



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

Appeal Number: IA/19470/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7 May 2015**

**Decision & Reasons Promulgated
On 12 May 2015**

Before

**THE HONOURABLE MRS JUSTICE MCGOWAN
DEPUTY UPPER TRIBUNAL JUDGE PICKUP**

Between

MOHAMMED NEZAM UDDIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mahmood

For the Respondent: Mr A Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Bangladesh. He was born on 4 October 1984. His immigration history is set out in detail in the determination and reasons of the First-tier Tribunal which we adopt and do not need to repeat in detail here.
2. He appeals against the SSHD's decision of 7 April 2014 refusing to vary his leave to remain in the UK and to remove him by direction under s.47 of Immigration, Asylum and Nationality Act 2006.

BACKGROUND

3. The letter of refusal of 7 April 2014 sets out in detail the grounds upon which the decision was reached. She had also considered the right of the Appellant to a family life under Article 8.
4. The Appellant had taken an English language test through ETS. The tests carried out through that institution were all called into question when wide spread cheating was alleged and in some cases proved. His leave to remain depended, in part, on the validity of his test result. The SSHD had refused his application to vary his leave.
5. The Appellant had applied for a Judicial Review which was sealed by a consent order on 23 December 2014 for three months on the basis that his case was to be reviewed by the SSHD.
6. On 28 February 2014 the SSHD wrote to solicitors acting for the Appellant saying that the enquiries into his ETS test were complex and would take longer than three months, she offered an alternative to waiting for the resolution in that the Appellant could take another test. He was asked to let the SSHD know the outcome of any new test and provide the original of a bank statement, only a photocopy had been sent with the application and that was not acceptable within the rules, by 31 March 2014.
7. He did not comply with those requirements. No response was sent. In fact the Appellant had sat another test on 3rd March 2014 but he did not inform the SSHD of that fact nor that he was awaiting the results: he passed the test and received a certificate on 9 April 2014. The SSHD wrote on 7 April 2014 refusing the application and giving full reasons for her decision.
8. The Appellant appealed that decision to the First-tier Tribunal on the basis that the her decision did not comply with the Immigration Rules and, in any event, was incompatible with his human rights. Further it was submitted that the consent order and the offer of the chance to sit a new test meant that the SSHD had acted unlawfully in the subsequent refusal.
9. The First-tier Tribunal found that the Appellant was a credible witness. He found that the Appellant's case did not fall within the Immigration Rules in any event.
10. The Tribunal found that he had not submitted the original document as required. Nor had he provided the new test certificate or even notified the SSHD that he had done the test and that the certificate would be available soon.
11. The Tribunal also found, after careful consideration and analysis, that the Appellant's family life would not be prejudiced. His spouse was a British citizen who came from a Bangladeshi heritage, she spoke Sylheti and had visited Bangladesh a number of times. His child was still a baby and had no life outside the immediate family. Their family life could continue by

their living together in Bangladesh, if they chose to move together, and there were no insurmountable obstacles to that course.

APPEAL

12. On appeal it was submitted that the Appellant had, in fact, satisfied the Immigration Rules, in that he had sufficient income and savings and that the SSJHHD should have accepted the photocopy as proof. We cannot accept that submission. The requirement to prove his financial suitability remained on the Appellant and was not discharged by the provision of a copy document. He was, in any event, given a second chance to provide the original in the letter of 26 February 2014 and failed to do so within the time permitted.
13. Further it was argued that by her letter of 26 February 2014, stating that her enquiries would not be concluded within three months, the SSHD was in breach of the terms of the consent order. We do not accept that submission. The letter actually gave the Appellant longer than he would have had under the terms of the consent order. The SSHD told him that her enquiries into the test could not be completed in the three months. If, and it was his choice, he chose not to wait he could take a new test. That is what he chose to do but he did not comply with the requirement to notify the SSHD of the results of the test by 31 March 2014, more importantly he did not notify her that he had chosen to take a new test and the results would not be available until early April.
14. The appeal must fail under the Immigration Rules.
15. It was argued that the appeal should succeed on human rights grounds. It was submitted that as his spouse and child were both British subjects it would be unfair to expect them to leave the UK and go to live in Bangladesh if the family was to stay together. It was submitted that no or no sufficient regard had been given to the child's position under s55 of Borders, Citizenship and Immigration Act 2009. That submission cannot succeed. The First-tier Tribunal gave detailed reasons setting out a careful consideration of the findings on this point. The Appellant's wife, although British born, comes from a Bangladeshi tradition, she has visited the country a number of times and speaks the language. So much so that she acted as interpreter for the Appellant in the appeal hearing. His child is also a British subject but is still an infant and has no life outside the immediate family. It is in the best interest of the child to remain in the care of his mother but there are no insurmountable obstacles to the mother going to Bangladesh to live with her husband, if that's what she chooses to do. She has that choice but is not compelled to go.
16. The appeal must also fail on human rights grounds.

Signed

Date **7 May 2015**

Mrs Justice McGowan