



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

Appeal Number: HU/06392/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 18 May 2017**

**Decision & Reasons  
Promulgated  
On 13 June 2017**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**MR MAKSUDUR RAHMAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer

For the Respondent: Mr S Karim, Counsel instructed by Kalam Solicitors

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge J Bartlett which was promulgated on 27 October 2016. The appeal was allowed under Article 8 ECHR.
2. The background to this matter is that the appellant came to the UK from Bangladesh on 18 December 2010 with leave to enter as a Tier 4 (General) Student. He remained here with leave in that capacity until 30 July 2014. On 30 July 2014 he made an application for further student leave but this was refused on 23 September 2014. The appellant applied for leave to remain as a spouse on 16 April 2015 having married Ms Akhtar, a British national, on 12 August 2014.

3. The respondent refused the application for leave as a spouse as it was found that the appellant's presence in the UK was not conducive to the public good as he had relied in a previous application on a false TOEIC certificate from ETS. The respondent therefore refused the application under paragraph S-LTR.1.6 of Appendix FM to the Immigration Rules.
4. The appellant had also provided a Trinity College ESOL certificate but the respondent did not find that this met the requirements of Appendix FM-SE as it did not meet the requirements of Appendix O as the certificate did not state the test was taken at a "SELT Centre".
5. Under Article 8, the respondent went onto assess whether there would be insurmountable obstacles to the appellant's wife going to Bangladesh with him but concluded that there were not, after taking into account the fact that the wife was pregnant at the time of the application. The respondent also concluded that the appellant could not show that he met the requirements of the Immigration Rules concerning private life as there were no very significant obstacles to his integration in Bangladesh, the country where he grew up. The respondent also considered that there were no exceptional circumstances that could lead to a grant of leave under Article 8 ECHR outside the Immigration Rules.
6. First-tier Tribunal Judge Bartlett found for the appellant on the question of the ETS test. He did not accept that the respondent had met the burden on her to justify the allegation of reliance on a false document. Judge Bartlett found as follows at [3] of the decision.

"At the start of the hearing I pointed out to Miss Rehman that I did not have any evidence in support of the statements in the refusal letter and Miss Rehman confirmed that she did not have any additional evidence. Miss Rehman was not able to concede this issue but she agreed that she could not say anything further than what was in the refusal letter.
7. At [18] the judge found as follows:

"I find that the respondent has failed to discharge the burden of proof to establish that the appellant used a proxy when taking the TOEIC with ETS. The respondent has not provided any evidence in this respect apart from the assertions in the refusal letter. Therefore I find that there are no grounds on which the appellant's presence in the United Kingdom can be said to not be conducive to the public good. Therefore the appellant satisfies S-LTR.1.6".
8. The First-tier Tribunal Judge also concluded, however, that the appellant did not meet the requirements of Appendix FM-SE and Appendix O because of the absence of the correct wording from the Trinity College certificate.
9. At [24] the judge went on to consider whether paragraph EX.1 of the Immigration Rules was met. He found that it was not reasonable for the appellant's child to leave the UK. The judge also found at [32] that the appellant had not shown that he was without family ties or assistance in

Bangladesh so could not meet the burden of proof on him to show that he had no ties to Bangladesh or that there would be very significant obstacles to his reintegration there. The First-tier Tribunal concluded that:

“33. As I have found that [A]’s best interests are to remain in the United Kingdom with both her parents and as [A] and Mrs Akhtar are British citizens I find that it would be unreasonable in all the circumstances for [A] to leave the United Kingdom for Bangladesh. Therefore the appellant satisfies paragraph EX.1(a) of the Immigration Rules and as a result he satisfies LTRP.1.1(d). Therefore the appeal succeeds under the Immigration (sic).

34. However if I had to consider paragraph EX.1(b) of the Immigration Rules, I find that there are not insurmountable obstacles to family life between the appellant and Mrs Akhtar continuing in Bangladesh. As I stated above I consider that the appellant would be able to find work there and support his family. I find that is (sic) relatively short absence from Bangladesh would not impede his ability to find work, reintegrate or help his family to settle. Mrs Akhtar follows the Muslim faith which would help her to integrate as would her husband.

35. In relation to Section 117B, my consideration of reasonableness above applies to sub-paragraph 6. In addition I find that the appellant can speak English even if it is not to a good standard but that he is not financially independent.

36. Again due to my findings above, I did not consider paragraph 276ADE(1) but for completeness I find that the appellant cannot satisfy the requirement set out therein. The only sub-paragraphs that the appellant could possibly satisfy is (iv), (vi) which requires there to be very significant obstacles to his integration into Bangladesh. For the reasons set out above I find that not to be made.

37. The appeal succeeds under the Immigration Rules”.

10. The respondent puts forward two grounds of appeal. The first ground is that the First-tier Tribunal failed to take into account material evidence from the respondent on the ETS point. The grounds argue in paragraph 5 as follows:

“5. While documentation may have been omitted from the original bundle (although the PF1 indicates that there was some evidence at Appendix F which the FtTJ fails to address), the Presenting Officer sought to rectify this – PO note attached below. A bundle was provided to the FtTJ shortly after the hearing which the Tribunal refused to accept. No reasons are provided in the determination for the rejection of this relevant evidence, indeed the matter is not even mentioned. Clearly the evidence was submitted prior to the determination of the appeal and the written reasons provided.

6. The material would not have taken the appellant, his representative, or the Tribunal by much surprise and limited supplementary evidence would have been required on this discrete point. The use of deception was a live issue and while it was unfortunate that the respondent’s evidence was initially incomplete the SSHD took steps to rectify this and assist the Tribunal in the determination of all issues. The refusal to even acknowledge the request to adduce this evidence and provide any reasons for rejecting the highly relevant evidence is a material error of law”.

11. I am in some difficulty in establishing what the additional “bundle” referred to grounds are referring to here. There is nothing on file to indicate that the respondent sought to rely on a further bundle of evidence before the First-tier Tribunal. Such a suggestion is very much at odds with the record of the statements of the Presenting Officer at [3] of the decision. Mr Nath was unable to assist and, sensibly, did not seek to take this aspect of the challenge further. I do not accept that an application to admit further evidence was made to the First-tier Tribunal so this aspect of the grounds is not made out.
12. It remains the case, as indicated in the grounds, that there was material relevant to the ETS issue at Appendix F of the respondent’s bundle. Those pages contain information slips from ETS. At F2 there is an ETS document stating that a test was taken at Portsmouth International College by the appellant and declared invalid. The document at F3 sets out a document concerning an ETS speaking test in which the score was 180 points for a test taken on 20 March 2012 and the writing score was 170. At F4 there is what appears to be a repeat of F2.
13. The decision of the First-tier Tribunal does not refer to these documents at any point. On the contrary there is a finding that the respondent had not provided anything at all to support the assertions in the refusal letter as to reliance on a false document. That was not correct and the materials in Appendix F of the respondent’s bundle have the potential to have led the First-tier Tribunal to a different decision had they been considered. This amounts to a material error on a point of law.
14. The respondent’s second ground challenges the appeal being allowed under Article 8 as it was unreasonable for the child to be expected to go to Bangladesh with the appellant and her mother.
15. Firstly, it is unarguable that the First-tier Tribunal was not entitled to allow the appeal under the Immigration Rules on the basis that it was not reasonable for the child to leave the UK as the child here was not born when the application was made and her circumstances were not relevant to the assessment under the Immigration Rules. To that extent the decision is also in error.
16. Although the child’s circumstances did fall to be considered in the Article 8 assessment outside the Immigration Rules that part of the decision is not sustainable as the decision does not appear to weigh in the “reasonableness” consideration the public interest in removal where the appellant has been here illegally, where the Immigration Rules are not met and where there is nothing unusual in a very young British child going to Bangladesh with her parents. The judge refers at [26] to better economic circumstances, more stability and less corruption in the UK. Nevertheless, the judge found that the parents could be expected to live there without difficulty. The appellant would be able to support the family. The child’s best interests were found to be in remaining with her parents and nothing in the decision shows why it would be unreasonable for the child to go to

Bangladesh if her parents could live there without serious difficulties. In error of law terms this was an irrational or perverse conclusion.

17. There was agreement before me that if errors of law were found in these terms, there was nothing remaining from the decision to be preserved and that it should be remitted to the First-tier Tribunal to be remade de novo.

### **Notice of Decision**

The determination of the First-tier Tribunal discloses a material error on a point of law and is set aside.

The decision will be remitted to be heard at Taylor House by a judge other than Judge J Bartlett.

Signed:   
Upper Tribunal Judge Pitt

Dated: 12 June 2017