



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13932/2016**

THE IMMIGRATION ACTS

**Heard at Glasgow
On 22 November 2018**

**Decision & Reasons Promulgated
On 28 November 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ZEESHAN CHAUDHARY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D Byrne, Advocate, instructed by Drummond Miller,
Solicitors

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is to be read with:
 - (i) The respondent's decision, dated 23 May 2016, refusing the appellant's application for leave to remain on family life grounds.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge Mozolowski, promulgated on 8 February 2018.

- (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal, filed on 21 February 2018.
- (v) The grant of permission, dated 13 June 2018.

2. The respondent's decision is based on appendix FM and paragraphs 276ADE of the immigration rules (family and private life), and on finding no exceptional circumstances outside the rules. The nub is at pp. 2 - 3 of 8:

Section S-LTR 1.6 states that the applicant will be refused if the presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR 1.3 - 1.5), character, associations, or other reasons, make it unreasonable to allow them to remain in the UK.

The test you took as part of your English test requirement on 18 April 2012 was withdrawn by ETS and declared invalid on the grounds that widespread test fraud was known to have occurred at the centre where you sat the test. You were therefore asked to attend a further interview.

At the interview on 11 May 2016 you confirmed at question 1 that you sat your ... test in 2012 in Manchester ...

Your scores from the test ... have been cancelled by ETS. On the basis of information provided to her ETS, the SSHD is satisfied that your certificate was fraudulently obtained.

In fraudulently obtaining a certificate in the manner outlined above, you willingly participated in what was clearly an organised and serious attempt, given the complicity of the test centre itself, to defraud the SSHD and others. In doing so, you displayed a flagrant disregard for the public interest, according to which migrants are required to have a certain level of English language ability in order to facilitate social integration and cohesion, as well as to reduce the likelihood of them being a burden on the taxpayer.

Accordingly, I am satisfied that your presence in the UK is not conducive to the public good because your conduct makes it undesirable to allow you to remain. Your application is therefore refused ...

- 3. It is not in dispute that the test result obtained by the appellant on 18 April 2012 was withdrawn because records showed it to have been fraudulently obtained.
- 4. The appellant's position was that he was not complicit, but he was suspicious even at the time of the *bona fides* of the test he undertook, and that is why he never relied upon it.
- 5. It is not in dispute that the appellant never did rely upon the test.
- 6. The nub of the FtT's decision is that the judge at [26] did not accept the appellant's explanation, and held at [28] that he involved himself (knowingly) in a fraudulent test, using a proxy, as indicated by cancellation of his test results.
- 7. The appellant's ground 2 refers to the interview on 11 May 2016 (respondent's FtT Bundle, pp. B1 -5), and says that in stating that the applicant accepted his test was fraudulent, the FtT misunderstood his

position. The interview record, Q/A 1 - 21, is followed by the interviewer's comments:

Were there any points ... where the applicant appeared to lack credibility? - No.

...

Recommendation summary

Very credible and competent, not only in answering questions in very good English but also providing a lot of detail with regard to the test itself.

8. The respondent's decision reads rather oddly, considering the interview record.
9. The interview record perhaps did not dictate another outcome from the FtT, but it is not mentioned in the judge's decision, and the appellant, at least, was entitled to know why this did not advance his credibility.
10. Mr Govan indicated that the respondent's practice enabled decision-makers to refuse on suitability grounds related to fraudulent tests, even where it had been accepted at interview that a party was credible; but he acknowledged that the decision was defective in not explaining why an adverse outcome was reached, despite the favourable interview.
11. Mr Byrne raised a point which was not in the grounds. The appellant said that he heard in April 2012 that his college (Manchester College of Accountancy and Management, or "Mancam") was likely to be suspended, and so he was in a panic to obtain a test result. The judge at [23] - [24] rejected that account because the evidence showed the college to be functioning at a later date. However, the judgement of Supperstone J in *Manchester College of Accountancy and Management* [2013] EWHC 409 narrates at [1] that the licence of the college "was suspended on 14 February 2012, and revoked on 2 April 2012". (The credit for tracing this point goes to Mr Byrne's devil.)
12. The respondent was represented in the FtT, and the fate of the college was within the respondent's knowledge. The issue, however, is not one which might easily have been anticipated. Through little fault of anyone at the hearing, there has been significant unfairness through a mistake of fact, which cannot go uncorrected.
13. The judge's reasons for finding that the appellant connived in the fraudulence of the test do not stand. There remains no good reason for finding against him. His application to the respondent should have been found to meet the requirements of the immigration rules, which in this area are designed to be compliant with human rights. His appeal on human rights grounds therefore now succeeds.
14. The decision of the First-tier Tribunal is set aside, and the following decision is substituted: the appeal, as originally brought to the FtT, is allowed.
15. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

22 November 2018
Upper Tribunal Judge Macleman