



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

Appeal Number: HU/08752/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 10th December 2019**

**Decision & Reasons Promulgated
On 24 December 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**MR ABDUL SABBOR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Plowright (instructed by Turpin & Miller LLP)

For the Respondent: Mr N Bramble (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 of Judge Murray promulgated on 13th August 2019 after a hearing in Newport on 30th July 2019.
2. Judge Murray, in a very careful Decision, dismissed this human rights appeal.
3. One of the reasons the original application was refused by the Secretary of State was because it was said that the Appellant had cheated in a TOEIC test.

4. Judge Murray, after considering all of the evidence, came to the conclusion that the Appellant had not cheated in a TOEIC test. That finding has not been challenged by the Secretary of State. Having so found, the judge was then directed to the case of Khan and Others [2018] EWCA Civ 1684. She recited the relevant part of that case at paragraph 42 of her judgment. That case sets out the Secretary of State's policy where persons have been found, by the Tribunal, not to have cheated in a TOEIC test and what the Secretary of State would then do.
5. Unfortunately, the judge was misled at the hearing because the chronology that she was provided with in the Letter of Refusal was wrong. Reliant on that chronology, Judge Murray found, quite rightly, that Khan did not assist the Appellant and so dismissed the appeal. However, I have been provided with an accurate chronology and Mr Bramble on behalf of the Secretary of State accepts that Judge Murray was applying Khan on the basis of an incorrect immigration history. That was an error of fact amounting to an error of law and as that was the rationale leading to the appeal being dismissed it was clearly a material error of law.
6. I have been assisted considerably by Mr Bramble and Mr Plowright who have worked out the correct chronology and how Khan applies in this case and I am grateful to them because it is not a straightforward matter.
7. Having found a material error of law it was agreed by both parties that it was appropriate for me to immediately go on and redecide the matter. The Appellant's representatives had provided a supplementary bundle for the purposes of the remaking of the Decision and asked me to accept that into evidence. Mr Bramble also asked me to accept it into evidence and I did. That bundle contains a chronology which is extremely helpful. Mr Bramble accepted the chronology as set out therein. In particular, the key dates pertinent to my Decision are as follows.
8. The Appellant made an application on 26th February 2013 leading to a Decision on 24th May 2013 which granted him leave to remain until 8th September 2015. The leave was curtailed by the Secretary of State on 25th June 2013 with an expiry date of 30th September 2013. The Appellant then made an application, in time, on 2nd September 2013 although that application was initially voided for lack of a fee that fee was subsequently paid and accepted by the Secretary of State. A Decision on that application was made on 23rd December 2013. It was rejected because biometrics had not been provided. A further application was then made, within 28 days, on 13th January 2014. That was the relevant application, which was only decided by the Secretary of State on 23rd July 2015 when it was refused.
9. Therefore, Mr Bramble accepts that Khan has application to this case and in particular the section which reads: -

"For those whose leave had expired and who had made an in-time application for further leave to remain, which was refused on ETS grounds, the effect of an FtT determination that there was no

deception would be that the refusal would be withdrawn. The applicant in question would still have an outstanding application for leave to remain and the Respondent will provide them with a reasonable opportunity to make any further changes to their application, which will be considered on the basis of them not having employed any deception in the obtaining of their TOEIC certificate and they would in no way be disadvantaged in any future application they chose to make”.

10. That then is the situation which now applies in this case and it is accepted by both parties that the appropriate step is for me to allow the appeal on human rights grounds. It is then a matter for the Secretary of State to grant whichever leave he deems appropriate in accordance with his policy. The appeal to the Upper Tribunal is allowed.

Notice of Decision

The appeal is allowed on human rights grounds.

No anonymity direction is made.



Signed
2019

Date 23 December

Upper Tribunal Judge Martin

**TO THE RESPONDENT
FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award because the correct chronology was, for the first time, put before the Tribunal.



Signed
2019

Date 23 December

Upper Tribunal Judge Martin