



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

Appeal Number: HU/04563/2016

**THE IMMIGRATION ACTS**

**Heard at City Centre Tower Decision & Reasons Promulgated  
Birmingham  
On 15<sup>th</sup> December 2017                      On 6<sup>th</sup> February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RENTON**

**Between**

**MUHAMMAD ISMAIL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr R Sharma of A W S Solicitors

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Pakistan born on 21<sup>st</sup> August 1988. He first arrived in the UK on 11<sup>th</sup> May 2011 when he was given leave to enter as a Tier 4 (Student) Migrant until 28<sup>th</sup> September 2012. This leave was subsequently extended until 18<sup>th</sup> November 2014 in the same capacity, and then as a spouse until 9<sup>th</sup> February 2016. On 19<sup>th</sup> January 2016 the Appellant applied for further leave to remain again as a spouse. That application was refused for the reasons given in a Reasons for Refusal

letter dated 20<sup>th</sup> January 2016. The Appellant appealed and his appeal was heard by First-tier Tribunal Judge O'Hagan (the Judge) sitting at Birmingham on 15<sup>th</sup> February 2017. He decided to allow the appeal for the reasons given in his Decision dated 6<sup>th</sup> March 2017. The Respondent sought leave to appeal that decision and on 6<sup>th</sup> 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. The Appellant's application for leave to remain was refused on the suitability grounds set out in Appendix FM of HC 395. It was considered that in a previous application for leave to remain made in 2012 the Appellant had submitted a fraudulent TOEIC certificate issued by ETS. ETS had identified the certificate as one which had been obtained fraudulently through the use of a proxy. The Appellant's current application for leave to remain was therefore refused under the provisions of paragraph 276ADE(1)(vi) of HC 395. The Judge allowed the appeal under the Immigration Rules because although he was satisfied that the Respondent had discharged the evidential burden of showing that the Appellant may have employed dishonesty in his previous application, he found the evidence of the Appellant to be plausible and that it provided an innocent explanation for the matters relied upon by the Respondent. Therefore the Judge was not satisfied that the Respondent had discharged the burden of proof of showing that deception had been used. Further, the Judge considered the right of the Appellant to a private life under Article 8 ECHR outside of the Immigration Rules and found the decision of the Respondent to refuse the application to be disproportionate.
3. At the hearing, Mrs Aboni referred to the grounds of application and submitted that the Judge had erred in law in coming to these conclusions. The Judge had failed to attach sufficient weight to the evidence relied upon by the Respondent at the hearing before him, and had given insufficient reasons for his finding that an innocent explanation had been provided by the Appellant. The Judge had made little of the inconsistencies in the Appellant's evidence referred to at paragraph 23 of the Decision.
4. Mrs Aboni then argued that the Judge had erred in law by considering the Appellant's Article 8 ECHR rights outside of the Immigration Rules. The Judge had failed to identify any compelling compassionate circumstances of the Appellant enabling him to do so.
5. In response, Mr Sharma referred to his Skeleton Argument and the Rule 24 response and argued that as regards the decision under the Immigration Rules, the grounds relied upon by the Respondent amounted to no more than a disagreement with the decision of the Judge and did not reveal any material error of law. Mr Sharma reviewed the reasons given by the Judge for his decision that the Appellant had provided an innocent explanation

given at paragraphs 22 to 27 inclusive of the Decision and argued that they amounted to sufficient reasons.

6. I find no material error of law in the decision of the Judge made in respect of the Immigration Rules which I therefore do not set aside. I find myself in agreement with the submission of Mr Sharma that the grounds relied upon by the Respondent amount only to a disagreement with the decision of the Judge. As Mr Sharma argued, the Judge provided a thorough analysis of the relevant evidence in paragraphs 22 to 27 of the Decision and came to a conclusion that he was entitled to make upon that evidence. He gave ample reasons for that decision in those paragraphs. I entirely disagree with the submission of Mrs Aboni that inadequate reasons were given. As part of this analysis the Judge took into account the evidence of deception produced by the Respondent but ultimately found that the plausible and credible evidence of the Appellant discharged the burden on a balance of probabilities of showing that there was an innocent explanation for the matters relied upon by the Respondent. The decision of the Judge cannot in any way be described as perverse.
7. For these reasons I find no material error of law in the decision of the Judge under the Immigration Rules. As that decision is to stand, there is no need for me to consider the decision of the Judge made under Article 8 ECHR.

### **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 aside 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 2<sup>nd</sup> February 2018

Deputy Upper Tribunal Judge Renton