



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

Appeal Number: IA/28224/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18th June 2015**

**Decision & Reasons
Promulgated
On 3rd July 2015**

Before

UPPER TRIBUNAL JUDGE RENTON

Between

**VAISHALIBEN PATEL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Wainwright

For the Respondent: Mr D Clark, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of India born on 4th July 1986. The Appellant first arrived in the UK on 19th October 2010 when she was given leave to enter until 27th August 2012 as a Tier 4 (General Student) Migrant

and on 7th July 2012 she applied for leave to remain as a Tier 2 (General) Migrant. That application was refused on 31st October 2012 for the reasons given in the Respondent's letter of that date. The Appellant appealed, and her appeal was heard by Judge of the First-tier Tribunal Butler (the Judge) sitting at Birmingham on 14th January 2015. He decided to dismiss the appeal for the reasons given in his Decision dated the 22nd January 2015. The Appellant sought leave to appeal that decision, and on 30th March 2015 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The application for leave to remain was refused by the Respondent *inter alia* under the provisions of paragraph 322(1A) of HC 395. The allegation was that with her application the Appellant submitted various documents which were subsequently declared to be false by the University of Bath, Santander Bank, and Teleca Limited, a company which the Appellant had claimed had made an offer of employment to her.
4. The Judge dismissed the appeal because he did not find to be credible the Appellant's evidence by way of explanation. However, he wrote at paragraph 10 of the Decision:

"10. The standard of proof is the civil standard on the balance of probability and rests with the Appellant".

It was argued by Mr Wainwright at the hearing, relying upon his grounds of application, that the Judge had erred in law by applying the wrong burden of proof according to the decision in **JC (Part 9 HC 395 - burden of proof) China [2007] UKAIT 00027**, and also the wrong standard of proof as given in **R (AN and another) v SSHD [2005] EWCA Civ 1605**. These errors were material because the Judge had decided the appeal on the papers without a hearing and had not had the opportunity therefore of considering the explanation of the Appellant in the context of the correct burden and standard of proof.

5. Finally, Mr Wainwright invited me to remit the case to the First-tier for rehearing if an error of law was found because the Appellant had a child of 3 years of age born in the UK and a British citizen whose Article 8 ECHR rights had not been considered.
6. In response, Mr Clark did not dispute that there was such an error of law, but argued that it was not material as there was compelling evidence of the deception perpetrated by the Appellant. Whatever burden or standard of proof the Judge had applied, he would have come to the same decision.
7. I find that there was an error of law in the decision of the Judge as argued by Mr Wainwright. It is evident from what he wrote at paragraph 10 of the Decision that he did not understand that where deception is alleged, the

initial burden of proof to establish the precedent facts lies upon the Respondent. Likewise, by using a standard of proof of the simple balance of probabilities, the Judge failed to apply the higher standard of proof set at the end of the spectrum of the balance of probabilities required to prove allegations of deception

8. I find these errors to be material because the appeal was determined by the Judge on the papers without a hearing and as there has been an error of law, the Appellant should be afforded the opportunity to explain what happened in person. It may be the case that in such circumstances applying the correct burden and standard of proof, a Judge would come to a different decision.
9. For these reasons I set aside the decision of the judge. I remit the case to the First-tier Tribunal for that decision to be remade in accordance with paragraph 7.2(b) of the Practice Statements, particularly as now the Appellant has raised an Article 8 ECHR issue.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision. I remit the appeal to the First-tier Tribunal for the decision to be remade.

Anonymity

The First-tier Tribunal did not make an order for anonymity and I find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton