



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/01237/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 28 March 2018

Decision & Reasons Promulgated  
On 22 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHAZEDUR RASHID  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer  
For the Respondent: In Person

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Majid promulgated on 8 August 2017 allowing the appeal of Mr Shazedur Rashid against a decision of the Secretary of State for the Home Department dated 19 February 2016.
2. Although before me the Secretary of State for the Home Department is the appellant and Mr Rashid is the respondent for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Mr Rashid as the Appellant and the Secretary of State for the Home Department as the Respondent.
3. The hearing was listed before me today at 10.00am. The Appellant was present ahead of time and passed to the clerk to the Tribunal a letter from his representative Simon

Noble Solicitors dated 27 March 2018. The letter is headed "*Re: An earnest request to hear the above appeal after 12pm given the concerned legal representative has another hearing at Taylor House...*". The body of the letter goes on to state that the legal representative, Mr M M Rahman, has another hearing at Taylor House on the same date, that his case is first in the list and is expected to be heard and completed by 11.00am. It goes on to say that under these circumstances it is "*earnestly*" requested that the Appellant's appeal be heard after 12.00 noon so that Mr Rahman can conduct the hearing.

4. Both the letter and the situation are wholly unsatisfactory. No explanation is offered in the letter as to why alternative arrangements were not made to ensure that both of this firm's clients could be separately represented. Nothing is offered by way of explanation as to how it came to be that Mr Rahman found himself to be double-booked, or what steps were taken to try and remedy that predicament.
5. Be that as it may, the Tribunal had other business with which to deal and accordingly I did not take issue with the contents of the letter at 10am. That other business was concluded by 11.40am. Even then bearing in mind there were some administrative matters to which to attend, I decided that I would wait until 12 noon before calling on Mr Rashid's case.
6. At 12 noon there was still no appearance by Mr Rashid's representative. I called the case on. I explained to the Appellant that I intended to proceed without his representative being present. Mr Rashid suggested that he had received a recent communication from Mr Rahman to suggest that he was on his way. This was not satisfactory: as indicated above no proper explanation had been offered for the failure to be able to provide the Appellant with representation at 10am; the Appellant and his representative had had the benefit of the indulgence up until 12 noon as requested. In the circumstances I indicated that I would proceed without the Appellant's representative
7. I invited the Appellant's participation in the hearing, and began to discuss the facts and circumstances of the appeal with him. At this point he indicated that he was not minded to discuss the case in the absence of his legal representative. Whilst I understood his reticence in this regard I indicated to him that I would nonetheless be proceeding and it was therefore essentially a matter for him as to whether or not he wanted to address me in any way in respect of his appeal. He indicated that he did not wish to do so.
8. I duly proceeded with the appeal.
9. I pause to note that if the issues in the appeal had been more complex or more controversial I might have been minded to extend a further indulgence to Mr Rahman

with regard to the commencement of the hearing notwithstanding the discourtesy of his non-attendance. However the issues are simple and straightforward; indeed in my judgment the outcome today seems to me inevitable. I struggle to conceive of anything that either the Appellant or Mr Rahman might have said to me that would suggest that the appeal should be dealt with in any other way than by setting aside the decision of First-tier Tribunal Majid and remitting the appeal to be heard again with all issues at large by a First-tier Tribunal Judge other than Judge Majid.

10. I have reached this conclusion in the following circumstances.
11. The Appellant is a citizen of Bangladesh born on 15 December 1978. He entered the UK on 18 October 2010 with entry clearance as a Tier 4 Migrant conferring leave until 30 June 2012. He then made an application 'in time' for variation of leave to remain; in support of his application he relied upon a TOEIC certificate from Educational Testing Services ('ETS') based on tests taken on 23 May 2012. He was initially refused further leave to remain, but successfully appealed to the IAC: he was granted further leave to remain as a Tier 4 Migrant from 23 July 2013 until 2 September 2014.
12. On 2 September 2014 the Appellant again applied for further leave to remain as a Tier 4 Migrant. Whilst this application was pending he varied it to a Tier 2 application by way of letter dated 14 November 2014.
13. The Respondent refused the Appellant's application for reasons set out in a combined Notice of Immigration Decision and 'reasons for refusal' letter ('RFRL') dated 19 February 2016 with particular reference to paragraphs 322(2) and (5), and 245HD(a) of the Immigration Rules. The Respondent concluded that the TOEIC certificate from ETS had been obtained using a proxy tester, and on that basis determined that the Appellant's presence in the UK was not conducive to the public good because he had displayed a flagrant disregard for the public interest and had employed deception and fraud in obtaining the TOEIC certificate. This was the core issue in the appeal.
14. First-tier Tribunal Judge Majid has been the subject of extensive criticism by the Upper Tribunal in the decision of **MM v Secretary of State for the Home Department** (and associated cases) (reference AA/06906/2014), a decision of a panel comprising Vice-President Ockelton, Upper Tribunal Judge O'Connor and Upper Tribunal Judge Smith. Many of the criticisms to be found in that decision of the Upper Tribunal with respect to the use of generalised, and often irrelevant, paragraphs are apposite in the instant case: see in particular paragraphs 22, 24, 42 and 43 of **MM**.
15. More particularly, on the facts of the instant case it is abundantly clear that the First-tier Tribunal Judge fundamentally misunderstood the nature of the core issue that was before him.

16. At paragraph 13 Judge Majid states:

*“The questions from both representatives wrongly focused on the exam day and did not deal with the issues to be decided in this appeal. Of course the main issue was whether the examination giving institution was duly approved by the Home Office.”*

17. It is absolutely clear that the representatives were appropriately focusing on the examination day because it was in issue whether the Appellant had himself taken the TOEIC examination, or whether somebody else had taken it for him. The main issue in the appeal was **not** whether the examination giving institution was duly approved by the Home Office.
18. The consequence is that the Judge has failed to address the issue in the appeal. The appeal was allowed in favour of the Appellant entirely in the absence of addressing the nature of the Respondent’s case. It is pointed out in **MM v Secretary of State for the Home Department** that Judge Majid’s decisions frequently explores matters that are peripheral or otherwise irrelevant to the real issue or issues. Thus it was here. In the circumstances it is inevitable that the decision of Judge Majid must be set aside.
19. The only proper outcome - bearing in mind that both parties have effectively been denied a full and fair hearing in this appeal - is that the matter now be remitted to the First-tier Tribunal to remake the decision with all issues at large.

**Notice of Decision**

20. The decision of the First-tier Tribunal is vitiated for fundamental error of law and is set aside.
21. The decision in the appeal is to be remade before the First-tier Tribunal by any judge other than First-tier Tribunal Judge Majid with all issues at large.
22. No anonymity direction is sought or made.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.*

Signed:

Date: 16 May 2018

**Deputy Upper Tribunal Judge I A Lewis**