



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

Appeal Number: HU/19047/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 August 2019**

**Decision & Reasons Promulgated  
On 13 August 2019**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN  
UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**MR MD RASHEL MIAH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M A Muid Khan (Lincoln's Chambers Solicitors)

For the Respondent: Mr N Bramble (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision and Reasons of Judge Lucas in the First-tier Tribunal, promulgated on 24 May 2019. Permission to appeal was granted by Judge Boyes of the First-tier Tribunal on 24 June 2019.
2. The appellant is a citizen of Bangladesh, born on 1 January 1988. He had appealed against a decision of the Secretary of State, taken on 24 August 2018, to refuse to grant him leave to remain in the UK.

3. The Secretary of State refused the application on the basis that an English-language certificate, TOEIC, from ETS submitted with his October 2012 application for leave to remain as a student was fraudulently obtained.
4. Having been granted leave to remain on the basis of that English language certificate until October 2015, the appellant then at some point left the country and re-entered in July 2013 and had his leave to remain reinstated.
5. In August 2014 his leave was cancelled, and he was served with a removal notice against which he lodged a judicial review application but permission to proceed was refused.
6. In March 2015 he made a human rights claim which was refused and certified.
7. The decision under appeal before the First-tier Tribunal related to an application made in July 2017
8. In addition to refusing the application on the basis of the TOEIC certificate, the Secretary of State also considered there to be no reason to grant the appellant leave on the basis of his private or family life nor were there any compassionate reasons to warrant a grant of leave outside the Rules.
9. Before the First-tier Tribunal both appellant and respondent were represented. The judge dealt firstly with the question of the TOEIC certificate and found that the Secretary of State had provided generic evidence only and provided no direct evidence to show that the appellant himself had deployed deception in relation to his own individual test. The judge noted that the appellant appeared to have passed a variety of examinations and obtained certificates in English and that he conducted the appeal in English. The judge concluded that he was not satisfied that there was sufficient evidence to show that the appellant had deployed or would have deployed deception in relation to the acquisition of the certificate and to that extent his appeal succeeded (paragraph 17 the First-tier Tribunal's decision).
10. The judge then went on to note that the appellant had no other basis to be in the UK. Having entered as a student in 2010 he remained, despite his leave having been curtailed in 2014. He had provided no evidence of private life in the UK apart from his eight-year presence. He found also that there was no evidence of family life acquired in the UK since 2010. On the basis that the appellant could not meet the requirements of the Immigration Rules under appendix FM or under the private life provisions, the judge dismissed the appeal.
11. The appellant's grounds seeking permission to appeal argue that having found in the appellant's favour with regard to the TOEIC certificate, the judge ought to have allowed the appeal.
12. The judge granting permission to appeal did not do so on the basis of the grounds, but rather granted permission on the basis that the judge had

given no analysis of the evidence in relation to the TOEIC certificate nor applied the correct test and there was no analysis of the law to be applied.

13. We would say first of all that the grant of permission was wholly wrong. That has been made clear by this tribunal in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UK UT00245 (IAC) and we quote from the head note:-

*“(3) Permission to appeal to the Upper Tribunal should be granted on a ground that was not advanced by an applicant for permission, only if:*

*(a) the judge is satisfied that the ground he or she has identified is one which has a strong prospect of success:*

*(i) for the original appellant; or*

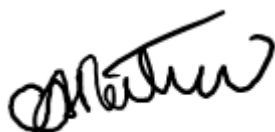
*(ii) for the Secretary of State, where the ground relates to a decision which, if undisturbed, would breach the United Kingdom’s international Treaty obligations; or*

*(b) (possibly) the ground relates to an issue of general importance, which the Upper Tribunal needs to address.”*

14. The grant of permission in this case grants permission in relation to an aspect of the appeal determined in the appellant’s favour. The Secretary of State made no cross application for permission to appeal.
15. Before us Mr Khan sought to reiterate the arguments in his grounds. Those grounds contain a recitation of the various cases in relation to how the tribunal should approach the ETS cases. What they do not do is provide any indication of where the judge has erred in finding an absence of evidence of private or family life.
16. Indeed, before us Mr Khan acknowledged that the appellant could not succeed under the Immigration Rules on the basis of his private or family life.
17. This was a human rights appeal and the appellant put forward no basis upon which that could succeed.
18. The First-tier Tribunal did not err in law in dismissing the appeal and the appeal to the Upper Tribunal therefore must be dismissed and we would reiterate that permission to appeal ought never to be granted.

### **Decision**

19. The appeal to the Upper Tribunal is dismissed



Signed

Date 2 August 2019

Upper Tribunal Judge Martin