



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/33360/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

**Decision & Reasons
Promulgated**

On June 9, 2017

On June 13, 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR MUHAMMAD KAMRAN BUTT
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

Ms Faryl, Counsel, instructed by Walker

Prestons

Respondent

Mr McVeetie (Senior Home Office Presenting

Officer)

DECISION AND REASONS

1. I do not make an anonymity order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended).
2. The appellant entered the United Kingdom on June 11, 2009 with leave to enter as a student until October 31, 2012. This leave was extended until October 13, 2014. On June 13, 2014 he submitted an application for leave to remain. The respondent refused his application on October 9, 2015 on the basis the appellant had used deception on October 23, 2012 by submitting a fraudulent TOEIC certificate. The respondent therefore refused his current application under the Immigration Rules on the basis he did not satisfy Section S-LTR1.6 of Appendix FM of the Immigration Rules. The respondent further refused the application under paragraphs 276ADE HC 395 and found no exceptional grounds existed to allow the appeal under article 8 ECHR.
3. The appellant appealed against that decision on October 23, 2015 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The appellant's appeal came before former Judge of the First-tier Tribunal Heynes (hereinafter called the "Judge") on July 27, 2016 and in a decision promulgated on August 3, 2016 he dismissed the appellant's appeal under the Immigration Rules and article 8 ECHR.
5. The appellant appealed that decision on August 16, 2016 and on February 24, 2017 Judge of the First-tier Tribunal Parker found there was an arguable error of law.
6. The matter came before me on the above date.
7. Ms Faryl adopted her grounds of appeal and submitted that the Judge's decision was brief and in considering the facts failed to have regard to the approach set out in SM and Qadir v SSHD (ETS-evidence -burden of proof) [2016] UKUT 00229 (IAC). The Judge failed to take account of the account put forward during the hearing and only took into account events after the test.
8. Mr McVeetie accepted, after considering the Tribunal's record of proceedings, that the Judge had failed to take any account of the account put forward by the appellant and there was an error in law.
9. Both representatives agreed that this matter should be remitted back to the First-tier Tribunal for a fresh hearing.
10. In light of Part 3, Section 7.1 to 7.3 of the Practice Statement I direct the matter should be remitted to the First-tier Tribunal.

11. I direct that any additional evidence should be served on both the Tribunal and other party in accordance with the current Procedural Rules. In particular, it would assist the Tribunal if the appellant provided a detailed witness statement addressing evidence that he would wish to give at the next hearing.

DECISION

12. The appeal is remitted back to the First-tier Tribunal for a de novo hearing.
13. If an interpreter is required then the appellant's solicitors should notify the Tribunal not less than seven days before the remitted hearing date.

Signed:

Dated:

A handwritten signature in black ink, appearing to read 'SPAL' with a flourish underneath.

Deputy Upper Tribunal Judge Alis