



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

Appeal Number: HU/02963/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 14 February 2019**

**Decision & Reasons
Promulgated
On 01 March 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**MD MAHBUBUR RAHMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Basith, Taj Solicitors

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Mr Rahman against the decision of the First-tier Tribunal, which dismissed his appeal against the refusal of the Secretary of State on 9 January 2018 of an application for leave to remain in the United Kingdom. The central point was the English language test which he took in July 2012, in which it was said on behalf of the Secretary of State was

one where there was significant evidence to conclude that his certificate was fraudulently obtained by the use of a proxy test taker.

2. The judge considered the evidence on this and concluded that she was satisfied that it was likely the appellant did not take the test himself and the respondent was entitled to invalidate the test and as a consequence therefore he could not meet the suitability requirements of the Rules and the appeal was dismissed.
3. The appellant sought and was granted permission to appeal against this decision on the basis essentially of a lack of proper reasoning. It was argued that though the judge had considered the evidential burden, the initial burden on the Secretary of State, which it was concluded was discharged, there had not been a proper assessment of the evidential burden on the appellant, bearing in mind such matters as were pointed out as his passing the IELTS test in November 2008 and the detailed description he provided of taking the test on the day.
4. The matter is summed up rather well I think in the grant of permission. The IELTS is a test that is an approved one for the UK immigration purposes. The judge did not make a clear finding as to whether or not the appellant had provided a reasonable explanation. It was unclear what of his evidence the judge accepted or rejected and was required to make a finding that the respondent had or had not shown that the reasonable explanation should be rejected and the judge had essentially just relied on a number of invalid tests at the test centre and arguably as was said at that stage, did not engage with the appellant's evidence.
5. I think Mr Avery is entirely right on consideration to conclude that the challenge to the decision is made out in this case and I have not needed to hear from Mr Basith as a consequence, except as to his agreement with that and with the proposed course of action. It does seem to me that the decision is materially flawed by errors of law and lack of proper reasoning in the manner identified, in particular in the grant of permission to appeal and as a consequence the decision will have to be remade and I also agree with the representatives that in the circumstances the degree of remaking that would be necessary in this case is such that it will have to go back to the First-tier Tribunal for a full rehearing in Birmingham.

No anonymity direction is made.



Signed

Date 28 February 2019

Upper Tribunal Judge Allen