



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13818/2015

THE IMMIGRATION ACTS

Heard at Field House
On 16th July 2018

Decision & Reasons Promulgated
On 26th July 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KHAWER HUSSAIN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms A Fijiwala, Home Office Presenting Officer

For the Respondent: Mr S Benara, Counsel instructed by Legend Solicitors

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State in relation to the Decision of Judge S J Clarke of the First-tier Tribunal promulgated on 19th October 2017. The appellant before the First-tier Tribunal had made an application for leave to remain on the basis of his private and family life in the UK. The Secretary of State refused the application on the basis that it was her case that he had submitted a TOEIC certificate which had been fraudulently obtained.

2. The judge in the decision confined herself solely to the issue of the ETS evidence and the TOEIC certificate. She found, without giving very many reasons, that the fact that the original of the TOEIC certificate or a copy of it had not been provided to her that the appellant had therefore not fraudulently used a false certificate. I have yet to see in any such case the certificate or a copy of it being provided and there is reference in the appellant's statement itself to having taken the test.

Notice of Decision

3. The findings in that regard are flawed and cannot stand, and what is more the judge allowed the appeal, which could only be allowed on human rights grounds, without any reference whatsoever anywhere in the decision to human rights. That being the sole permissible reason for allowing the appeal, the error is clearly material and the whole decision has to be set aside.

Directions

- (1) It is appropriate because all of the findings that will have to be made that it be remitted to the First-tier Tribunal.
- (2) The case was originally heard at Taylor House. Notwithstanding that the appellant lives in Falkirk near Glasgow, the case should be reheard in Taylor House.
- (3) No interpreter is necessary.

Signed

Date 23rd July 2018

Upper Tribunal Judge Martin