



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

Appeal Number: IA/27906/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 May 2017**

**Decision & Reasons Promulgated  
On 11 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**MR TAUHIDUL ISLAM**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Butterworth of Counsel instructed by Waterstone Solicitors

For the Respondent: Mr P Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Bangladesh who seeks to appeal against the decision of the respondent, refusing to grant him leave in the United Kingdom as a Tier 4 (General) Student Migrant. The date of the decision being that of 27<sup>th</sup> July 2015.

2. By way of background the appellant was first granted leave to enter the United Kingdom in October 2010 as a Tier 4 (General) Student until 31<sup>st</sup> December 2012.
3. On 25<sup>th</sup> October 2013 the appellant made a further application for leave to remain as a Tier 4 (General) Student. That application was refused on 3 December. Judicial review proceedings were instituted in respect of that decision, upon which there was an agreement by the respondent to reconsider the application.
4. Prior to making that decision the Secretary of State wrote to the appellant on 4<sup>th</sup> February 2015 informing him that as part of his application he was required to sit a new English language test because his test scores had been cancelled. The appellant was advised to submit those new test scores by 1<sup>st</sup> April 2015 otherwise the application would be refused. At the same time a further notification was made on 4<sup>th</sup> February 2015 requiring the appellant to submit a Confirmation of Acceptance for Studies CAS also by 1<sup>st</sup> April 2015. A period of 60 days' leave was granted for that purpose.
5. The letter 4<sup>th</sup> February 2015, notifying the appellant of the requirement to take an English language test, is of significance because, enclosed with that letter was a certified copy of the appellant's passport which was retained by the Home Office. The certification being that it was a true and complete copy of the original and it is dated 4<sup>th</sup> February 2015. The notice also states as follows:-

"You can use the endorsed copy of your passport enclosed with this letter to prove your identity when taking the test. Once the certificate has been issued it must be sent to the following address."
6. It is right to indicate in summary that the appellant made a number of attempts to obtain that language certificate by contacting a number of the IELTS administrative offices and test centres.
7. Significantly on 20<sup>th</sup> February 2015 there was a reply from Poppy Smith of the administrative office of the University of Westminster saying as follows:-

"Thank you for your email due to British Council Regulations we unfortunately cannot accept the certified copy of your passport and you would only be able to apply for the test with your physical passport. I'm sorry for this inconvenience."
8. This was in response to the letter from the Home Office together with the certified copy of the passport. On 17<sup>th</sup> March 2015 there was a response to an enquiry by the test manager at Bellerbys College to the effect: "Unfortunately we do not accept Home Office letters. All candidates must hold a valid passport." On the same day was a response from the examination centre at International House London to the effect as follows:-

“Thank you for your email. Please be informed that we will accept the letter of the Home Office however we cannot accept your certified passport copy. The passport copy does not show the expiry date. Please supply us with the page of your passport where the expiry date or extension is stated then we will be able to fully accept your documents.”

9. On the same date of 17<sup>th</sup> March 2015 there was also a reply from the Lewisham Southwark College “We cannot register with an expired passport your passport has to be in date.”
10. It was this email which alerted the appellant to the reality that he did not have a current passport and immediately he put in train an application for a new passport. That new passport was issued on 4<sup>th</sup> May 2015 but was not received for some time because it had to be sent from Bangladesh.
11. Given the problems that he had, a letter was written on his behalf to the Home Office by solicitors dated 27<sup>th</sup> March 2015 complaining of the difficulties which the appellant was having at the various test centres, informing the Home Office that a new passport had been requested asking for further time to obtain the test and also to obtain a new CAS. No response was made to that letter until the refusal was issued on 27<sup>th</sup> July 2015.
12. The appeal against that decision was lodged and came before First-tier Tribunal Judge McIntosh on 29<sup>th</sup> July 2016. In reality it was a challenge to the fairness of the decision, it being said that the Home Office had taken no account of the difficulties which the appellant had been facing and that in the circumstances the 60 day grant of leave was inadequate for the purposes of obtaining the language certificate and the CAS. The appeal was dismissed under the Immigration Rules and under Article 8 of the ECHR.
13. Permission, however, to appeal that decision to the Upper Tribunal was granted by Deputy Upper Tribunal Judge Davey on 17<sup>th</sup> March 2017 essentially, that of common law fairness.
14. The Judge at paragraphs 25 and 26 of the determination concentrates upon the need to provide a new IELTS. The Judge considers that the first email to an alternative recognised test centre seemed to be on 19<sup>th</sup> February 2015 and the other enquiries around 17<sup>th</sup> March 2015. The finding of the Judge was that for a period of almost four weeks the appellant was not proactive in ensuring that he was able to submit his IELTS by 1<sup>st</sup> April 2015.
15. It seem to me on the evidence that was presented that such a finding failed to take into account the context of what was done by the appellant. He contacted at least four or five centres; he notified the respondent

