



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

Appeal Number: HU/10150/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19 March 2019**

**Decision & Reasons Promulgated
On 29th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**M O F J
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Harvey, Counsel

For the Respondent: Mr E Tufan, HOPO

DECISION ON ERROR OF LAW

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Cox dismissing his appeal against the refusal by the Secretary of State to grant him leave to remain under Article 8 human rights grounds.
2. The appellant is a citizen of Bangladesh born on 17 February 1979.
3. The judge noted that a preliminary issue was raised by the appellant's Counsel, Ms Nelson, who identified that she had only at the hearing been served with evidence by the respondent of the test results in support of

the assertions made in the RFRL. I note that the test results in question were in relation to the TOEIC language test taken by the appellant at a centre in Birmingham. The judge said that Ms Nelson said she did not have the relevant authorities with her but the difference between questionable and invalid was important. She was unhappy that such evidence should be before the judge and asked that it be excluded.

4. The judge however said that having regard to the overriding objective and the fact that the issue was plain from the RFRL and that Ms Nelson had identified the issues, she could address any concerns in submissions and it was a matter for the judge as to the weight she attached to the results. Consequently, the judge refused the application to exclude the evidence and admitted it.
5. Judge E M Simpson granted permission to appeal holding that it was arguable that the appellant was the subject of procedural unfairness in the respondent's production on the day of hearing of ETS evidence specific to the appellant having before only furnished the respondent's ETS generic evidence, and the judge's admission of that evidence, arguably not with reference to the appellant's Counsel's request for its exclusion, rather there appeared a failing to provide the appellant and his Counsel time on the day to deal with matters and/or adjourn for these purposes.
6. Mr Tufan accepted that there was a procedural unfairness caused by the judge's failure to adjourn the hearing so that the issues raised by the respondent at the last minute could be properly dealt with by the appellant's Counsel.
7. Ms Harvey concurred with Mr Tufan's submission that there was procedural unfairness and submitted that the case should go back to the First-tier Tribunal for rehearing.
8. In the light of the above, I found that the judge's decision cannot stand. I set it aside in order for it to be re-made. The appellant's appeal is remitted to the First-tier Tribunal for rehearing by a judge other than First-tier Tribunal Judge Cox.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 26 March 2019

Deputy Upper Tribunal Judge Eshun