



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

Appeal Numbers: HU/23509/2016
HU/24742/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 20th September 2018**

**Decision & Reasons
Promulgated
On 9th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TASLIMA HABIB
AMZAD HOSSAIN
(ANONYMITY DIRECTION NOT MADE)**

Respondents

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer
For the Respondents: Mr S Kamal, of ISL Legals Limited

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Rothwell made following a hearing at Harmondsworth on 22nd February 2018.

Background

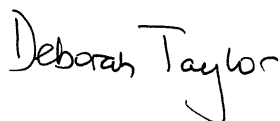
2. The claimants are both are citizens of Bangladesh. They appealed against the decisions of the Secretary of State dated 23rd September 2016 refusing the first claimant's application for indefinite leave to remain based upon ten years' lawful residence in the UK. The second claimant was refused in line.
3. The basis of the refusal was that the Secretary of State believed that the TOEIC certificate which the first claimant produced as part of her application for an entrepreneur application on 30th December 2011 was fraudulent. It was withdrawn by ETS and declared questionable on the grounds that voice recognition software detected the presence of a proxy tester who sat the test in her place. The UKVI was aware of the widespread test fraud that was known to have occurred at the test centre. Although the claimant did not rely on this TOEIC certificate for the purpose of the application for indefinite leave to remain her complicity in the fraud contributed to an attack upon immigration controls.
4. The judge considered the evidence. She said that the only evidence produced by the Secretary of State consisted of general assertions made in the refusal letter and the generic evidence from Peter Millington and Rebecca Collings. Moreover the ETS test result in this case was questionable and not invalid. The claimant had been given no opportunity, as she should have been, to retake the test in line with the witness statements produced by the Secretary of State. Moreover, the claimant had given her evidence in perfect English. In February 2016 she took grade 5 grade examination in spoken English and scored at level B1.1 at Trinity College and sat and passed the Life in the UK test.
5. The judge concluded that, on the evidence before her, the Secretary of State had not discharged both the evidential and legal burden and the appeal was allowed on human rights grounds.
6. The Secretary of State sought permission to appeal on the grounds that there had been administrative failure on the part of the Tribunal in failing to link the evidence which the Home Office had provided to the file. It was said that there was a coversheet dated 7th February 2018 and an accompanying statement dated 7th February 2018 attached to the ETS bundle which had been sent to the Tribunal prior to the hearing at Harmondsworth on 22nd February 2018. Unfortunately those documents were not appended to the grounds and are not in the Tribunal's file.
7. Mr Tarlow said that he did not have the documents either and there was nothing which he could put before the court which might assist. He therefore made no submissions.
8. I conclude therefore that the Secretary of State's challenge is not made out. He has been unable to substantiate the claim made in the grounds

that the Secretary of State provided further evidence which the judge did not take into account. Accordingly the decision of the judge will stand.

Notice of Decision

9. The original judge did not err in law and his decision stands. The Secretary of State's appeal is dismissed.

No anonymity direction is made.



Signed

Date 2 October 2018

Deputy Upper Tribunal Judge Taylor