- before 1<sup>st</sup> April of the difficulties and received no reply and he was proactive in getting a new passport once he realised that it had expired.
16. The Judge finds there were no reasonable grounds as to why the applicant could not take the new IELTS and submit a valid application by 1<sup>st</sup> April 2015. I find in relation to that comment that that is a failure upon the part of the Judge to understand the practical difficulties that were placed in the way of the appellant in doing so.
  17. The first difficulty being that the certified true copy enclosed with the notice of 1<sup>st</sup> February 2015 was incomplete, such that it did not alert to those who would read it necessarily to whether it was valid or not. Clearly it was the belief of all parties initially that it was valid. There would have been no purpose in enclosing a certified true copy of an invalid passport. It was only in March, as indicated by the emails, that it became clear that not only was the certified true copy incomplete as to the expiry when one looked at it, it had expired. Thus the Secretary of State had invited the appellant to make use of that certified copy when it was in reality useless.
  18. A more concerning aspect is the lack of clarity as to policy and to expectation as between the Home Office and the various testing centres. On the Home Office point of view it was reasonable to expect that they would accept the certified true copy, whereas almost universally that was not the case. Mr Butterworth most helpfully has produced the latest policy in relation to securing English language testing and generally it indicates that the original passport should be presented. That certainly would seem to have been the understanding of the testing centres.
  19. Some criticism clearly could be made of the appellant in not notifying the Home Office in February as to the reluctance on the part of certainly one provider to accept the certified copy. However, as it transpires, even had the request for an original passport been made it would not have been forthcoming because it had been expired.
  20. Thus the Home Office were expecting the appellant to obtain the test on the basis of an expired passport. The only way forward was to obtain a new passport and that is precisely what the appellant did as soon as he realised that he had to do so.
  21. It seems to me that there were entirely reasonable grounds as to why the appellant could not take the test in time, namely that he had no passport to do so and means to correct that matter before 1<sup>st</sup> April 2015.
  22. I find that the reasoning therefore of the Judge was defective in failing to see the matter in the whole context and particularly in the light of the fact that communication was made with the respondent prior to 1<sup>st</sup> April as to the difficulties to which no response was made. It was reasonable to expect that some accommodation would be arrived at and none seemingly was.

23. I have no hesitation in finding that the decision of the Judge was defective particularly on the issue of fairness as to set aside that decision.
24. It falls therefore for that decision to be remade and I retain it within the Upper Tribunal in order for that to be implemented. Given that the respondent had granted a period of time to the appellant to obtain that certificate, it was entirely apparent and should have been apparent by 27<sup>th</sup> March and for the reasons stated in the letter that that time was inadequate. There was a expectation that time would be further extended in order to permit the use of the new passport.
25. In any event the challenge is to the decision of 27<sup>th</sup> July 2015, which makes no reference to the difficulties which have been placed before the appellant in either obtaining the language certificate or the CAS. There is no acknowledgment of the letter that was written and no concession to the difficulties which clearly were placed before the appellant in obtaining that requirement. I find that, having regard to the notice of 4<sup>th</sup> February 2015, the requirements that were made pursuant to it, both as to the language and CAS, were wholly unrealistic given the misapprehension of fact as to the existence of a valid passport. Indeed if anything the appellant himself was misled both as to the document enclosed with the notice and with the lack of clarity of the policy which should be adopted.
26. I find therefore that there was a fundamental unfairness in the procedure such that the decision of 27<sup>th</sup> July 2015 was unfair and unreasonable and unlawful.
27. In those circumstances the appeal in respect of that decision is allowed such that it should be of no effect.
28. In terms of Article 8 of the ECHR that is also a decision which is largely unreasoned it is clearly predicated upon the findings of fact in relation to the Immigration Rules. That too I set aside but do not remake it in the absence of any material to do so.

### **Notice of Decision**

The appeal in respect of the Immigration Rules is allowed. The decision made in respect of Article 8 of the human rights is set aside.

No anonymity direction is made.



Signed

Date 10 May 2017

Upper Tribunal Judge King TD