Westbridge on 6 February 2013. In my judgment that is a step too far.
5. There has been a period of over a year in which it would have been possible for the Secretary of State to have contacted ETS and to have simply asked them to submit a correct printout. That is the sort of thing that would happen, I suspect, if there is a document an individual receives that they know to be wrong so that if, for example, you receive a marriage certificate that does not bear your right name or if you receive a passport which does not have the right content, then you would simply write to the issuing authority and say, 'Please submit to me a certificate which is

accurate'. This was not done in this case and so the process by which the Secretary of State has to rely upon the '*blue-pencil effect*' is one which is made significantly weaker by the fact that no attempt has been made for an accurate printout to have been obtained.

6. I am far from saying that a single error in relation to one of these documents, possibly in the date of birth, possibly in the certificate number, possibly in the nationality, would alone be sufficient to set aside the reliability of the certificate. But in this case, one has to apply a wholesale blue pencil to the entirety of the first line and to the nationality part of the second line. That is too much to permit the respondent to establish an appropriate degree of reliability can be attached to this certificate.
7. I entirely agree that matters of this type are fact-sensitive and therefore there will not always be a convergence of opinion as to whether a document can be relied upon. That might require consideration of the other material to see whether it can be properly relied upon. However, in this case, there were a number of matters upon which the appellant was able to rely. They are mentioned in the grounds of appeal. They raise the question whether this is a case which is so open and shut that one can safely overlook the errors which are contained in the printout. We know that the appellant has demonstrated a proficiency in English by giving evidence unassisted by an interpreter. We know that he has previous qualifications in English, which were in the appeal bundle in relation to 2005. We know that there was an IELTS test in 2014 which has not been considered unreliable and we know that there are academic transcripts in relation to the other qualifications that he has obtained, the courses for which were all conducted in English. There are confirmatory letters from work in which he has been employed by well-known organisations. I do not pay any regard to the image that appears on the TOEIC official score report because, if a scam is conducted, it is conducted by the hearing centre. Consequently one cannot say whether or not his picture on the certificate can be treated as being determinative of his presence at the test centre.
8. Nevertheless, I have come to the conclusion that the ETS print-out spreadsheet which was issued is so singularly lacking in accuracy that it cannot and should not be properly relied upon and that the Tribunal ought to adopt a fairly stringent approach where the errors in the spreadsheet are such as to undermine its liability in a significant way. Accordingly, I find that there is an error of law.
9. As far as the re-making is concerned, it is agreed that I should allow the appeal having found that the Secretary of State had failed to discharge the initial evidential burden which is the first stage of the *QM and Qadir* approach. It follows that I do not need to deal specifically with the other grounds of appeal.

## DECISION

- (i) The First-tier Tribunal made an error of law and I set aside its decision.
- (ii) I allow the appellant's appeal against the decision of the Secretary of State.

ANDREW JORDAN  
DEPUTY JUDGE OF THE UPPER TRIBUNAL  
17 December 2018