



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-001983

First-tier Tribunal No:
HU/50671/2020; IA/01352/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 19 September 2023

Before

UPPER TRIBUNAL JUDGE LESLEY SMITH
DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

SABRINA SOBHAN
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Wass, Counsel instructed by DJ Webb & Co, Solicitors
For the Respondent: Ms S Mackenzie, Senior Home Office Presenting Officer

Heard at Field House on Tuesday 29 August 2023

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge S L Farmer dated 6 March 2022 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 23 October 2020, refusing the Appellant’s human rights claim. The Appellant’s claim was made in the context of an application for indefinite leave to remain (ILR) on grounds of long residence under paragraph 276B, that application having been made as a variation of an application to remain as a Tier 1 entrepreneur (“the Application”).

2. The Appellant who is a Bangladeshi national had entered the UK as a student on 18 August 2007 with leave which was extended in that category to 31 August 2010. She applied in-time for leave as a Tier 1 post-study worker and was granted leave to remain in that category until 15 September 2012. She again applied in time as a Tier 1 entrepreneur. That application was varied (without being decided) to one for ILR on 17 January 2018.
3. The Appellant claims to have been involved in a business called Eurasia Television. That business was discovered as part of an investigation titled "Operation Meeker" to have been a fake company. Operation Meeker led to the successful prosecution of various individuals, including one Jalpa Trivedi, who were found guilty of having falsely created businesses for the purpose of assisting migrants to obtain leave to remain by deception. The Appellant does not dispute that Eurasia Television was not a legitimate business. Her case is that she did not know that it was at the time.
4. The Respondent refused the Application on the basis that the Appellant had made false representations in her Tier 1 entrepreneur application. The Respondent relied upon paragraphs 322(1A) and 322(5) of the Rules ("Paragraph 322(1A)" and "Paragraph 322(5)"). We will come to the detail of those paragraphs below. Suffice it to say for the moment that the Appellant argues that neither paragraph applies but accepts that paragraph 322(2) of the Rules ("Paragraph 322(2)") may apply.
5. In the decision under appeal, the Respondent went on to consider the Tier 1 entrepreneur application. She did so to inform her decision under Paragraph 276B. Having concluded that the Appellant had made false representations and that there were no exceptional circumstances outweighing the deception, the Respondent went on to consider the Appellant's case based on her private life under paragraph 276ADE (1) of Appendix FM to the Rules ("Paragraph 276ADE").
6. The Respondent refused the Appellant leave on that basis for two reasons. First, she relied upon the fact of the Appellant's deception as reason to refuse the application on suitability grounds applying paragraphs S-LTR.1.6 or S-LTR.2.2 of Appendix FM to the Rules ("Paragraph S-LTR.1.6" and "Paragraph S-LTR.2.2"). Second, she pointed out that the Appellant had not accrued a sufficient period of residence under Paragraph 276ADE, and she also did not accept that there were very significant obstacles to the Appellant's integration in Bangladesh.
7. Having considered the Appellant's case under Article 8 ECHR outside the Rules, the Respondent also concluded that the decision to remove the Appellant was not a breach of her right to respect of her private life (no family life is relied upon). She concluded that removal would not be a disproportionate interference with that private life when balanced against the public interest.

