



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/13957/2015**

Appeal Numbers:

HU/13960/2015

HU/13965/2015

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 27th March 2018

Promulgated

On 3rd April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

MIZANUR RAHMEN + 2

(ANONYMITY DIRECTION NOT MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Sowerby, instructed by Thamina solicitors

For the Respondents: Mr D Clarke, Senior Home Office Presenting Officer

Notice of Decision

1. Rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) applies to this decision.
2. The Appellant applied for leave to remain as a Tier 2 migrant. The application was refused by the Respondent on the basis that the Appellant had previously used deception in obtaining his English language certificate. The judge concluded that he had not. The factual findings are

unchallenged. It is common ground before me that the judge's positive findings entitle the appellant to an exercise of discretion under the respondent's policy concerning a grant of leave of 60 days to those whose sponsors lost their licence between application and decision. Further both parties were agreed that the judge erroneously self-directed that he had no jurisdiction to decide that a failure to apply policy rendered the decision not in accordance with the law. As this application had been made before March 2015 and a decision not made until December 2015, the appeal was covered by transitional provisions and the judge had such jurisdiction.

3. By consent the appeal to the Upper Tribunal is allowed as follows:
- (a) the First-tier Tribunal's decision is affected by error of law as set out above.
 - (b) the First-tier tribunal decision is set aside, with all factual findings preserved.
 - (c) I remake the decision as follows: the respondent's decision is not in accordance with the law and the appeal is allowed to the limited extent that the application remains outstanding before the Secretary of State for a decision on the exercise of discretion under the relevant policy.

Signed



Date

28/3/2018

Deputy Upper Tribunal Judge Davidge