



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

Appeal Number: HU/04636/2015

THE IMMIGRATION ACTS

Heard at Field House

On 19 April 2017

**Decision &
Promulgated
On 7 June 2017**

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**TAYBUR RAHMAN CHOKDER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Basith, Taj Solicitors

For the Respondent: Ms Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Taybur Rahman Chokder, was born on 1 January 1988 and is a male citizen of Bangladesh. He is married to Sabina Elloy (the

sponsor) who is an Indian citizen who has indefinite leave to remain in the United Kingdom. The appellant and sponsor have a child (T) who is a British citizen. The appellant had entered the United Kingdom as a General Student Migrant in 2010 and had applied for further leave to remain when his previous leave expired in October 2012. The respondent considered that the appellant had fraudulently obtained an English language certificate the appellant was served with a notice IS151A on 6 October 2014. The appellant made a further application for leave to remain as the spouse of a person present and settled in the United Kingdom but, by a decision dated 11 August 2015, the appellant's application was refused. The appellant appealed to the First-tier Tribunal (Judge Aujla) which, in their decision promulgated on 6 October 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grounds of appeal are prolix and very poorly drafted. However, I shall seek to deal with the grounds as they were articulated by Mr Basith, who appeared for the appellant, at the Upper Tribunal hearing. First, the appellant relies upon *SM and Qadir (ETS – evidence – burden of proof)* [2016] UKUT 229 (IAC). The appellant asserts that he provided an innocent explanation for the fact that his name appeared upon a list of invalid test results carried out by ETS. Thereafter, the appellant submits that it was for the Secretary of State to adduce evidence sufficient to prove that the appellant had undertaken an invalid or fraudulent test.
3. I do not find that the ground has merits. I agree with the submission of Miss Ahmad, who appeared for the respondent, to the effect that the appellant had not given an innocent or any explanation for the test result. In his written evidence, he does not more than simply deny that he had provided a fraudulent result. Such a denial is not an explanation for the invalid test result. At [35], Judge Aujla wrote, "Having considered the evidence referred to above, I am satisfied the appellant did obtain an English language certificate fraudulently." In the light of the evidence which the judge had before him including a bare denial by the appellant, I consider that such a finding (clearly based upon all the evidence) is sufficient. There was no need for the judge to deal with the transference of the burden of proof (as in *SM*) in a case where the evidence was so straightforward on both sides.
4. The second ground of appeal concerns EX.1 of Appendix FM of HC 395 (as amended). The appellant asserts that the judge should have applied paragraph EX.1 in his case and that the judge's failure to do so amounted to an error of law. It is true that the judge has not referred to paragraph EX.1 in terms, but at [45], he wrote as follows:

"I have finally considered whether or not the interference of the appellant's family life would be proportionate. Considering the issue I have taken into account the circumstances that were favourable to the appellant and his family and have balanced them against the need to remove him because he no longer had leave to remain. In considering proportionality I have taken

into account whatever I have stated above in respect of the best interests of the couple's child and my conclusions that it would be reasonable to expect the child to leave the UK with her parents."

5. The judge had found [42], and gave reasons for the finding, that it would be reasonable for the child to accompany its parents to Bangladesh. In the light of that finding, there was no need for the judge to make a separate finding in respect of paragraph EX.1 given that he had already found that it would be "reasonable to expect the child to leave the UK" (paragraph EX.1(a)(ii)).
6. In the end, although he does not refer to it in terms, the judge's finding as to the child returning to Bangladesh is sufficient to cover the application of Section 117B(6) of the 2002 Act (as amended).
7. Finally, Mr Basith submitted that the judge had not carried out a proper assessment of the best interests of the child under Section 55 of the Borders, Citizenship and Immigration Act 2009. That submission does not have merits. The judge has indeed carried out a "best interests" assessment in respect of the child at [37-38]. The judge did not err in law for the reasons given in the grounds of appeal or at all
8. In the circumstances, the appeal is dismissed.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 2 June 2017

Upper Tribunal Judge Clive Lane

TO THE RESPONDENT **FEE AWARD**

As I have dismissed the appeal there can be no fee award.

Signed

Date 2 June 2017

Upper Tribunal Judge Clive Lane