



Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/31380/ 16920 &
36319/2014

THE IMMIGRATION ACTS

Heard at Field House, London

Decision handed down on 23
March 2016 and promulgated
on

On 05 and 08 February and 04 and 07
March 2016

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Before

The President, The Hon. Mr Justice McCloskey and
Deputy Upper Tribunal Judge Saini

Summary of Judgment

These two Appellants have succeeded in their appeals for the following reasons in summary:

1. The evidence of the Secretary of State's two principal witnesses (Mr Millington and Ms Collings) is intrinsically limited. Furthermore, neither witness possesses any relevant qualifications, credentials or expertise in what is, ultimately, a scientific field.
2. Apart from the limited hearsay evidence adduced via Mr Millington and Ms Collings, there was no evidence from the protagonist in this saga, the ETS organisation.
3. The Tribunal found the evidence of the Appellant's expert Dr Harrison, to be persuasive. Dr Harrison's report contains a litany of criticisms of the ETS voice recognition testing systems, both automated and human.

His opinion evidence was not challenged by any competing expert witness. Furthermore, he was an impressive witness. The Tribunal has accepted Dr Harrison's evidence, in all material respects, in full.

4. There was some limited support for the Appellant's cases in the evidence of other witnesses, both oral and written, which the Tribunal accepts.
5. The Tribunal finds that both Appellants were truthful and reliable in their accounts and accepts the core of the case made by each.
6. In allowing the appeals the Tribunal has been mindful that judges are not expert document examiners and, further, profess no expertise in linguistics or language testing.
7. The Tribunal's decision to allow the appeals is not founded on any judicial assessment of either Appellant's apparent English language proficiency based upon their evidence at the hearing.
8. Ultimately, the Tribunal has subjected all of the evidence to detailed and careful scrutiny. Having done so, it concludes that the Secretary of State has not discharged the legal burden of establishing that either Appellant procured his TOEIC certificate by dishonesty. The core of the Secretary of State's case was that both Appellants had cheated. The Tribunal concludes that this accusation has not been proven to the requisite standard.
9. To quote from [92] of the judgment:

"The legal burden of proof falling on the Secretary of State has not been discharged. The Appellants are clear winners".

Armand McCloskey.

PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 23 March 2016