Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/02254/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2nd January 2018	**On 14th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

RUBI BEGUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mustafa of Kalam Solicitors
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Bangladesh born on 1st January 1989. She first arrived in the UK on 10th May 2011 when she was given leave to enter until 30th October 2012 as the dependant of a Tier 4 Migrant. She applied unsuccessfully for leave to remain as a spouse in March 2013, and applied again on the same basis on 29th May 2015. That application was refused on 11th January 2016 for the reasons given in the Respondent's letter of that date. The Appellant appealed, and her appeal was heard by First-tier Tribunal Judge Devittie (the Judge) sitting at Taylor House on 20th

February 2017. He decided to dismiss the appeal under the Immigration Rules and also on human rights grounds for the reasons given in his Decision promulgated on 14th March 2017. The Appellant sought leave to appeal that decision and on 29th September 2017 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 Judge dismissed the appeal under the Immigration Rules because he found that the Appellant failed the suitability requirement of Appendix FM of HC 395 in that she had used a deception in respect of the English language proficiency test. The Judge was satisfied that paragraph S-LTR.1.6 of Appendix FM applied and therefore that the Appellant failed to satisfy the provisions of paragraph 276ADE(1)(i) of HC 395. The Judge went on to consider the rights of the Appellant and her family under Article 8 ECHR outside of the Immigration Rules. He found that there was a genuine and subsisting marriage between the Appellant and her husband and their two minor children who were British citizens. However, even taking into account the best interests of those children, the Judge decided that the public interest outweighed the circumstances of the Appellant and her family and therefore that the decision of the Respondent was proportionate.

4. At the hearing, Mr Mustafa argued that the Judge had erred in law in coming to these conclusions. As regards the alleged deception, the Judge had failed to consider all of the evidence and in particular had placed too great a weight on the fact that at the hearing before him the Appellant had used her first language not being English. Further, the Judge had not made a finding as to whether there was an innocent explanation for the matters alleged against the Appellant.

5. As regards Article 8 ECHR, Mr Mustafa argued that the Judge had erred in law by misapplying the provisions of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002. The Judge had treated the provision as if it applied to the qualifying children of the Appellant and not the Appellant herself. Further, the Judge had failed to attach sufficient weight to the consequences for the Appellant's children of her being excluded from the UK. It was decided in **SF and Others (Guidance, post-2014 Act) Albania [2017] UKUT 00120 (IAC)** at paragraph 7 that it was never reasonable to effectively remove British children from the UK and that was Home Office Policy. At paragraph 10 of that decision it was further decided that there must be harmony between Home Office Policy and decisions of the First-tier Tribunal. In addition, it was decided in **Treebhawon and Others (NIAA 2002 Part 5A – compelling circumstances test) [2017] UKUT 00013 (IAC)** that if Section 117B(6) of the 2002 Act was satisfied, that was determinative of the proportionality test and that Section 117B(1) to (5) did not apply. Again the Judge had failed to apply this decision.

6. In response, Ms Ahmad argued that there was no such material error of law. She argued that the Judge had come to conclusions open to him on the evidence before him and which he had fully explained. She submitted that the decision in **SF** had no application to this appeal as it could be distinguished on the facts. She referred me to paragraph 8 of that decision. She then argued that in deciding the deception issue, the Judge had considered all the relevant factors and had used a correct approach as evidenced by what he wrote at paragraphs 14 and 16 of the Decision.

7. I find no material error of law in the decisions of the Judge which I therefore do not set aside. I agree with the submission of Ms Ahmad that the Judge came to conclusions open to him on the evidence before him and as a consequence I find that the arguments of the Appellant amount to no more than a disagreement with those conclusions and do not reveal a material error of law. The Judge dealt with the issue of deception at paragraphs 14 - 18 inclusive of the Decision. The Judge carried out a careful and thorough analysis of all the relevant evidence and came to a conclusion which cannot be described as perverse. It is not correct to say that the Judge did not consider if the Appellant had given an innocent explanation. At paragraph 17 of the Decision the Judge dealt in detail with the rebuttal evidence of the Appellant.

8. As regards Article 8 ECHR, the Judge again considered all of the relevant evidence and came to a conclusion open to him. He considered the best interests of the children as a primary consideration, and demonstrated that he had carried out the balancing exercise necessary for any assessment of proportionality. It was not perverse for the Judge to find that the public interest outweighed the interest of the Appellant and her family. He considered whether it would be reasonable for the children of the family to leave the UK as required by Section 117B(6) of the 2002 Act. The Judge did not weigh in the balance against the Appellant any factors mentioned in Section 117B(1) to (5) of the Act except for the Appellant's inability to use English proficiently. This was not cited by the Judge as a determining factor and he found what he described as a compelling public interest for other reasons. Therefore any error of law in this respect is not material.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

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

Signed Date: 12th February 2018

Deputy Upper Tribunal Judge Renton