Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13935/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 September 2019	**On 25 October 2019**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SADRUL ISLAM
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M West, Counsel instructed by PGA Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by a citizen of Bangladesh against a decision of the First-tier Tribunal dismissing is appeal against a decision of the respondent to refuse him leave to remain in the United Kingdom. The appeal was brought on human rights grounds. It is the appellant's case that there was no public interest in his removal because he satisfied the Rules and was entitled to remain and in any event his removal would involve a disproportionate interference with the private and family life of him and more particularly his wife.

2. The appellant has been identified as an IELTS cheat. It was conceded in the First-tier Tribunal, plainly correctly, that the evidence established a prima facie case against him. However, I am deeply concerned about the reasons given by the First-tier Tribunal for going on to be satisfied that the appellant was indeed a cheat.

3. It was a feature of the Home Office's case that there was something suspicious or unsatisfactory about the appellant going to Portsmouth to take his language test when he was living in Stratford in East London. The judge said "common sense tells me there must be centres in London more easily accessible and offering the test around that time". I do not follow that all. I have absolutely no idea how many test centres were available or how long an applicant had to wait for a test. If the Secretary of State wanted to make anything of this point the Secretary of State should have laid the necessary evidential foundation. It cannot be a matter of judicial notice that test centres are available nationally or that waiting lists were uniformly short if indeed that is right. I do not know if it is.

4. Further, the appellant is said to have taken his test in February 2012 yet at paragraph 37 of the decision and reasons the judge noted that the appellant was unsure about whether a receipt had been obtained and concluded "his answer that he is not sure whether he got a receipt leads me to doubt his credibility". The judge accepted that any receipt may no longer be available. I do not understand why it should be assumed that some seven years after the test was taken (it was clearly taken by somebody) the appellant should remember whether or not he received any receipt.

5. The judge also seems to have taken it against the appellant that he made unsuccessful applications to remain as the carer of his uncle. Clearly if he had told lies in an earlier application or appeal hearing that could have been relevant but the mere fact that he made an application shows nothing more than a desire to remain lawfully in the United Kingdom but finding that his circumstances do not satisfy the rules. It is not a sign of dishonesty to make an unsuccessful application and to have an appeal dismissed.

6. There is reference to the appellant having a crib sheet at his marriage interview. On the face of it this is a proper reason to doubt his integrity. However, I note from the record that at the second page near the bottom the appellant was asked "why do you have a crib sheet in your [possession]?" to which the appellant is said to have replied "because Emma has a problem remembering things".

7. There was no supplementary question and the answer on the face of it is quite bizarre. The appellant was not interviewed with his wife. The crib sheet was never produced. It is hard to see what the appellant actually meant or what precisely was put to him. It seems to me this is a weak reason to doubt his credibility. Further, I note nothing in the interview record to suggest the crib sheet was in any way secreted and then

discovered and if it was a document that would be of most use to his wife there is no obvious reason why it should have been secreted by the appellant. There are too many open and unresolved issues here for it to be a good reason to undermine his integrity. It may be that a good point is lurking but it has not been made.

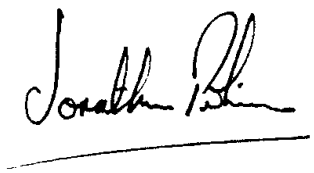
8. Further, there was an unequivocal finding by the judge that "the appellant is in a genuine and subsisting relationship" (paragraph 48). The judge then went on to dismiss the appeal on human rights grounds. His approach there is, with respect, hard to understand. The judge made an unequivocal finding that "there are insurmountable obstacles to the appellant's wife living in Bangladesh". The judge then went on to be satisfied that family life cannot continue in Bangladesh. He then said "the central issue is whether the appellant should be required to return to Bangladesh to make an application for entry clearance". The judge appeared to find it satisfied that the appellant's application was likely to succeed because the financial requirements were met by reason of the appellant's partner being in receipt of Disabled Living Allowance. That may be right. I do not know. However, having made that finding the judge went on to find that his departure would be a proportionate interference because he could make an application for entry clearance and return. It is not at all clear to me that that has been established. On the judge's own findings this man is a cheat and that will impact on the appellant's suitability. Further, the judge was aware of that, in a way, because he referred to the appellant having "abused the immigration system; he has overstayed and obtained leave by deception and cheating in his ETS test".

9. I do not understand why the judge dismissed the appeal or the judge's findings that the appellant would satisfy the requirements of the Rules or why he was satisfied that the appellant was in fact dishonest although that was clearly the judge's conclusion.

10. I reflected carefully on Mr Tufan's measured submissions. Nevertheless, I find that the reasons given for finding the appellant to be dishonest are inadequate or, perhaps more accurately, explained inadequately. This is not a case where the answer is obvious. There has to be a hearing of evidence and that is best done in the First-tier Tribunal. I have decided that the only proper response here is to set aside the decision of the First-tier Tribunal and all its findings. It is not pursued logically or clearly. The appeal will be heard again in the First-tier Tribunal where all findings must be made again.

Notice of Decision

11. The First-tier Tribunal erred in law. I allow the appeal and direct that the appeal be heard again in the First-tier Tribunal.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 24 October 2019