



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

Appeal Number: HU/18930/2016

THE IMMIGRATION ACTS

Heard at Field House

On 11 December 2018

Decision given orally at hearing

**Decision & Reasons
Promulgated**

On 9 January 2019

Before

**THE HON. MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE KEBEDE**

Between

**MUHAMMAD MAYNUL ISLAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Biggs, Counsel instructed by Universal Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal, brought with permission that followed the grant of a judicial review by Stephen Morris J in the High Court, of a decision of the First-tier Tribunal which, following a hearing at Hatton Cross on 13 December 2017, dismissed the appellant's human rights appeal.

2. The crucial issue in the appeal is common ground - whether the appellant had used deception in connection with taking an English language test in connection with a previous application for leave.
3. The judge carried out a detailed examination of the evidence. Unfortunately, however, we are compelled to reach the conclusion that the judge erred in law. It is apparent from the decision, in particular at paragraph 58, that the judge regarded the so-called evidential burden on the appellant in matters of this kind as amounting to a legal burden. In any event, the evidential burden was treated by the judge as requiring far more of the appellant than the case law makes plain it is necessary to raise, by way of a plausible explanation that puts the entire task back in the hands of the respondent, who throughout bears the legal burden of proving dishonesty to a civil standard.
4. This finding vitiates the conclusions of the judge, which is regrettable, given the effort that was put into writing the determination. It means that we are not required to engage with the second of Mr Biggs's grounds, which relates to an alleged failure by the judge to have regard to case law which is not binding on the First-tier Tribunal but which Mr Biggs says nevertheless should have been taken into consideration. We have to say that we find this submission would have been problematic, notwithstanding that the First-tier Tribunal is a specialist tribunal which is supposed to know the relevant law.
5. We set aside the decision of the First-tier Tribunal. We have considered what follows from that.
6. In the circumstances, we accept Mr Biggs's submission that paragraph 7.2(b) of the Practice Statement is engaged. The nature of the fact-finding task is such that in the circumstances it is appropriate for this case to be remitted to the First-tier Tribunal rather than re-heard in the Upper Tribunal.

No anonymity direction is made.

Signed

Date: 20 December 2018

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber