



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002656
First-tier Tribunal No:
HU/50761/2021
IA/05187/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 April 2023

Before

UPPER TRIBUNAL JUDGE OWENS

Between

Mr MD MAHFUJUL ISLAM
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lewis, Counsel instructed by Wilden Legal Solicitors
For the Respondent: Mr Wain, Senior Presenting Officer

Heard at Field House on 21 April 2023

DECISION MADE PURSUANT TO RULE 40(3) OF THE
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge H Graves sent on 18 March 2022 dismissing his appeal against the decision dated 5 March 2021 refusing his human rights claim.
2. The judge found that the appellant fraudulently obtained his TOEIC English language test certificate; that the suitability provisions of the rules apply; that there are no very significant obstacles to the appellant returning to Bangladesh and that it would not be a disproportionate breach of Article 8 ECHR to remove the appellant from the UK.
3. At the outset of the error of law hearing, Mr Wain for the respondent conceded that the judge had made a material error of law in line with Ground 1, in that the judge had made an error of fact which had contributed to her rejecting the appellant's "innocent explanation".

4. The respondent conceded that when the judge found at [81] that the appellant had taken his English language test on 5 and 15 February 2013 and had submitted his application on 16 February 2013, she drew an inference that the appellant had paid a bribe in order to obtain his English language test result certificate on the next or same day.
5. The respondent concedes that this is an error of fact because although the impugned English language test took place on 6 February 2013 and the application was sent on 16 February 2013, it is accepted that the test certificate itself was not sent in until later. It was therefore an error of the judge to infer from the timing of the procurement of the certificate that there had been dishonesty on this basis and further no evidence before the judge on which to base her assertion that it was possible to pay bribes to obtain expedited certificates as opposed to obtaining positive results.
6. I am satisfied that the respondent's concession is appropriate, despite the decision being otherwise careful and detailed. The decision therefore involved the making of a material error of law and impacts on the judge's findings on the appellant's "innocent explanation" as a whole which in turn impacts on the Article 8 ECHR assessment. The decision is therefore set aside in its entirety with no findings preserved. Since the decision is set aside on this ground, I do not go on to deal with the remaining grounds.
7. The Secretary of State has now served the "Look up tool" and other evidence specific to this appellant on the Tribunal, and this material will be before the Tribunal at the remitted hearing.
8. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing, but I have summarised my reasons for the benefit of the parties.

Notice of Decision

9. The decision of the First-tier Tribunal involved the making of an error of law.
10. The decision of the First-tier Tribunal is set aside in its entirety with no findings preserved.
11. The decision is remitted to the First-tier Tribunal for a de novo hearing before a judge other than First-tier Tribunal Judge H Graves.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 April 2023