



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

Appeal Number: HU/06209/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 12 April 2018**

**Decision &  
Promulgated  
On 23 April 2018**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HILL QC**

**Between**

**MRS JIAOJIAO MA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Coleman, counsel, instructed by Woodford Wise  
Solicitors

For the Respondent: Ms A Holms, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal from a decision of First-tier Tribunal Judge Zahed, promulgated on 10 May 2017.
2. The issue relates to an application under Appendix FM and paragraph 276ADE of the Immigration Rules. The judge, in a disturbingly brief determination, came to the conclusion that the TOEIC certificate upon which the appellant relied had been obtained fraudulently. The judge said this at paragraph 7

“I had an opportunity to see and hear her give evidence. I find that although the appellant could get by with her English ability it is not at the level stated in her TOEIC certificate where she has scored full marks for speaking, reading and listening and only scored 10 points less than full marks for writing.”

And at paragraph 8 the judge continues:

“I find that given she was unable to answer the above questions without the assistance of an interpreter the appellant did not genuinely obtain the test certificates showing that she obtained nearly 100% on all the elements I find that the test certificate was obtained fraudulently.”

3. The grounds of appeal were extensive but at their core was the simple proposition that rather than addressing whether the Secretary of State had demonstrated deception or fraud, the judge purported to carry out his own forensic assessment of the appellant’s capacity to communicate in English on the basis of her evidence to him in the course of the hearing and the fact that she had the assistance of an interpreter during an earlier ‘marriage interview’.
4. Although there is no Rule 24 response, Ms Holms for the Secretary of State fairly concedes there is a fundamentally flaw in the judge’s approach.
5. It is inevitable that this appeal must be allowed and the decision of First-tier Tribunal Judge Zahed.
6. Mr Coleman, who acts for the appellant, argues that I should re-make the decision today in the Upper Tribunal on the basis that there has been substantial noncompliance by the Secretary of State with directions made prior to the hearing in the First-tier Tribunal. The Secretary of State, he argues, has had repeated opportunities to marshal her evidence to make the case that the TOEIC certificate was obtained by deception and has not done so. He points me to the overriding objective and the Practice Direction which effectively advocated a presumption for matters to be disposed of within the Upper Tribunal unless there is good reason to the contrary.
7. Ms Holms on the other hand argues that so fundamental are the errors exhibited in the decision of the First-tier Tribunal that justice requires that the matter be remitted so that a different judge of the First-tier Tribunal can determine the appeal adopting the correct legal approach, from which there would be an appeal to the losing party on the basis of error of law.
8. In this case, the balance of justice lies with the arguments of Ms Holms. The scanty and inadequate decision of the First-tier Tribunal is wholly flawed. The process must start again with evidence taken orally and careful credibility findings made. That is not the function of the Upper Tribunal. The only proper course is for this matter to be remitted and that there can be fresh determination made by another judge other. Inevitably that will occasion delay and expense to the appellant and that is

unfortunate, but a remittal is necessary so that a proper decision can be made.

**Notice of decision**

- (1) The appeal is allowed and the decision of the First-tier Tribunal is set aside.
- (2) The matter is remitted to the First-Tier Tribunal at Hatton Cross for a fresh decision to be made by a judge other than Judge Zahed.
- (3) No findings of fact are preserved.
- (4) No anonymity direction is made.

Signed *Mark Hill*

Date

20 April 2018

Deputy Upper Tribunal Judge Hill QC