



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/16635/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 17<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 24 July 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MD SAYFUL ISLAM  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Turner (instructed by Hubers Law Solicitors)

For the Respondent: Mr T Melvin (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision and reasons of the First-tier Tribunal Judge Higgins promulgated on 28<sup>th</sup> November 2017. The Appellant before the First-tier Tribunal is a Bangladeshi national and the issue to be decided in the case essentially was whether or not the Appellant was guilty of fraud in allowing a proxy to take a TOEIC test in 2012.
2. On the morning of the hearing the Presenting Officer provided a copy of the Temporary Migration Credibility Interview Template in relation to an interview that

had taken place on 7<sup>th</sup> September 2015 with the Appellant regarding the TOEIC test. The conclusion of that interview was that the interviewing officer found the Appellant to be credible. In light of that document, only provided on the morning of the hearing, the Presenting Officer on the day said, and what he said is referred to in the judge's Decision, that he had formed the view that he would struggle to satisfy the Judge that the Appellant had indeed acted dishonestly. For that reason he did not cross-examine the Appellant and so the judge heard no oral evidence from the Appellant. The Home Office Presenting Officer's only submission was to rely on the Letter of Refusal.

3. The judge also refers in paragraph 29 to the fact that he indicated at the hearing that, in the light of the position adopted by the Presenting Officer, the Appellant had reason to be optimistic. The judge however then goes on to say that having considered the evidence in its totality and more fully he found the Respondent had satisfied him that the Appellant's test was taken by a proxy.
4. I find that the Appellant would have had every reason to leave the hearing assuming he had won his appeal. The judge did not hear any evidence from him and it is highly likely that that was because the Presenting Officer felt his position unarguable. If the judge was going to change his mind having considered the evidence more fully then of course he was entitled to do that; however what he should have done in that event, as a matter of fairness, was to make his position plain to the parties and called them back so that he could hear evidence. That procedural unfairness is an error of law clearly material to the outcome and it is accepted by the representatives before me that on that basis the appropriate step is for the matter to be remitted back to the First-tier Tribunal for a full rehearing on all matters. There the Appellant will no doubt give oral evidence and be cross-examined. The original hearing was in Taylor House and that will be the appropriate venue on the next occasion.

### **Notice of Decision**

I see no justification for making an anonymity direction and do not do so.

Signed

Date 20th July 2018

Upper Tribunal Judge Martin