



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

Appeal Number: HU/00364/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> September 2018**

**Decision & Reasons  
Promulgated  
On 10<sup>th</sup> October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**AHMED HOSSEN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr R Wilcox, Counsel

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

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of Judge Harrington made following a hearing at Hatton Cross on 20<sup>th</sup> March 2018.

**Background**

2. The appellant is a citizen of Bangladesh born on 16<sup>th</sup> January 1990. He entered the UK on 7<sup>th</sup> May 2011 with valid leave as a Tier 4 Student. On 30<sup>th</sup> October 2014 he made an in-time application for further leave to remain which was refused. Whilst he was pursuing his appeal he decided

to withdraw his application in order to proceed with the current one for further leave to remain on the basis of his marriage to a British citizen present and settled in the UK.

3. That application was refused by way of a decision dated 9<sup>th</sup> December 2016 on the basis that the appellant did not meet the suitability requirements since the Secretary of State believed that he had obtained an ETS test certificate fraudulently by using a proxy test taker. The judge accepted the Secretary of State's case and concluded that the appellant's ETS test was attained by fraud. She dismissed the appeal.

### **Grounds of Application**

4. The appellant sought permission to appeal primarily on the grounds that the judge had acted unfairly by relying on matters which were not put to him, depriving him of an opportunity to answer her concerns.
5. Permission to appeal was granted by Judge Hollingworth for the reasons stated in the grounds.
6. Mr Wilcox started his submissions by asking permission to amend the grounds in order to make the argument that, even if the appellant was found to have cheated on the TOEIC test, that did not bring him within the suitability criteria for refusal. I refused the application. Such an amendment would require the Presenting Officer to have time to consider the arguments and would result in this case having to be adjourned. There has been ample opportunity for the representatives to seek to amend their grounds prior to the hearing and there is no justification for attempting to do so on the day in circumstances which would inevitably mean that this appeal could not be concluded.
7. Mr Wilcox argued that not only that the judge had acted unfairly but that, in holding the fact that the appellant had given his evidence fluently against him, had in effect made it impossible for him to succeed. He said that the flavour of the determination suggested that she had prejudged the appeal.
8. It seems to me that there is no evidence that this judge had done so. She was perfectly entitled to consider that the manner in which the appellant gave his evidence suggested that it was rehearsed.
9. However it is clear that she relied strongly, at paragraph 30, upon the fact that the appellant had not provided evidence of his English language ability at the time of the refusal. She said that she did not have any exam results from Bangladesh or any proof of him succeeding in his study in the UK and some or all of this evidence ought to have been available. The fact that it had not been produced suggested to her that it did not support his case.
10. In fact however such evidence was available. According to the grounds the appellant studied for his four year diploma in electronic engineering in

Bangladesh following a course which was conducted at least in part in the English medium. It also contained an English language module. Further, he had obtained a qualification in the UK on food safety in English in November 2011. Moreover he had given his evidence without an interpreter at a hearing before an Immigration Judge in 2015.

11. By not putting him on notice that she required evidence of his speaking ability in 2013 the judge deprived the appellant of the opportunity of providing evidence which was in fact available.
12. Accordingly the decision is set aside and will have to be remade.
13. Even if the appellant ultimately succeeds in relation to the suitability criteria he still has to show that he can meet the requirements of paragraph EX.1. Further evidence will therefore be required in relation to his wife's ability to live in Bangladesh, a matter not dealt with by the original judge.
14. This matter is therefore remitted to Taylor House to be heard before a judge other than Judge Harrington.

No anonymity direction is made.

*Deborah Taylor*

Signed

Date 2 October 2018

Deputy Upper Tribunal Judge Taylor