



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/24462/2015

THE IMMIGRATION ACTS

Heard at Field House
On 10th April 2018

Decision & Reasons Promulgated
On 16th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR ASHRAF AHMED CHOWDHURY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan, Counsel instructed by Immigration Solutions Ltd.

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge L M Shand QC promulgated on 24th November 2016 following a hearing at Hatton Cross on 6th September 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, citizen of Bangladesh, and was born on 18th August 1989. He appealed against a decision of the Respondent Secretary of State refusing his application for leave to remain in the UK as the spouse of a person present and settled in this country.

Background

3. The background to this appeal is complicated. The Respondent's original refusal decision was actually dated 28th May 2015. This was appealed and the file was given the reference number of IA/21440/2015. However, due to an administrative error by the Respondent it was deemed necessary to withdraw the decision and a new identical decision was inserted dated 19th June 2015. The Appellant and his representatives were advised of this by letters dated 19th June 2015 from the Respondent and also from the Tribunal on 22nd August 2016. The appeal continued in a new file numbered IA/24462/2016 and the parties were advised of the hearing by the Tribunal on 29th March 2016.
4. When the matter came before Judge L M Shand QC on 6th September 2016, the judge summarised accurately the background at paragraphs 4 to 7 and moreover stated at paragraphs 16 to 18 why he had decided to proceed with this appeal. At the hearing, however, neither the Appellant nor anyone on his behalf was present because the position was taken by the Appellant that the original decision had been withdrawn and so the matter had ended there.

Submissions

5. At the hearing before me on 10th April 2018 Mr Jarvis, appearing on behalf of the Respondent Secretary of State submitted that the following three things had been in favour of the Appellant notwithstanding his failure to attend. First, the judge had already made three findings.
6. First, that the Appellant had actually exercised no deceit at all (see paragraph 21). This was the allegation in respect of his English language test certificate. The Appellant had maintained that he had only ever sat an IELTS examination and had a certificate to that effect. He had never sat a TOEIC test and there was no certificate, in relation to which his veracity had been impugned by an ETS certification. The judge at paragraph 21 stated that "it is well established that where the Respondent alleges that an applicant has practised dishonesty or deception in an application there is an initial evidential burden on the Respondent which requires that sufficient evidence be adduced" and this was not the case here.
7. Second, submitted Mr Jarvis, the Appellant had also been able to show, contrary to what the Secretary of State had stated, that his wife was indeed a British citizen. The judge had referred to paragraph 23 in terms that:

“The Appellant states that he submitted his wife’s original passport and that the Home Office returned her passport on the same day but kept the Appellant’s application for more than eight months. That is confirmed by the Appellant’s wife’s statement. It is moreover supported by the letter from the Home Office dated 15th October 2014 which is at page 28 of the Appellant’s bundle”.

Therefore, the judge was firmly of the view that the Appellant had been able to show that “the Appellant has established that his wife is a British citizen” (paragraph 23).

8. Thirdly, submitted Mr Jarvis, there was a question of whether the Appellant’s wife was earning more than £18,600 at the time of the application. Although this was not an issue taken up by the Respondent Secretary of State, the judge was clear that “his wife was earning more than £18,600 at the time of the application” (paragraph 26). In view of these three matters being in favour of the Appellant, Mr Jarvis submitted that the appeal really ought to have been allowed in any event, regardless of whether the parties were in attendance on the date of the hearing. Mr Jarvis went on to say that there had been no cross-appeal in relation to the appeal lodged by the Appellant’s lawyers and given that this was a case the matter could only fall one way.
9. For his part, Mr Khan submitted that he could not add anything further to this. The Grounds of Appeal made two essential points. First, that the Appellant had only ever sat a IELTS test and the ETS cancellation in relation to the TOEIC certificate was plainly misconceived. Secondly, that his wife was a British citizen and it was wrong for the Secretary of State to say that only a copy of the British passport had been submitted when in fact the original had been submitted. Given that that was the case the refusal was unwarranted.

Error of Law

10. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision.

Remaking the Decision

11. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. For the reasons that I have given above I am allowing this appeal.
12. No anonymity direction is made.
13. This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

14th May 2018

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have made a fee award of any fee which has been paid or may be payable.

Signed

Date

Deputy Upper Tribunal Judge Juss

14th May 2018