



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

Appeal Number: IA/31663/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 9 May 2017**

**Decision & Reasons
Promulgated
On 8 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SYED MAHMUD TANVIR AHAMED
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr K Norton of the Specialist Appeals Team
For the Respondent: Mr M Hossain of Counsel instructed by Direct Access

DECISION AND REASONS

The Respondent

1. The Respondent to whom I shall refer as “the Applicant” is a citizen of Bangladesh born on 3 May 1978. His immigration history is set out in the Reasons for Refusal Letter of 10 September 2015 issued by the Appellant (the SSHD). In brief, he arrived on 27 January 2015 with leave to enter as

a student. Subsequent grants of further leave were made, and ultimately on 27 March 2015 he applied for indefinite leave to remain based on ten years' continuous lawful residence. The immigration history set out in the SSHD's Reasons for Refusal Letter did not disclose the Applicant had not made timely applications for further leave or at any point not had some form of leave.

2. The basis for the SSHD's refusal was she considered the Applicant had submitted a TOEIC from the Educational Testing Service (ETS) which had been fraudulently obtained and therefore his presence was not conducive to the public good and the application was refused by way of reference to paragraph 322(2) of the Immigration Rules.

Proceedings in the First-tier Tribunal

3. On 23 September 2015 the Applicant appealed under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). By a decision promulgated on 21 October 2016 Judge of the First-tier Tribunal Swaniker found the Applicant had not employed deception and that the TOEIC was genuine. She went on to allow the appeal against refusal of indefinite leave under paragraph 276B of the Immigration Rules. She did not separately address any claim based on the Applicant's private and family life outside the Immigration Rules under Article 8 of the European Convention.
4. The SSHD sought permission to appeal on three grounds. On 28 March 2017 Judge of the First-tier Tribunal Robertson granted permission but only on the first ground, namely that the only ground of appeal would have been by reference to Section 6 of the Human Rights Act 1998 and that the decision resulted in a breach of the Applicant's rights under Article 8.

Proceedings in the Upper Tribunal

5. The SSHD renewed the application for permission to appeal to the Upper Tribunal and by a decision of 20 April 2017 Upper Tribunal Judge Canavan affirmed Judge Robertson's decision to refuse permission to appeal on grounds other than the first ground and in relation to the first ground stated:-

First-tier Tribunal Judge Robertson granted permission to appeal in relation to the first ground of appeal, which asserted that the Judge had no jurisdiction because the Appellant did not in fact have a right of appeal because his previous leave had been curtailed in an earlier decision (the exact date is still unclear from the confused chronology in the grounds). No mention of this decision was made in the PF1 or the immigration history outlined in the decision letter. There is no record of this issue being raised before the First-tier Tribunal. Nothing in the decision letter indicated that the Appellant had no right of appeal, indeed, the application was treated as an application to extend leave to remain and the Appellant was accordingly given a right of appeal. In the absence of any evidence to show that a valid curtailment decision

was made and served on the Appellant before he made the application for Indefinite Leave to Remain on 27 March 2015 I have some doubts about the merits of the first ground of appeal, nevertheless, permission has already been granted in relation to that point. Whether the First-tier Tribunal did in fact have jurisdiction clearly is a material issue.

6. The Applicant was present and I explained to him the purpose and procedure of an “Error of Law” hearing. Mr Norton for the SSHD stated he had only just seen the permission decision of Upper Tribunal Judge Canavan. The SSHD was unable to show any evidence that a decision to curtail the Applicant’s previous leave had ever been made or served. It was clear from the reasons for refusal accompanying the decision leading to the present appeal that the SSHD’s decision had been reached without reference to any curtailment. In the circumstances the Respondent accepted the Tribunal would have little option but to consider the Applicant had applied for indefinite leave in time.
7. I noted there was no challenge to the findings of Judge Swaniker on the TOEIC issue. I also noted the Applicant’s application leading to the decision under appeal had been made before 6 April 2015 and that the transitional provisions of Article 9 of the Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014 as amended by Article 8(2) of the Commencement No. 4 Order applied so that the appeal was against a decision under the Immigration Rules and not solely on human rights grounds.

Conclusion

8. In the light of the SSHD’s not showing the Applicant’s leave had been curtailed, the sole ground for permission to appeal does not disclose any material error of law in the Judge’s decision and accordingly it shall stand.

Anonymity

9. There was no request for an anonymity order or direction and, having considered the appeal, I find none is warranted.

SUMMARY OF DECISION

The decision of the First-tier Tribunal did not contain an error of law and shall stand. The appeal of the Applicant is therefore allowed.

Signed/Official Crest
2017

Date 11. v.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal