



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

Appeal Number: HU/15940/2018

**THE IMMIGRATION ACTS**

**Heard at UT (IAC) hearing in Field  
House  
On 6<sup>th</sup> June 2019**

**Decision & Reasons Promulgated**

**On 18<sup>th</sup> June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**MR MOSARAF HOSSAIN  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G O’Ceallaigh, Counsel instructed by Bindmans LLP  
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Bangladesh whose appeal was dismissed by First-tier Tribunal Judge White in a decision promulgated on 11<sup>th</sup> April 2019. Grounds of application were lodged. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison in a decision dated 14<sup>th</sup> May 2019. Thus, the appeal came before me on the above date.
2. Before me Counsel relied on his grounds. Given the failures in the decision particularly on the issue of credibility the decision should be set

aside and the appeal should be remitted to the First-tier Tribunal for a fresh hearing.

3. For the Home Office Ms Jones relied on the Rule 24 notice. In particular the Appellant accepted that the voice recording linked to him was not his voice and that the Home Office had discharged the initial burden of proof. The oral evidence of the Appellant appears to have not been wholly rejected but the explanations provided were not satisfactory.
4. The Home Office had established that the evidence demonstrated a statistically high level of fraud at Colwell College and where the Appellant accepted the voice recording was not his. The judge was entitled to conclude having regard to all the evidence and the Appellant had used a proxy.
5. At the same time Ms Jones accepted that there was no clear credibility finding against the Appellant.
6. I reserved my decision.

### **Conclusions**

7. The grounds of application are extensive. It is not necessary to repeat them all here but Ground 1 relates to the judge failing to reach a conclusion as to whether the Appellant's account was credible and in treating the Respondent's evidence as determinative it is said the judge erred in law. In paragraph 7 of the grounds it is said the judge reached no conclusion as to whether the Appellant's account was plausible or whether his evidence was credible despite noting that it was "not shaken by cross-examination" and not "inherently contradictory or implausible". Paragraph 8 says that the judge's failure to reach a conclusion on this core issue was an error of law.
8. Reference is made to **SM and Qadir (ETS - Evidence - Burden of Proof) [2016] UKUT 229 (IAC)** which led the Tribunal to fail to properly weigh the Appellant's evidence against that of the Respondent. Further grounds which may well have merit are stated.
9. However, it seems to me that in a case of this nature it is essential for the judge to make a clear credibility finding. That was not done in this case. Of course, if the Appellant was regarded as a credible witness then it is very likely that the appeal would have been successful. There are other factors which went to the credibility of the Appellant namely paragraph 20 wherein the judge notes various witnesses testified to their shock at the allegation of cheating and that the Appellant would not do such a thing. The judge says this is a factor to be taken into account.
10. Fairness demands that the Appellant has a clear and coherent finding on credibility either in his favour or against him. Without that the decision is simply not safe. Sometimes an inference can be drawn from all the findings that the judge must have concluded the Appellant was not a

credible witness but given that a significant part of the evidence is favourable to the Appellant I do not think that can be safely done in this case.

11. The decision must therefore be set aside. Because further fact-finding is necessary the matter has to be remitted to the First-tier Tribunal to be heard by a judge other than Judge White.
12. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the appeal to the First-tier Tribunal.

No anonymity order is made.

Signed *JG Macdonald*

Dated 14<sup>th</sup> June 2019

Deputy Upper Tribunal Judge J G Macdonald