



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04830/2018**

THE IMMIGRATION ACTS

**Heard at Field House
On 5 November 2019**

**Decision & Reasons
Promulgated
On 8 November 2019**

Before

**UPPER TRIBUNAL JUDGE PLIMMER
HER HONOUR JUDGE STACEY**

Between

JAMIAL HASAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Syed-Ali, Counsel

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

DECISION AND REASONS

1. The appellant is a citizen of Bangladesh, who arrived in the United Kingdom ('UK') in January 2008 as a student.
2. In a decision sent on 1 February 2019, First-tier Tribunal ('FTT') Judge Fox dismissed the appellant's appeal on human rights grounds. The appeal turned on the respondent's allegation, as contained in a letter dated 4 February 2018, that the appellant used deception when relying upon TOEIC certificates dated 21 March 2012 and 17 April 2012 respectively, said to be taken from tests at New College of Finance. The appellant refuted the allegation of

deception by advancing evidence that he did not rely upon a TOEIC certificate dated 17 April 2012 and never took a test at New College of Finance. The FTT concluded that the respondent displaced the burden of establishing deception.

3. The appellant appealed against the FTT's decision, submitting inter alia, that the FTT failed to assess his "innocent explanation" and its conclusion was irrational.
4. In a decision dated 26 July 2019, Upper Tribunal ('UT') Judge Stephen Smith granted permission to appeal to the UT. He observed, inter alia, that the FTT's decision is difficult to follow. The respondent has not submitted a rule 24 notice.
5. At the beginning of the hearing Ms Everett conceded that there are errors of law in the FTT's decision, requiring it to be set aside in order for the decision to be remade de novo.
6. We are satisfied that this concession was properly made and can state our reasons briefly. The FTT has not provided adequate or rational reasons for rejecting the appellant's explanation that the SSHD's had not established deception. The appellant's explanation was straightforward: the SSHD relied upon evidence that could not relate to him as the test centre relied upon was inaccurate. Having accepted that errors could have been made on the part of ETS at [38], the FTT failed to expressly address whether errors were made in relation to this appellant.
7. Both representatives agreed that entirely new factual findings were required and this should be done in the FTT. We have had regard to paragraph 7.2 of the relevant *Senior President's Practice Statement*, and the nature and extent of the factual findings required in remaking the decision, and have decided that this is an appropriate case to remit to the FTT. This is because completely fresh findings of fact are required.

Decision

8. The appeal against the decision of the FTT is allowed and the FTT's decision is set aside.
9. The decision shall be remade in the FTT by a FTT Judge other than Judge Fox.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date: 5 November 2019