8. It is helpful at this stage to summarise the grounds of appeal, that the Judge erred by substituting paragraph 322(2) and the suitability requirements, and that there was a factual error relevant to credibility.
9. The Judge accepted the Appellant's argument that the Respondent had applied the wrong provisions under the Rules (as summarised at [28] of the Decision). The Judge found nonetheless that the Appellant had known that the company in which she invested was not genuine for the reasons set out at [14] to [27] of the Decision. The Respondent had been entitled to refuse the application for that reason. We remind ourselves at this juncture that the only ground of appeal is that the Respondent's decision breaches section 6 Human Rights Act 1998. Nonetheless, we accept that the issue of whether the Appellant meets the Rules is a relevant consideration in this regard.
10. Having dealt with the general grounds of refusal, the Judge turned to the suitability requirements in relation to Paragraph 276ADE. She concluded that paragraph S-LTR.4.2 of Appendix FM ("Paragraph S-LTR.4.2") would apply although accepted that Paragraph S-LTR.1.6 and Paragraph S-LTR.2.2 would not ([30] to [31] of the Decision). The Judge relied in this regard on this Tribunal's decision in Mahmood (paras. S-LTR.1.6. & S-LTR.4.2; Scope) [2020] UKUT 00376 (IAC) ("Mahmood").
11. The Judge found in any event that the Appellant could not meet Paragraph 276ADE as she had an insufficient period of residence and there were no very significant obstacles to integration in Bangladesh. The Judge also concluded that the appeal failed outside the Rules when the interference with the Appellant's private life was balanced against the public interest.
12. The Appellant appeals on two grounds as follows:

Ground 1: the Judge has erred in her application of the law when considering both the general grounds (Paragraph 322) and the suitability provisions (Paragraphs S-LTR).
Ground 2: the Judge has made factual errors when considering the Appellant's credibility.
13. Permission to appeal was granted by First-tier Tribunal Judge Chowdhury on 6 May 2022 as follows (so far as relevant):

"..2. The grounds argue that the judge made an error in correcting the mistakes in the refusal letter and substituting a Ground of Refusal of 322(2). It is arguable that the judge ought not to have made that substitution.
3. The grounds argue that a refusal under 322(5) is based on the conduct or associations of an individual. The grounds submit that in the present case the '*conduct*' was making false representations and such conduct is specifically catered for under the Rules 322(2) and cannot be a Ground of Refusal under 322(5). The grounds rely on the case of **Mahmood [2020] UKUT 376**. It is arguable that the judge did not determine this point.
4. Permission is granted on all the grounds."

14. The matter comes before us to decide whether the Decision contains an error of law. If we conclude that it does, we must then decide whether the Decision should be set aside in consequence. If the error would not affect the outcome, we would not set aside the Decision. If the Decision is set aside, we must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.
15. We had before us a core bundle of documents relating to the appeal, the Appellant's bundle and Respondent's bundle before the First-tier Tribunal, the Respondent's review and the Appellant's skeleton argument before the First-tier Tribunal. We refer to documents in the Appellant's bundle as [AB/xx] and to documents in the Respondent's bundle as [RB/xx].
16. At the outset of the hearing before us, it was suggested that it might be necessary to have the recording of the First-tier Tribunal hearing and/or instructions from the Respondent's representative as regards (a) what was argued before the Judge which might be relevant to the first ground and (b) the position as to the oral evidence given at that hearing which might be relevant to the second ground. Having canvassed the basis on which Ms Wass suggested that this might be necessary, we determined that it was not. We had written notes of what was said at the hearing (which it appears may be those taken by Ms Wass who represented the Appellant on that occasion). We consider that those notes make clear what evidence was given and what submissions were made. We therefore considered it unnecessary to adjourn for the recording to be obtained or for Ms Mackenzie to take instructions.
17. Having heard submissions from Ms Wass and briefly from Ms Mackenzie, we indicated that we would reserve our decision and provide that in writing which we now turn to do.

DISCUSSION

Ground 2

18. We begin with the second ground as, if we accept that there is an error of law capable of affecting the outcome of the appeal, that would without more be sufficient to set aside the Decision.
19. The focus of the challenge in this regard is [19] of the Decision where the Judge said this:

