



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

Appeal Number: HU/13339/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 December 2018**

**Decision & Reasons Promulgated
On 20 February 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**DULAL AHMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Biggs, Counsel instructed by Londonium Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. In a decision sent on 15 August 2018, Judge Plumptre dismissed the appeal of the appellant, a citizen of Bangladesh, against a decision made by the respondent dated 20 October 2017 to refuse his application for ILR. The judge considered that the appellant was caught by the provisions of paragraph 322(5) of the Immigration Rules because he had fraudulently used a proxy to sit a TOEIC English Language Test on his behalf on 29 August 2012 at Colwell College.

2. I heard detailed submissions from Mr Biggs at the end of which Mr Tarlow said he was persuaded by them not to seek to defend the judge's decision. I too am persuaded by at least three of these submissions that the judge materially erred in law in more than one respect: in considering at paragraphs 13 and 59 that the legal burden of proving the appellant had an "innocent explanation" rested on him; in judging that the appellant had not provided an innocent explanation on the basis of an unreliable and factually mistaken consideration of the evidence relating to his academic certificates and references and letters of support (which had been provided to the respondent and which the respondent had not challenged); and in failing to conduct the hearing in a procedurally fair way that identified to the appellant the judge's own issues about this documentation (or perceived lack of it) and afforded him proper opportunity to address them.
3. For the above reasons I set aside the judge's decision for material error of law. Both parties were of the view that if I set aside the judges' decision the case should be remitted to the First-tier Tribunal because the decision on the issue of whether the appellant had used deception would require a de novo hearing at which the appellant could give oral testimony and be cross-examined.
4. To conclude: the decision of the First-tier Tribunal Judge is set aside for material error of law and the case is remitted to the First-tier Tribunal.

No anonymity direction is made.

Signed

Date: 14 January 2018



Dr H H Storey
Judge of the Upper Tribunal