



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17623/2016

THE IMMIGRATION ACTS

Heard at North Shields
On 23rd May 2018

Decision and Reasons Promulgated
On 12th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MR MHD SULTAN MAHAMUD
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the appellant: Ms Faryl, Counsel, instructed by Sabz Solicitors LLP
For the respondent: Mr Diwyncz, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. Although the Secretary of State is the appellant in the present proceedings, for convenience, I will hereinafter refer to the parties as they were in the First-tier Tribunal.
2. The appellant is a national of Bangladesh. He came to the United Kingdom as a student in June 2011; his visa was valid until 28 February 2013. On 14 February 2013 he applied for further leave to remain as a student but withdrew that application on 15 January 2014. On 23 January 2014 he applied

for leave to remain as the spouse of a British national, Mrs Rachel Elizabeth Pearson. Her 17-year-old son from a previous relationship lived with them. He was granted leave until 23 July 2016. On 5 July 2016 he made another application for leave to remain as her spouse. That application was refused the same day.

3. That application was considered under appendix FM and refused on suitability grounds. When he applied on 14 February 2013 for further leave to remain as a student he submitted an ETS certificate as to his ability in English. The test was taken on 5 December 2012 at Queensway College. Using voice recognition technology ETS checked his test recording and concluded there was significant evidence a proxy test taker had been used. Therefore, he had engaged in fraud and his presence was not conducive to the public good because this conduct made it undesirable that he be allowed to remain. Regarding EX 1, the respondent did not see any insurmountable obstacles to family life continuing outside the United Kingdom. In terms of the appellant's private life, he had not been here the necessary 20 years under paragraph 276 ADE and it was not accepted there were significant obstacles to his reintegration into Bangladesh. No exceptional circumstances were identified that would justify the grant of leave outside the rules.
4. The appellant's appeal was heard by First-tier Tribunal Judge Hindson at North Shields on 21 July 2017. In a decision promulgated on 24 August 2017 the appeal was allowed. Both parties were represented. Paragraph 21 records the presenting officer as accepting the requirements of the rules were met but for the suitability issue.

The Upper Tribunal

5. Permission to appeal was granted on the basis that it was arguable the judge erred in law for not giving adequate reasons for the conclusion reached. The appellant's credibility about taking the test was central and the application indicates there was lengthy and detailed cross-examination about this. However, it was submitted that the judge failed to engage with the points made and did not explain why he considered the appellant's evidence to be cogent.
6. The presenting officer's note of the hearing is contained in ground 4 of the application. The presenting officer felt the appellant performed poorly at hearing. He referred to the test centre as Queens College rather than Queensway and could not say what part of London it was in. His answers about his studies were vague and inconsistent. The presenting officer queried why he would choose to live in Cumbria on arrival whereas he was meant to be studying in London. It was submitted he displayed a poor knowledge of London, inconsistent with his claim that he travelled down every week for

two days at a time. The presenting officer also referred to the background material on the test centre which suggested widespread fraud.

7. At hearing Mr Diwyncz relied upon the grounds on which the application was based. He confirmed that the test issue was the only point taken
8. Ms Faryl pointed out the passage of time between the date of the test and the hearing before First-tier Tribunal Judge Hindson and the fallibility of memory. I was referred to paragraph 22 of the decision where the judge found some minor errors in his evidence, such as the name of the test centre, but did not find these undermined his credibility. The judge referred to his explanation as to why he chose the venue and how he travelled there and details of the test itself. She submitted that the reasons in paragraph 22 were adequate. She contended that the judge did not need to write a verbatim account of what the respective points were. She also made the point that it was for the judge to determine the appellant's credibility and performance rather than the presenting officer. I was referred to the qualifications he obtained. She also referred to the fact that he was a relationship and that is why he lived outside London.

Conclusions.

9. I find that the judge has failed to give adequate reasons. The respondent is entitled to know why the judge arrived at the outcome. However, there is no real engagement with the evidence and the points taken by the respondent. Rather, paragraph 22, which is the closest there is to reasons, is superficial. The judge does appreciate the point in contention but the bulk of the decision is dealing with preliminary matters. It is only a paragraph 22 that there is any engagement. It records the appellant was cross-examined at great length but does not provide any real analysis of the issues arising. There is no reference to the legal and evidential burden of proof or engagement with the evidence. There is no reference to the criminal enquiry into the abuses at Queensway College. There is no mention of the fact that between 2012 and 2014 70% of the results were declared invalid. There was also the screen-print confirming the appellant's test was declared invalid. On the day of the test 62 of the results was subsequently declared invalid.

Decision.

10. The decision of first-tier Tribunal Judge Hindson materially errs in law and cannot stand. The appeal is remitted for a de novo hearing in the First-tier Tribunal.

Francis J Farrelly
Deputy Upper Tribunal Judge