



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

Appeal Number: IA/04161/2015

**THE IMMIGRATION ACTS**

**Heard at Stoke on Trent  
On 21 June 2017**

**Decision & Reasons  
Promulgated  
On 11 July 2017**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**ZOHAIB ILYAS  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Barnfield, instructed by Citadel Immigration Lawyers  
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Zohaib Ilyas, was born on 3 August 1986 and is a male citizen of Pakistan. The appellant had applied in July 2014 for further leave to remain on the basis of his relationship with a person settled in the United Kingdom but his application had been refused by a decision on 9

January 2015; the decision of 12 October 2015 referred to by the First-tier Tribunal appears to have been a supplementary decision. In any event, the appellant appealed to the First-tier Tribunal (Judge Callender Smith) which, in a decision promulgated on 22 August 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the decision of the First-tier Tribunal should be set aside. I have reached that decision for the following reasons. The analysis of the judge is seriously deficient in respect of its discussion of the issues arising in this appeal and the evidence. The judge correctly observed that he needed to consider the question of the appellant's alleged involvement in obtaining a false English language certificate from Educational Testing Services (ETS) and also the status and genuineness of his relationship with the United Kingdom sponsor. The sponsor, in turn, has a British child and issues concerning the appellant's relationship with that child and whether or not the child could be expected to leave the United Kingdom should also have been addressed. Unfortunately, the judge was severely hampered on account of the fact that the appellant himself was not legally represented at the hearing nor was there any Presenting Officer for the respondent. The judge did have before him a letter from the appellant's father-in-law which had suggested that the appellant's marriage to the sponsor was not genuine. The judge records that the father-in-law attended and gave evidence before the First-tier Tribunal and withdrew his previous allegations. It is clear from any reading of the decision that the father-in-law's written allegations carried very significant weight with the judge (see, in particular, [39]). The readiness of the judge to latch on to the father-in-law's written (subsequently withdrawn) allegations has led him to ignore the proper procedure for considering whether or not the appellant had obtained a fraudulent language testing certificate. Indeed, the judge does no more at [36] to observe that "[the appellant] has not produced any evidence in relation to [having undertaken the TOIEC test in 2013] and there is no mention in his witness statement dated 10 May 2016 of the TOEIC issues which I regard as a significant avoidance or omission". The judge appears to have been unaware of the possibility of shifting burdens of proof nor has he examined in any detail at all the respondent's evidence in support of the assertion the appellant had obtained the certificate fraudulently. Likewise, the judge appears to have rejected the genuineness of the appellant's relationship with the United Kingdom sponsor in the light of the father-in-law's withdrawn allegation. The matter is further complicated (albeit in a way which the judge could not have contemplated) by reason of the fact that in May 2017 at an interview with the appellant, the sponsor and the respondent's officers, the respondent accepted that the respondent and the United Kingdom sponsor were in a genuine and subsisting relationship.
3. I find that the judge's analysis cannot stand and that the questions of the appellant's obtaining of an English language certificate and also the genuineness of his marriage (subject to what appears to be a concession by the respondent in May 2017) will have to be looked at again. Having

determined the genuineness or otherwise of the marriage, the Tribunal will need to examine the appellant's relationship, if any, with the sponsor's British child and to consider both the application of the relevant Immigration Rules and also any relevant case law.

**Notice of Decision**

4. The decision of the First-tier Tribunal promulgated on 22 August 2016 is set aside. The appeal will be returned to the First-tier Tribunal (not Judge Callender Smith) for that Tribunal to remake the decision.
5. No anonymity direction is made.

Signed

Date 1 July 2017

Upper Tribunal Judge Clive Lane