



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005264

First-tier Tribunal No: HU/15184/2018

THE IMMIGRATION ACTS

Decision & Reasons Issued:

11th January 2024

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Khurram Shahzad
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr S Ahmed of No. 12 Chambers.

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

Heard at Field House on 4 January 2024

DECISION AND REASONS

1. By a “Decision and Directions” (signed on 29 June 2023 and served on the parties on 11 July 2023 (the “EOL Decision”), I set aside the decision of Judge of the First-tier Tribunal Hyland (hereafter the “judge”) who, in a decision promulgated on 25 February 2022 following a hearing on 19 November 2022, dismissed the appeal of the appellant, a national of Pakistan born on 31 July 1987, on human rights grounds (Article 8) against a decision of the respondent of 2 July 2018 to refuse his application of 15 December 2014 for leave to remain on human right grounds (Article 8, private life).
2. The respondent considered that the appellant had used an English language test certificate that had been fraudulently obtained in support of his previous application (dated 20 June 2012) for leave to remain. The test in question was a TOIEC test taken on 16 May 2012 at the Thames Education Centre.

3. The judge found that the appellant had obtained his TOIEC test certificate by deceit. She then went on to consider his private life claim under Article 8, taking into account, inter alia, that she had found that he was unable to meet the requirements of the Immigration Rules due to his deception. She considered that this weighed against him. She was not satisfied, in all of the circumstances, that the respondent's decision would amount to a disproportionate interference.
4. Terms defined in the EOL Decision have the same meaning in this decision.
5. The appeal was listed before me on 4 January 2024 for the decision on the appellant's appeal against the respondent's decision to be re-made.
6. At the hearing on 4 January 2024, Mr Walker conceded the appellant's appeal. He conceded that the respondent could not discharge the overall burden of proof upon him to show that the appellant had obtained his TOIEC certificate by deception. He asked me to re-make the decision on the appellant's appeal by allowing it. It follows that the respondent accepts that, in the circumstances of this case, the decision amounts to a disproportionate interference with the appellant's right to his private life under Article 8.

Decision

The making of the decision of the First-tier Tribunal involved the making of any error of law sufficient to require it to be set aside.

I re-make the decision on the appellant's appeal by allowing his appeal against the respondent's decision on human rights grounds (Article 8).

Signed
Upper Tribunal Judge Gill

Date: 5 January 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email