



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

Appeal Number: HU/22637/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 14 November 2018**

**Decision and
Promulgated
On 28 December 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**FORHAD [H]
(No anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Singer of Counsel

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh born in 1987. He appealed against a decision of the respondent made on 15 September 2016 to refuse his application for leave to remain on the basis of family and private life. He claimed to be married to a British citizen and to be living together in a genuine and subsisting relationship.

2. The application was refused under the suitability requirements of Appendix FM of the Immigration Rules because the respondent considered that the appellant had fraudulently taken a TOEIC speaking test with Educational Testing Service by the use of a proxy test taker.
3. Further, although it was accepted that there is a genuine and subsisting relationship with his wife there are no insurmountable obstacles for the appellant, his wife, step-daughter born in 2008 and a son born in 2016 to continue their lives in Bangladesh. His wife and son are British citizens, his step-daughter is a Bangladesh citizen.

First tier hearing

4. He appealed.
5. Following a hearing at Taylor House on 24 May 2018 Judge of the First-tier Tribunal Zahed dismissed the appeal. He found that the appellant had used deception in his TOEIC test and used the CAS he thereby obtained to get further leave to remain.
6. He went on to find that there were no insurmountable obstacles to the appellant and family living in Bangladesh given the family support both he and his wife have there.
7. He sought permission to appeal. In a decision made on 9 October 2018 a judge found no arguable error in relation to the finding of deception in the taking of the test and refused permission on that ground. However, the judge considered it arguable that inadequate consideration had been given to the children's circumstances and granted permission on that ground only.

Error of law hearing

8. At the error of law hearing before me Ms Everett agreed with Mr Singer that inadequate consideration had, indeed, been given to the children's circumstances. Whilst brief reference had been made to the best interests of the two year old son who is a British citizen, with the finding that at such a young age his life is centred on his parents and with the help of extended family there it is reasonable for him to live in Bangladesh, it is not apparent that any consideration was given to the best interests of the step-daughter who is nearly 10 years of age and has been in the UK for over 5 years. I agreed.
9. Further, no reference had been made to the Immigration Directorate Instruction - Family Migration - Appendix FM, Section 1.0(B) "Family Life as a Partner or Parent and Private Life, 10 Year Routes" (February 2018) which provides that it is unreasonable to expect a British citizen child to leave the UK with the applicant parent facing removal unless the parent has committed significant or persistent criminal offences falling below the

thresholds for deportation set out in paragraph 398 of the Immigration Rules or has a very poor immigration history having repeatedly and deliberately breached the Rules.

10. By failing to make adequate findings on material matters the judge erred.
11. Both parties agreed that the appropriate course was for the case to be reheard in the First-tier Tribunal so that proper findings can be made on the best interests of both children and the reasonableness of return and proportionality. As indicated, the findings of deception in respect of the TOEIC decision stand.
12. The decision of the First-tier Tribunal is set aside. The nature of the case is such that it is appropriate under section 12 of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement paragraph 7.2 to remit to the First-tier Tribunal for a fresh hearing. The member(s) of the First-tier Tribunal chosen to consider the case are not to include Judge Zahed.
13. No anonymity order made.

Signed:

Date: 18 December 2018

Upper Tribunal Judge Conway