



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

Appeal Number: HU/13068/2019 (v)

THE IMMIGRATION ACTS

**Heard Remotely at Field House
On 23rd September 2020**

**Decision & Reasons Promulgated
On 19th February 2021**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**Oliur Hossain
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation:

For the Appellant: Mr S Karim instructed by City Heights Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

1. The appellant, a citizen of India born on 10th January 1980, appealed against the determination of First-tier Tribunal Judge Cooper promulgated on 2nd January 2020. Judge Cooper found the appellant had not used deception to obtain his TOEIC certificate in 2012, but nonetheless dismissed his appeal against the Secretary of State's decision of 19th June 2019 to refuse the appellant leave to remain in the UK on the basis of his established private life.
2. At the appeal before the Upper Tribunal Mr Karim submitted that the appeal should have been allowed on human rights grounds as the appellant should have been placed in the position he would have been had the deception not been found.

3. Following submissions made by Mr Jarvis at the hearing, directions were issued to the Secretary of State to consider her position and to make written submissions on the approach she adopted in such appeals.
4. Both representatives, the Secretary of State wrote to the Upper Tribunal on 7th December 2020 and the appellants' legal representatives confirmed on 1st February 2021, confirmed their agreement to the appeal being resolved in this particular appeal in the following terms:
 - (i) The appellant agrees for his appeal to be dismissed;
 - (ii) The Respondent accepts that the appellant was cleared of TOEIC deception by the Tribunal on appeal and this remains a preserved and binding finding of fact;
 - (iii) The Respondent will grant the Appellant a subsequent period of six months' leave to remain outside of the Immigration Rules in order for him to make a free of charge application for leave of his choice, in light of the Tribunal's findings as set out in paragraph (ii) above;
 - (iv) In terms of the Appellant's immigration history, the Respondent will treat the Appellant as if he has had continuous section 3C leave to date/present as it is accepted that the decision to refuse his case on TOEIC deception grounds can no longer stand;
 - (v) The Respondent agrees that the Appellant will not be treated as an overstayer between the date that this appeal is dismissed and the date that the respondent issues him six months leave to remain outside of the Rules;
 - (vi) Finally, the Respondent's Specialist Appeals Team will write to the Appellant's instructed legal representatives to provide their contact details and to ensure that the above process is facilitates for the Appellant.

Order

2. In the light of the above the appeal remains dismissed.

Signed **Helen Rimington**
Upper Tribunal Judge Rimington

Date 15th February 2021