"In support of the application for the EV [Entrepreneur Visa] a letter from Jalpa Trivedi of JTC Accountancy was submitted which confirmed the appellant has invested £27,000 into Eurasia on 14 March 2012. This was at least a month, if not more before she even had her first meeting with the solicitors. Jalpa Trivedi was also convicted of providing false documentation to support Tier 1 applications, amongst other convictions. When asked why she used this firm she said they were recommended to her by RK [Rezaul Karim Khan -the person who referred her to Rukaiya and Associates - "RA"

and who was convicted of conspiracy to defraud the Respondent by making false Tier 1 applications and of cheating the public revenue] and their fee was £4,000 which had to be paid in cash. The appellant has not explained whether she paid this sum or how she raised the money to do so. She also initially claimed never to have met Ms Trivedi. When the documents were produced to show they had both signed them she remembered that she had met her briefly at a tube station to hand over documents. I find it is not credible that she would agree to pay an accountant £4,000 and not meet her except to hand over documents in a tube station. Nor is it credible that she could have invested the money by this date (March) as she was still trying to get the money together several months later and said in oral evidence that she spent the time from April until August 2012 preoccupied as to how she would raise the capital to invest in the business. By signing a document dated 14/03/2012 that she had invested the money she must have been aware that this was a false representation.”

20. The challenge to the findings made in this paragraph is two-fold. First, it is said in relation to the final sentence that the Appellant’s case has always been that she did not sign any document on 14 March 2012 and that either that signature was a forgery or the date was backdated. Second, it is said that the Appellant’s position that she had never met Ms Trivedi has not changed. She did not meet Ms Trivedi at a tube station. It is said that the meeting (at Upton Park tube station) was with her business partner, Dewan Naziur Rahmanwan (“DR”).
21. Ms Wass submitted that the Judge’s misunderstanding about this meeting may have arisen from something said in the decision under appeal. At [RB/13], the Respondent said this:

“In your MTR [minded to response] response, you state JTC accountancy was recommended to you by Mr Khan. You state you had no direct dealings or communication with Jalpa Trivedi. You state their fee was £4,000 for a three-year period, to be paid in cash. You have not indicated whether you paid this fee, nor supplied any supporting evidence. Mr Khan advised when it came to filing returns and accounts, you were to provide your information to him, and he in turn would provide to the accountant. You further stated in 2013 you met your entrepreneurial partner at Upton Park tube station so you could hand over your documents to have your accounts completed and prepared by the accountancy firm. This response lacks credibility. It is reasonable to expect business meetings would be held in order to produce business accounts, rather than handing paperwork over at a tube station. Your explanation does not support that you were a genuine entrepreneur and director of a business in the UK, and it is noted that there is a lack of supporting documentation to support your claims. Furthermore, your 2012 accounts were signed by both you and Jalpa Trivedi on 15/08/12, prior to your recollection of meeting at Upton Park tube station to have your business accounts prepared. Although you claim to have had no direct dealings or communication with Jalpa Trivedi, she did support your tier 1 entrepreneur application and produce business accounts for your company and send to companies house.”

22. We accept that the Judge has misunderstood the evidence when finding that the Appellant met Ms Trivedi at a tube station. The

Appellant's case is that she met DR there. There is therefore no inconsistency in the Appellant's case in this regard. However, the point made by the Judge that it is not credible that the Appellant would pay for the services of someone she had never met still stands as does the point that the Appellant has provided no supporting evidence of where the £4,000 came from nor that it was paid. Moreover, the chronology of the meeting does not stack up as the Respondent has pointed out. The accounts made up to August 2012 were filed on 15 August 2012. Yet the Appellant says that she did not meet DR until some time after March 2013 to give him paperwork so that the accounts could be filed. There therefore remains a discrepancy in the Appellant's account in this regard.

23. In relation to the point made in the final sentence of [19] of the Decision, whilst we accept that it is the Appellant's case that she did not invest money in March 2012 or sign a document at that time, that is itself inconsistent with a letter signed by Ms Trivedi dated 15 August 2012, filing the company accounts which asserts that the Appellant did invest the money on 14 March 2012 ([RB/30]). That is consistent with the share certificate document signed by the Appellant at [RB/122]. It is also consistent with the date given as the date of appointment on the Companies House document at [RB/54]. We accept of course that Ms Trivedi is one of those persons convicted of fraud and deception and her word and the documents prepared by her and her criminal associates might not count for much. Equally, though, it is not clear what Ms Trivedi or her associates would stand to gain by lying about the date when the Appellant invested in the company. In any event, the Judge did have evidence on which to base her finding that the chronology of the Appellant's account was not credible.
24. The findings at [19] of the Decision are not limited to those of which the Appellant complains. The thrust of the findings at [19] is that the Appellant had an association with Ms Trivedi, whether she had met her or not, and that the businesses with which Ms Trivedi were involved were not genuine. The Appellant accepts that Eurasia Television was not a genuine business either.
25. As Ms Wass very fairly accepted, the findings at [19] of the Decision are not the totality of the adverse credibility findings and the other findings are not challenged. Those findings (at [16] to [22] of the Decision) are amply sufficient to support the Judge's conclusion that the Appellant was aware that Eurasia was not a genuine business even if one leaves out of account in its entirety [19] of the Decision.
26. We accept that the Judge made a minor error in finding that there was an inconsistency in the Appellant's account of not having met Ms Trivedi. We also accept as Ms Wass submitted that credibility has to be considered based on the evidence as a whole. However, a minor inconsistency as to one minor detail, when taken together with the other findings which are unchallenged could not alter the overall finding that the Appellant was not a credible witness and was not to be believed in

her account to have been unaware of the deception given the other findings made.

Ground 1

27. We turn then to the asserted misdirection made by the Judge. Paragraphs [6] to [8] stem from what is said at [10] and [11] of the Decision as follows:

“10. I am satisfied that the respondent should not have refused the application under 322(1A). Mr Aslam did not seek to dissuade me from this in his submissions and relied instead on 322(2) or 322(5) of the general grounds. I find 322(1A) does not apply because the current application is a variation application and the new application replaced the old application. The date of the application is 17 January 2018 and that is the date of the variation. Paragraph 322(1A) applies to a current application and therefore any false representations would need to have been made in the January 2018 application for this provision to apply. The false representations that are claimed relate to the 2012 application and therefore I accept Ms Wass’s submission that 322(1A), which is a mandatory ground for refusal, should not apply to this case.

11. I find that instead 322(2) would apply (subject to finding false representations were made) instead of (1A). 322(2) provides a general ground on which leave to remain and variations of leave to enter or remain in the UK should normally be refused: *“(2) the making of false representations or the failure to disclose any material facts for the purpose of obtaining leave to enter or a previous variations of leave or in order to obtain documents from the Secretary of State or third party required in support of the application for leave to enter or a previous variation of leave”*.

28. Having directed herself to the burdens and standards of proof which apply in deception cases (which self-directions are not challenged), the Judge reached the findings at [24] and [25] of the Decision that the Appellant was aware that the application made as a Tier 1 Entrepreneur was false for the reasons given at [14] to [23] of the Decision (which we have upheld subject to the minor error which we have concluded could not affect the outcome). The Judge then went on to reach the following conclusions in relation to the general grounds:

“26. Paragraphs 322(2) and 322(5) are discretionary provisions. I have already found that the appellant did act in bad faith and that she was aware that she was not investing in a genuine business and that she would have an active role in as an entrepreneur. I have not accepted she has a reasonable excuse as to why these documents referred to above were submitted with her application. I do not accept that she was an innocent victim of the fraud perpetrated by RK and his associates.

27. I find that the evidence of any deception in this case is compelling. The respondent has provided cogent evidence that deception was used to submit her application in 2012. I find that having discharged the initial evidential burden then the appellant has not provided an innocent explanation. In those circumstances I find that the respondent has

discharged that legal burden. I find that she has been dishonest and has used deception.

28. In all the above circumstances I find that the respondent was correct in not exercising their discretion in the appellant's favour. I find that they should have applied Paragraph 322(2) and not (1A) and they were correct in applying Paragraph 322(5). I therefore find that she does not meet the requirements of 276B as she fails under the general grounds of Paragraph 322(2) and (5). I bear in mind that they are discretionary provisions and that I must look at all the criteria and put them into the balance. However I find that false documents go to the core of the application and that the dishonesty is serious and central to the application. I therefore find that it outweighs any of the other considerations. The appellant's application for Indefinite Leave to Remain is therefore refused on this basis.

29. Before we turn to the grounds challenging the Decision on this basis, we make the following preliminary points. First, the only ground of appeal before the Judge was whether the decision under appeal breached the Appellant's Article 8 rights as a disproportionate interference with her private life. We accept that whether she meets the Rules is relevant to the proportionality assessment, but one must not lose sight of this crucial issue. There is no longer a ground of appeal that the decision under appeal is "not in accordance with the law" or "not in accordance with the Rules". The latter issue may be relevant for the Judge to consider if the Judge finds that in fact an appellant does meet the Rules. The former may be relevant to proportionality if the decision was not one which the Respondent could lawfully make but only, we would suggest, if it was unlawful in more than a technical sense.
30. Second, there were two separate issues to which the Appellant's deception was relevant. First, in relation to the application for ILR, it was relevant to Paragraph 276B(ii)(c) which expressly relates to the Appellant's "personal history, including character, conduct, associations and employment record". It was also relevant to Paragraph 276B(iii) and whether the Appellant falls for refusal under the general grounds of refusal. In the decision under appeal, the Respondent relied on both those sub-paragraphs for rejecting the application. The second issue to which deception was relevant was in relation to the suitability requirements under Appendix FM to the Rules. That was a separate issue as we will come to.
31. Turning then to the grounds, it is said first that the Judge's consideration of the Appellant's case applying Paragraph 322(2) was wrong as it was "not the place of the Tribunal to correct the errors which have been made by the SSHD". This was in part the reason for the grant of permission.
32. Second, it is said that the Judge was wrong to find that Paragraph 322(5) applied. It is said that the making of false representations falls within Paragraphs 322(1A) or 322(2) and therefore cannot be a ground of refusal under Paragraph 322(5). The Appellant prays in aid in this regard

the case of Mahmood. This was also an express reason for the grant of permission.

33. Third, it is said that the Appellant's case was that none of the cited general grounds applied and therefore her application could not be refused under Paragraph 276B(iii) and would instead have to be refused under Paragraph 276B(ii). It is said that the Judge failed to determine that issue. It is said that the Judge failed to reach any conclusion whether it would be undesirable for the Appellant to be granted ILR having considered the factors in Paragraph 276B(ii). This point largely overlaps with and subsumes the first two points made.
34. As we have indicated, the Appellant relies in part on the Tribunal's decision in Mahmood. We consider that the Appellant's case is distinguishable from that case. However, it is helpful at this juncture to set out what that decision did or did not decide.
35. First, the guidance for which Mahmood is reported is confined to the suitability provisions in Appendix FM. The headnote does not deal with the general grounds of refusal.
36. Second, the reason why the general grounds of refusal are not dealt with in the headnote is that the decision under appeal in Mahmood was a refusal of a human rights claim made in the context of an application for further leave to remain to which Paragraph 276ADE applied. There had been a previous application for ILR under Paragraph 276B but that had been refused several years earlier and that decision was not the decision under appeal (unlike in the Appellant's case). It is for that reason that the general grounds of appeal were not directly at issue in the appeal in Mahmood. In the Appellant's case, Paragraph 276B was directly at issue. The general grounds of refusal were directly relevant to the application of that paragraph.
37. Although the general grounds of appeal were not directly at issue in Mahmood, the Tribunal did consider those as part of the backdrop. However, in our view the Appellant's case is also distinguishable from Mahmood on this issue.
38. We turn then to [37] to [39] of Mahmood which helpfully set out Paragraphs 322(1), (1A), (2) and (5). Dealing first with the distinction between Paragraphs 322(1A) and (2), Paragraph 322(1A) is concerned with false representations being made in the application under consideration (the current application) whereas Paragraph 322(2) is concerned with the making of false representations "for the purpose of obtaining leave to enter or a previous variation of leave" or in order to obtain documents required in support of such applications (in other words in a previous application). The other distinction is that Paragraph 322(1A) is a mandatory ground of refusal whereas Paragraph 322(2) is a discretionary one where leave is normally to be refused.

