Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/14629/2016**

THE IMMIGRATION ACTS

Heard at Field House **Decision and Reasons Promulgated**
On 9 April 2018 **On 18 April 2018**

Before

UPPER TRIBUNAL JUDGE JOHN FREEMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ABADUR RAHMAN CHOWDHURY
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the appellant: Ms K Pal, Home Office Presenting Officer
For the respondent: Mr A R Islam, chambers of Aminul R Islam

DECISION AND REASONS

1. This is a Home Office appeal against a decision of First-tier Tribunal Judge Susan Clarke, sitting at Taylor House on 6 November 2017, allowing an appeal by a citizen of Bangladesh refused leave to remain under the ten-year partner route. This appellant was born in 1984, and arrived here in 2010 on a student visa valid until 2016. In the course of a renewal application in 2012, he filed a TOEIC ETS English language test certificate with his application. In 2015, apparently for other reasons, his leave to remain was curtailed with removal directions, and on 9 March 2016 he applied for further leave to remain on private and family life grounds. On 26 May that was refused for various reasons. The one with which I am concerned was the first, which relied on the fact that his ETS language test result had been cancelled on the basis of evidence showing he had taken the test by proxy.

2. The judge considered the evidence, and referred to various decided cases up to *Nawaz* [2017] UKUT 288 (IAC) in relating it. She also referred to the respondent's evidence, which included specific evidence about the result obtained at the test centre in question on the day the appellant took his test, which was 29 August 2012. 92% of all that day's results at that centre were shown to be invalid, and the remaining 8% all questionable. None were regarded as acceptable.

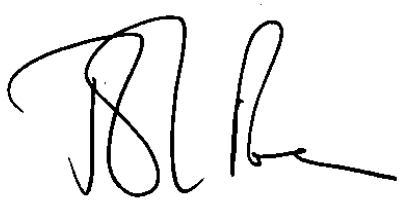
3. There is a reference to the usual generic evidence, and then the judge deals with the appellant's own evidence. She accepts that, dealing with how he went to the centre and the way in which he took his test, and says this "I have considered very carefully the account as set against the invalid score against his test number, but I find the appellant has been a credible witness".

4. It may be difficult, with evidence of two different kinds, in this case the scientific evidence about the invalidity of the test and the appellant's own evidence about how he took it, for a judge to give intelligible reasons for explaining why. However there is the additional factor, which the judge did not take account of in her decision paragraph, that, of the tests taken that day at that centre, none were shown to be valid, and only 8% even questionable. While it was open for the judge, after a proper assessment of the evidence on both sides to accept the evidence that the appellant did take the test himself, in my view she did not give satisfactory reasons for doing so.

5. There is another point, which is that the judge allowed the appeal without referring to the Human Rights Convention, human rights grounds or ss. 117A to D of the 2002 Act at all. By the date of the decision in question there was only one ground which an appeal of this kind could be allowed which was that the decision had been in breach of the applicant's human rights. Although not everything had to be spelt out, the very least that the judge had needed to do, as set out in *Dube* [2015] UKUT 90, was to address the s.117 considerations in substance. While there might or might not have been material before the judge which would have justified allowing an appeal on that basis, she failed to explain why she was doing so at all, and did not even go so far as to say that she was allowing the appeal on human rights grounds.

6. For both those reasons the decision is set aside. In view of the need for oral evidence, there will have to be a fresh hearing, which will take place at Taylor House before another first-tier judge.

Home Office appeal allowed: first-tier decision set aside
Fresh hearing at Taylor House before a first-tier judge, not Judge Clarke



(a judge of the Upper Tribunal)

Dated: 17 April 2018