



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

Appeal Number: OA/10174/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 May 2017**

**Decision & Reasons Promulgated  
On 01 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR MD MIZANUR RAHMAN  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Respondent: Mr Z Malik, Counsel  
For the Appellant: Mr P Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. For convenience, I refer to the parties as they were in the First-tier Tribunal with the Secretary of State as respondent and Mr Rahman the appellant.
2. No anonymity direction was made in the First-tier Tribunal and none is required now.

**Background**

3. The appellant is a Bangladeshi citizen who submitted a certificate from Educational Testing Service ("ETS") in connection with an application to study in the UK. The respondent later decided that there was significant evidence to conclude that the appellant's certificate had been fraudulently obtained by the use of a proxy test taker. As a result, she decided on 20

August 2014 that he should be removed from the UK pursuant to s10 of the Immigration and Asylum Act 1999. The appellant appealed, from outside the United Kingdom, against that decision. His appeal was heard by First-tier Tribunal Judge Thew (“the FTTJ”) who allowed it in a decision promulgated on 1 November 2016.

4. The respondent sought permission to appeal and this was granted in the following terms:

“... It is arguable that in coming to his conclusions the Judge did not take note of the guidance in SM and Quadir [sic] [2016] UKUT 00229 despite reference being made to it in the decision.”

5. Hence the matter came before me today.

6. At the outset of the hearing, I showed Mr Nath the respondent’s bundle in the First-tier Tribunal; it contains only the notice of liability to removal, reasons letter, notice of immigration decision and the notice and grounds of appeal together with those documents submitted by the appellant in support of his appeal. Mr Nath accepted it does not contain any evidence to support the respondent’s assertion that the appellant had submitted a fraudulent certificate.

7. Mr Nath conceded, appropriately in the circumstances, that the respondent had not produced, in the First-tier Tribunal, any evidence to support her assertion that the appellant had exercised deception in support of an application for leave to remain as a student. He accepted that the FTTJ’s decision was therefore unassailable.

8. Mr Malik referred me to Beatson LJ’s comments at paragraph 30 of **SSHD v Shehzad [2016] EWCA Civ 615** at [30]:

“... in the circumstances where the generic evidence is not accompanied by evidence showing that the individual under consideration’s test was categorised as “invalid”, I consider that the Secretary of State faces a difficulty in respect of the evidential burden at the initial stage.”

However, this is a case where the respondent did not even produce, at the appeal hearing in the First-tier Tribunal, the generic evidence, quite apart from any evidence relating to the appellant himself.

9. The appellant’s appeal before the FTTJ was bound to be successful in such circumstances, the respondent having failed to meet the evidential burden on her.

### **Decision**

10. The making of the decision of the First-tier Tribunal did not involve a material error of law and the decision is not set aside.

Signed  
Deputy Upper Tribunal Judge A M Black

Date 30 May 2017

