



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/02738/2019**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 1st November 2019**

**Decision & Reasons
Promulgated
On 6th November 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**ADEEL ASLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Aslam, in person

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Lawrence promulgated on 4 July 2019, in which the Appellant's appeal against the decision to refuse his human rights claim dated 29 January 2019 was dismissed.
2. The Appellant is a national of Pakistan, born on 28 November 1990, who first entered the United Kingdom with entry clearance as a student and leave to remain as such initially to 17 November 2013 and extended to 21 March 2015. The Appellant's leave to remain was cancelled on return to the United Kingdom on 11 February 2015 on the basis that he had used deception in his previous application for leave to remain by replying on a

false TOIEC English language certificate. The Appellant successfully appealed against that cancellation, with findings that the Respondent had not established the use of deception because there was no specific evidence in relation to him or his specific English language test. The Appellant's leave was ultimately reinstated for a short period following his appeal to expire on 31 May 2017.

3. The Appellant made an application for further leave to remain on the basis of human rights on 30 May 2017, which was initially rejected as invalid and a further claim was submitted on 4 January 2018. The Respondent refused this application firstly on the basis that the Appellant did not meet the suitability grounds because he had used deception in a previous application for leave to remain by replying on a false TOIEC English language certificate and secondly because he did not in any event meet the requirements for a grant of leave to remain on family life grounds under Appendix FM of the Immigration Rules or on a private life grounds under paragraph 276ADE of the same. Specifically, there were no very significant obstacles to the Appellant's reintegration into Pakistan on return. The Respondent considered whether there were any exceptional circumstances to warrant a grant of leave to remain in the United Kingdom, recognising that the Appellant's desire to continue and complete his studies which had been interrupted because of the previous translation of his leave to remain, but found that the appropriate route would be an application for further leave to remain as a student and not on human rights grounds.
4. Judge Lawrence dismissed the appeal in a decision promulgated on 4 July 2019 on all grounds. In relation to the suitability criteria, it was found that the Respondent had discharged the initial burden of proof that the Appellant had relied on a false TOIEC English language certificate and that the Appellant had not given an innocent explanation to rebut that which reached the minimum level of plausibility, primarily because the Appellant had not "*been active in marshalling his evidence*" against the deception allegation. Further, it was found that the Appellant did not meet the requirements of paragraph 276 ADE of the Immigration Rules for a grant of leave to remain and that there were no other compelling circumstances to justify grant of leave to remain on Article 8 grounds outside of the Immigration Rules.

The appeal

5. The Appellant appeals on four grounds. First, that there was procedural unfairness in the conduct of the Appellant's appeal in that he was only handed the Respondent's bundle on the day of the hearing, which included evidence about the English language test and what is known as the ETS look-up tool, together with incomplete witness statements. The Appellant, who was not legally represented, was not granted an adjournment and was simply told to read the documents and reply to them on the day. Secondly, in the context of the Appellant's previous appeal against a refusal on the same topic grounds having been successful and no documents being served upon him prior to the most recent appeal

hearing, the Appellant states that he was unaware of the detail of the allegations against him and as such was unable to contact ETS or pursue further evidence in support of his claim. The First-tier Tribunal erred in law in holding his failure to do so against him when assessing whether he had provided an innocent plausible explanation. Thirdly, that the First-tier Tribunal materially erred in law in failing to take into account evidence of the Appellant's English language ability. Finally, in light of the previous findings and generally, that the First-tier Tribunal erred in law in its assessment of the Appellant's right to respect for private life in the context of him having lawfully entered the United Kingdom as a student but being unable to finish his studies because of a previous unlawful decision of the Respondent.

6. At the oral hearing, Mr Tarlow on behalf of the Respondent accepted a material error of law in the first ground of appeal which is sufficient of itself to justify setting aside the decision of the First-tier Tribunal.

Findings and reasons

7. As properly accepted by the Respondent in this case, there was procedural unfairness to the Appellant, acting in person, in that he was not provided with a full bundle from the Respondent prior to his appeal hearing and was not given a proper opportunity to consider the contents of and respond to them to pursue his own appeal. In the context of an allegation of deception for use of a false TOIEC certificate, where detailed evidence was relied upon by the Respondent, both generic about the ETS and the testing system and also specific to this Appellant and where the Appellant was previously successful in an appeal on the same issue in 2015; fairness required that the hearing should have been adjourned with the Appellant being given a reasonable opportunity to fairly pursue his appeal. Whilst it is not clear whether the Appellant expressly sought an adjournment on the day, I do accept that he was simply told to proceed with his appeal, which was procedurally unfair in all the circumstances. That unfairness was compounded by the First-tier Tribunal's reliance on the Appellant's lack of response to the allegation of deception as essentially the sole reason why his innocent explanation had not been accepted as plausible.
8. The errors identified above are sufficient of themselves to require the decision of the First-tier Tribunal to be set aside and remitted for a fresh appeal hearing in the First-tier Tribunal. The errors are clearly material and at least potentially affect the overall assessment made on Article 8 grounds.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal (Birmingham hearing centre) to be heard de novo before any judge except Judge Lawrence.

No anonymity direction is made.

Signed 
2019

Date 4th November

Upper Tribunal Judge Jackson