



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

**Appeal Number: IA/38750/2014**

**THE IMMIGRATION ACTS**

**Heard at Birmingham Employment  
Centre  
On 9 February 2016**

**Decision & Reasons  
Promulgated  
On 12 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY**

**Between**

**HARDEEP SINGH  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr N Ahmed, instructed by Rakkani Solicitors  
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals against the decision and reasons statement of First-tier Tribunal Judge Narayan that was promulgated on 6 July 2015.
2. As I announced at the end of the hearing, I would allow the appeal because the decision and reasons are infected with legal error. The decision has to be remade and it is appropriate to remit it to the First-tier Tribunal for a fresh hearing. I reserved my reasons, which I now give.
3. Without intending any disrespect to either Mr Ahmed or Mr Harrison, there is no need for me to labour through the arguments each presented because the errors are obvious. Mr Harrison acknowledged this to be the case and had no strong submissions to make but was unable to concede the appeal.

4. The first error relates to the application of the burden of proof. In this case much turned on the Secretary of State's allegation that the appellant had obtained an English language test qualification by fraud. It is settled case law that the burden of proof lies on the respondent in such matters yet at paragraphs 8 and 21 Judge Narayan places that burden on the appellant. This is not a situation where the error can be attributed to a slip (such as by the use of standard paragraphs when drafting the decision) because it is clear from the findings made that Judge Narayan thought the burden of proof lay on the appellant in respect of the allegation of fraud.
5. This finding is sufficient of itself to remit the appeal but is not the only error. At paragraph 22 Judge Narayan expressly finds that the appellant did sit the impugned test. It may be that he has simply omitted a negative but given the confusion over the burden of proof I cannot be satisfied this is merely a typographical slip.
6. The final error relates to the approach to article 8 ECHR. As already noted, the judge misdirected himself in relation to the burden of proof on the fraud issue. That finding is central to his article 8 assessment and therefore that finding cannot stand.
7. In light of these errors, the case has to be reheard. The appellant has been deprived of a fair hearing because the judge inverted the burden of proof and this is reason for the matter to be remitted.

## **Decision**

The appeal to the Upper Tribunal is allowed because the decision and reasons statement of First-tier Tribunal Judge Narayan contains legal error and his decision is set aside.

## **Remittal**

The appeal is remitted to the First-tier Tribunal for a fresh hearing before a judge other than Judge Narayan.

To avoid potential confusion, nothing is preserved from the earlier decision.

The parties request the remitted hearing to be in Birmingham.

Signed

Date

Judge McCarthy  
Deputy Judge of the Upper Tribunal