



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

Appeal Number: HU/10875/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 1st December 2017**

**Decision & Reasons
Promulgated
On 21st December 2017**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR MD JILLUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M K Mustafa (instructed by Kalam Solicitors)
For the Respondent: Ms Z Ahmad (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal with permission by the Appellant. It relates to a Decision and Reasons of First-tier Tribunal Judge Buckwell promulgated on 16th January 2017 following a hearing in December at Taylor House.

2. The application was for leave to remain, the background being that the Appellant had been granted entry clearance as a student valid from December 2009 until 2013, arriving in the country in 2010. Then there was a Decision to curtail his leave to expire in May 2012. He was then given a further period of leave but that also was curtailed by a Decision of 25th September 2012, expiring in November. He was then given a period of leave to remain as a spouse for six months and then he made a further application based on that marriage prior to his latest period of leave expiring.
3. The Secretary of State had refused the application on suitability grounds because it was said that the Appellant had fraudulently obtained an English language test certificate. The judge in determining the appeal made no finding about whether or not the Appellant had used fraud but he looked at the other aspects of the Immigration Rules and found that the Appellant did not meet those and therefore believed that he did not need to make a finding in relation to the fraud.
4. The grant of permission to appeal by Upper Tribunal Judge Reeds refers to the fact that the judge did not consider when considering Article 8 the fact that there were two British children and EX.1 of Appendix FM or Section 117B(6) could arguably have applied. What Judge Reeds did not note was that of course EX.1 does not apply if an applicant fails to meet the suitability grounds. Whether or not this Appellant meets the suitability grounds is entirely dependent on whether or not he has used fraud and therefore that question requires a finding.
5. It was accepted by both the representatives before me that that was an error of law material to the outcome and that it was appropriate therefore for the Decision and Reasons of Judge Buckwell to be set aside in its entirety and the matter remitted to the First-tier Tribunal for a full rehearing on all issues.

Notice of Decision

The appeal to the Upper Tribunal is allowed to the extent that the matter is remitted to the First-tier Tribunal for a full rehearing on all issues.

No anonymity direction is made.

Signed

Date 21st December 2017

Upper Tribunal Judge Martin