



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/32905/2015

THE IMMIGRATION ACTS

Heard at Field House
On 30 October 2017
Prepared 30 October 2017

Decision & Reasons Promulgated
On 18 December 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR MD SHAH JALAL MIA SOHEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hosein, Legal Representative from Redman
Solicitors

For the Respondent: Mr McVeety, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a nation of Bangladesh, date of birth 1 July 1979 appealed against the Respondent's decision, dated 29 September 2015 to refuse an application to vary leave to remain. His appeal against that decision

came before First-tier Tribunal Judge C Greasley who on 10 November dismissed the appeal on all grounds. In somewhat unusual circumstances he then issued a different decision which I have previously concluded he had no jurisdiction to do.

2. At a hearing on 14 August 2017 Mr Wilding, Senior Presenting Officer appeared for the Respondent and as a result of the issues raised and particularly the Judge's findings on whether the Appellant had dishonestly taken an ETS language certificate, TOEIC test using a proxy test taker resolved the matters, Mr Wilding would consider again whether or not other than the issue of suitability the Appellant succeeded on the five year route in Appellant FM of the Immigration Rules HC 395 as amended (the Rules). The parties were in agreement there was an error of law and accordingly I set a timetable and gave directions for a further response from the Respondent.
3. In the light of Mr Wilding's letter of 5 September 2017 it is agreed that the suitability issue no longer stood and that was the only basis on which to refuse the application to vary leave to remain under the Rules.
4. Accordingly Mr Wilding wholly correctly accepted that there was no outstanding basis for refusal under the five year route and accordingly invited me to determine the appeal on that basis.
5. In the circumstances having considered the papers I find that the Appellant met each relevant requirement of the five year route and accordingly was entitled to leave to remain.

NOTICE OF DECISION

The appeal is allowed.

ANONYMITY ORDER

No anonymity order was sought nor is one required

Signed

Date

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal succeeded on the basis of the considerations of matters arising after the date of the Respondent's decision and accordingly I decided that no fee award is appropriate.

Signed

Date 10 November 2017

Deputy Upper Tribunal Judge Davey