



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

Appeal Number: HU/16856/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 27 March 2018**

**Decision and
Promulgated
On 19 April 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**MR MD R
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hossain instructed by Tower Hamlet Barristers
Chambers

For the Respondent: Mr T Wilding, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to,

amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the refusal of leave to remain on human rights grounds. The respondent's refusal is based on a number of matters, in particular his lack of suitability because he is one of those considered to have participated in the ETS/TOEIC fraud at Synergy College and his ETS/TOEIC English language certificate has been withdrawn.
2. However, it is also said to be the case that the appellant has a partner now a wife, and a 3 year old daughter. The partner is settled and the daughter is a British citizen. There is a further son born in January 2018 who is also a British citizen.
3. It is common ground between the parties today and the Tribunal that there was an error of law in the First-tier Tribunal's approach in that the appeal was considered on the basis that the family could be expected to go to Bangladesh with the appellant if he is returned, but of course the appellant's children cannot be expected to go to Bangladesh as they are British citizens and indeed his wife is settled in the United Kingdom.
4. For the appellant, Mr Hossain sought to persuade me that the ETS/TOEIC question ought to be left open, but on the basis of the evidence before the First-tier Tribunal and before the Upper Tribunal there is no reason to interfere with the First-tier Tribunal Judge's conclusions thereon. I note that the appellant has not called for his voice recordings or produced any other direct evidence of his presence at the hearing centre on the date alleged. That is not a matter which can be dealt with in the context of an appeal against this decision. If the appellant wishes to challenge those conclusions he must do so by way of further submissions to the Secretary of State based on fresh evidence if that is what he is advised to do.
5. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed. in relation to the Article 8 issues only. The decision of the First-tier Tribunal in relation to ETS/TOEIC, and the findings of fact which that entailed, are to be preserved.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision in relation to the human rights element of the appeal. The decision will be remade in the First-tier Tribunal on a date to be fixed.

Signed: **Judith A J C Gleeson**
2018

Date: 18 April

Upper Tribunal Judge Gleeson

