



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/02364/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 18 October 2018

Decision and Reasons Promulgated  
On 19 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ABDUL MALAK  
(ANONYMITY HAS NOT BEEN DIRECTED)

Respondent

**Representation:**

For the Appellant: Mr Tarlow, Home Office Presenting Officer  
For the Respondent: Mr Khan, Londonium Solicitors, London

**DECISION AND REASONS**

1. The appellant in these proceedings is the Secretary of State however for convenience I shall now refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a national of Bangladesh born on 30 July 1979. He appealed the respondent's decision of 27 January 2017 refusing him further leave to remain in the United Kingdom on the basis of his marriage. His appeal was heard by Judge of the First-tier Tribunal Meah on 2 May 2018 and was allowed in a decision promulgated on 22 May 2018. An application for permission to appeal was lodged and permission was granted by Deputy Upper Tribunal Judge Taylor on 21 August 2018. The permission states that there may have been an administrative error in this case in that the respondent claims that his bundle was properly served on the Tribunal but it did not reach the Judge's file, hence the Judge failed to take into account material evidence when reaching his decision.

## The Hearing

3. The Presenting Officer submitted that he is relying on the grounds of application submitting that the respondent's bundle appears not to have been before the Judge although there is evidence that it was served timeously. He submitted that the appeal was floated and had the Judge considered the respondent's bundle he would have reached a different decision, so the respondent was disadvantaged. He submitted that in these circumstances the decision should be set aside and the appeal remitted back to the First-tier Tribunal.
4. The appellant's representative submitted that he does not accept that the Judge's decision would have been different if the respondent's bundle had been received on time. He submitted that at paragraph 6 the Judge makes it clear that the appellant's bundle was before him and at paragraph 7 he states that there was no respondent's bundle in the court file. The Presenting Officer at the hearing was unable to confirm whether a bundle had been sent to the IAC in compliance with directions and he did not have a copy of the respondent's bundle either. The representative submitted that the respondent had not complied with the directions but at the hearing the appellant's representative was in possession of a paginated respondent's bundle which he provided to the Judge and to the Presenting Officer and the Presenting Officer was given an opportunity to go through this and confirmed that he was ready to proceed. At paragraph 8 of the decision the Judge states that the Presenting Officer had no further documents to hand to the Judge.
5. The representative submitted that there was no evidence of fraud before the Judge and at paragraphs 29 and 30 of the decision the Judge makes reference to the generic witness statements by civil servants working at the Home Office and found they were insufficient for the respondent to discharge the burden upon her to prove the allegation made against the appellant. He submitted that it is clear that the Judge considered all of the evidence and found it to be insufficient to show that the appellant cannot meet the suitability requirements which is why the application was refused.
6. The representative submitted that the appellant's test result was "questionable" and he submitted that that is crucial. The Judge found the appellant's evidence to be credible and his testimony at the hearing to be credible and he states that these led him to afford the appellant the benefit of the doubt in relation to his explanation of how he sat all elements of the TOIC exam himself and did not use a proxy test-taker. He submitted that the appellant's results were not "invalid" and that the respondent has not discharged the evidential burden in this case.
7. He submitted that because the appellant's result was questionable and was not cancelled, deception has not been shown, so in the circumstances of this case the decision given at the First-tier Tribunal hearing contains no error of law.
8. At paragraph 20 the Judge states that he found the appellant's evidence to be credible so he has afforded him the benefit of the doubt and allowed the appeal.

9. The representative submitted that there is no error of law in the decision.
10. He submitted that with regard to Article 8 of ECHR the judge did not require to make findings as he had already found that the appellant qualifies for leave under the 10-year partner route. He submitted that the appellant has family life in the United Kingdom and has a British wife and British child and this has not been challenged.
11. He submitted that even if I find that there are errors in the decision they are not material errors and the judge was not required to consider public interest as the terms of the Rules have been satisfied.
12. He submitted that the decision is sound. The Judge saw the “look up tool” and found that there was no deception by the appellant.
13. I was asked to uphold the decision.
14. The Presenting Officer had no further submissions.
15. Although the respondent’s bundle did not arrive on time the appellant’s representative had a respondent’s bundle which he allowed the Judge and the Presenting Officer to consider before the hearing started.
16. The Judge therefore saw all the evidence from both sides at the hearing and has taken it all into account. This is clear when the decision is read as a whole. I find that there is no error of law in the Judge’s decision.

**Notice of Decision**

As there is no error of law in the First-tier Tribunal Judge’s decision I find that the decision promulgated by Judge of the First-tier Tribunal Meah on 22 May 2018 must stand.

Anonymity has not been directed.

Signed

Date 12 November 2018

Deputy Upper Tribunal Judge Murray

