



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/17942/2019 (V)

**THE IMMIGRATION ACTS**

Heard remotely at Field House  
On 8<sup>th</sup> February 2021

Decision & Reasons Promulgated  
On 10<sup>th</sup> March 2021

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

MD MONIR HOSSAIN  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Biggs, instructed by JKR Solicitors

For the Respondent: Mr P Duffy, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

**DECISION AND REASONS**

1. The Appellant is a citizen of Bangladesh born on 1 January 1988. He appeals against the decision of First-tier Tribunal Judge Courtney, promulgated on 2 April 2020, dismissing his appeal against the refusal of indefinite leave to remain on human rights grounds.
2. Permission to appeal was granted by First-tier Tribunal Judge Rhys Davies on 4 June 2020 on the following grounds: "In an otherwise detailed and careful decision, it is arguably a material error for the Judge to have concluded that the issue of deception was settled on the basis of an allegation in a previous refusal letter that had not been successfully appealed. All the grounds are arguable."
3. It was agreed by the parties that the judge erred in law for the reasons given in the grounds for permission to appeal and the decision dismissing the appeal should be set aside. It was agreed the appeal should be allowed on Article 8 grounds.
4. There was no challenge to the judge's findings at [22] to [39]. The Respondent accepted there was no basis for the judge's finding at [40] that there was an extant finding of deception. The Appellant's ETS result was 'questionable' and was not relied on in the refusal of indefinite leave to remain. The Appellant had accrued ten years' lawful continuous residence and he satisfied the requirements of paragraph 276B of the Immigration Rules. There was no public interest in removal.
5. The judge erred in law in her decision promulgated on 2 April 2020. I set the decision aside and remake it. The Appellant's appeal is allowed on Article 8 grounds.

**Notice of decision**

**The Appellant's appeal to the Upper Tribunal is allowed.**

**The decision of 2 April 2020 is set aside.**

**The Appellant's appeal against the refusal of leave to remain is allowed on human rights grounds.**

*J Frances*

Signed  
Upper Tribunal Judge Frances

Date: 8 March 2021

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable.

*J Frances*

Signed  
Upper Tribunal Judge Frances

Date: 8 March 2021

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**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email