



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/02234/2017

**THE IMMIGRATION ACTS**

Heard at Manchester Magistrates Court  
On 30<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 06<sup>th</sup> August 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NAZIK HUSSAIN SHAH  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mrs H Aboni (Senior Home Office Presenting Officer)

For the Respondent: Mr Salam (Salam & Co Solicitors Ltd)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal, with permission, by the Secretary of State in relation to a decision of Judge Shergill in the First-tier Tribunal promulgated on 5<sup>th</sup> January 2018. For the sake of continuity and clarity I will continue to refer to Mr Shah as the Appellant and the Secretary of State as the Respondent in this judgment.
2. Judge Shergill was hearing the appeal of a Pakistani citizen born on 5<sup>th</sup> May 1985 who had arrived in the UK as a student in 2011. An application for further leave to remain was refused and he became appeal rights exhausted in 2013. He then made an

application in October 2015 for leave to remain relying on his private and family life. He is in a relationship with a British woman with whom he has two children born in 2014 and 2017. He has served a sentence of 28 days for failing to surrender and had also, according to the Secretary of State, cheated by using a proxy in a TOEIC test.

3. The judge found against the appellant in relation to the English test and found that he had not given a satisfactory explanation and found he had in fact cheated. The judge also found the offence of failing to surrender was not a minor matter as it interfered with the proper administration of justice.
4. The judge found that he failed to meet the suitability criteria and could not rely upon Appendix FM and thus Ex.1 was not available to him.
5. The judge also found that there were no very significant obstacles to the appellant integrating into Pakistan where he lived for the first 24 years of his life.
6. The judge then went on to consider the situation for his British wife and daughters. He appears to have found that the family could relocate without disruption to Pakistan and he also found that the appellant's wife was not a wholly innocent party to the situation. However, the judge went on to find that it would be proportionate to remove the appellant from the United Kingdom in normal circumstances but that he should be given a further period of leave to enable him and his wife to sort their lives out to enable him to be in a position where he could succeed in an application to return.
7. The difficulty with the Decision and Reasons is that the Judge has reached no clear finding on whether removal is or is not proportionate and said in the decision:- "The appeal is allowed on human rights grounds (to a limited extent)". A Judge is tasked with either allowing or dismissing an appeal. He cannot do so partially and in doing so and in making equivocal findings he has made an error of law material to the outcome. I therefore set aside the Decision and Reasons in its entirety, with the agreement of Mr Salam. Both parties agreed that the appropriate way forward was to remit the matter to the First-tier Tribunal for a full rehearing.

### **Notice of Decision**

The appeal is allowed to the extent that the Decision and Reasons is set aside and the matter remitted to the First-tier Tribunal for a full rehearing before any Judge other than Judge Shergill

There having been no application for an anonymity direction and the First-tier Tribunal not having made one, I see no justification for directing anonymity and do not do so.

Signed

Date 30<sup>th</sup> July 2018

Upper Tribunal Judge Martin