



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

Appeal Numbers: HU/15217/2016

THE IMMIGRATION ACTS

**Heard at Manchester
On November 22, 2017**

**Decision & Reasons Promulgated
On November 23, 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR SAJIID ALI
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr McVeetie, Senior Home Office Presenting Officer

For the Respondent: Unrepresented

DECISION AND REASONS

1. I do not make an anonymity direction in this matter.
2. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-tier Tribunal so that, for example, reference to the respondent is a reference to the Secretary of State for the Home Department.

3. The appellant is a citizen of Pakistan and on March 3, 2016 he applied for leave to remain in the United Kingdom on family and private life grounds. The respondent considered the application but refused it on June 2, 2016.
4. The appellant appealed that decision on June 15, 2017 and the appeal came before Judge of the First-tier Tribunal Lloyd-Smith on March 2, 2017. In a decision promulgated on March 8, 2017 she allowed the appeal on human rights grounds.
5. The respondent appealed that decision on March 13, 2017 arguing that the Judge had erred in her approach. In short, the Judge placed the burden of proof on the respondent whereas she only carried the legal burden of proof. On the basis of the generic evidence that burden was met and the appellant then had to rebut that presumption on the balance of probabilities. The respondent argued that the Judge erred in her approach at [14] by seemingly placing the burden on the respondent. Based on that error the respondent argued the Judge erroneously looked at Section EX.1 of Appendix FM and it followed her approach to article 8 was also flawed.
6. Judge of the First-tier Tribunal Bird considered the grounds of appeal on September 18, 2017 and found there was an error of law.
7. At the hearing before me Mr McVeetie adopted the above ground of appeal. Ms Chaudry opposed the ground of appeal arguing [14] of the Judge's decision demonstrated she had the correct burden of proof in her mind.
8. Having heard submissions I indicated to the representatives that there was a material error.
9. Whilst the Judge had correctly identified that the respondent carried, what has commonly been described, the legal burden of proof the Judge failed to demonstrate she was aware the burden of proof had switched to the appellant. Whilst she gave reasons for showing the appellant could satisfy the burden placed on him, I am satisfied she approached this assessment from the wrong position. At [14] she reiterated that the respondent had not discharged the legal burden of proving that the TOEIC certificate was procured by dishonesty. That finding was materially incorrect because the generic evidence satisfies that burden and it seems the Judge, inadvertently, applied the wrong test.
10. That finding undermines the remainder of the decision as that finding forms part of her deliberations for both Section EX.1 of Appendix FM and article 8 ECHR.
11. I agreed to remit the case back to the First-tier Tribunal for a further hearing in light of Part 3 Section 7.1 to 7.3 of the Practice Statement and that the appellant should provide statements for both himself and his partner along with any other evidence he felt would assist his case.


12. I direct that the case be re-listed for a de novo hearing before any Judge other than Judge Lloyd-Smith.

NOTICE OF DECISION

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I remit the appeal back to the First-tier Tribunal.

Signed

Date 22/11/2017




Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I revoke the earlier fee award and make no fee award as the appeal remains outstanding.

Signed

Date 22/11/2017



Deputy Upper Tribunal Judge Alis