39. As we pointed out to Ms Wass, there may be a distinction between a previous application which has been decided and one which was made but never decided because it was varied whilst pending. Mahmood was concerned with the former situation. The Appellant's case is the latter situation.
40. Whilst we accept that the effect of a variation of a pending application requires the Respondent to consider the varied application rather than the initial one, in this case the two were inextricably linked as the decision under appeal makes clear. The false representations were clearly made in the initial application but continued to be relevant to the varied application as they went to the Appellant's character and conduct as well as the issue whether she had made false representations in the initial application. We do not accept therefore a suggestion made by Ms Wass that the false representations were not relevant to the varied application under consideration.
41. We also consider that it may not be correct in this analysis to refer to the varied application as being a previous application. Whilst the discussion at [57] to [76] of Mahmood is concerned mainly with the interaction of the general grounds and the suitability requirements in Appendix FM, it is also instructive in relation to the distinction drawn between false representations made in current and previous applications respectively, particularly as to the mandatory and discretionary nature of the tests. We have regard in particular to the Respondent's guidance referred to at [59] of the decision in Mahmood.
42. In our view, the distinction drawn and the reason why one paragraph applies a mandatory test whereas the other applies a discretion can be understood based on this guidance. If a false representation is discovered in the context of a current application, then that should lead to a mandatory refusal "unless the particular paragraph of the rules allows [the use of a] discretion". However, if an application is not refused for that reason either due to caseworker error or because the false representations are not discovered until later, the decision maker would need to consider what had occurred since the making of those false representations and the impact on the current application. That involves the exercise of a discretion. However, that analysis depends also on the previous application having been determined in some way. In the case of an application which is varied whilst pending, that is not determined except where, as here, it is relevant to the later application as varied. It is then (as here) considered as part of the current application.
43. Whilst we are for those reasons far from persuaded that the Respondent did err in her application of Paragraph 322(1A) rather than 322(2), we have decided to proceed on the basis that she was wrong to do so. We are after all presently considering whether Judge Farmer made an error of law in the Decision, and she proceeded on the basis that the Respondent had applied the wrong paragraph.

44. We therefore return to the grounds of appeal. The first point made by the Appellant does not identify any error of law. The Appellant raised in her skeleton argument that the wrong provision had been applied. We accept that after the Appellant had put her case, the Respondent continued her reliance on Paragraphs 322(1A) and (5) in the Respondent's review. However, at the hearing, the Respondent's representative argued in submissions that irrespective of any error in this regard, Paragraph 322(2) would apply. That was an issue between the parties which the Judge had to resolve and did.
45. Further, as we have already pointed out, the issue for the Judge was whether the Appellant could meet the Rules. She had to consider that for herself. This involved considering whether there was any other basis for refusal under the Rules on the findings made.
46. We turn then to the issue of whether Paragraph 322(5) could properly be applied. The Appellant relies in this regard on the analogy with the suitability provisions in Appendix FM and what was said in Mahmood. At [1] of the headnote the Tribunal concluded as follows:
- "Paragraph S-LTR.1.6 of Appendix FM does not cover the use of false representations or a failure to disclose material facts in an application for leave to remain or in a previous application for immigration status."
- The Tribunal's reasoning in this regard is to be found at [73] to [76] of the decision in Mahmood .
47. That reasoning is predicated upon legislative amendments made to the suitability requirements in Appendix FM to the Rules and what was assessed to be the purpose of those amendments. That has no bearing on the general grounds as such. Even if we were wrong about that, we repeat the point we have already made that, when applying the general grounds, the Respondent was considering not merely the use of false representations and whether those could be said to be in relation to the current or a previous application but also the Appellant's conduct which arose for consideration under Paragraph 276B(ii).
48. We return then to the complaint made about the Judge's reliance on Paragraph 322(5). For the reasons we have given we do not consider that Mahmood goes so far as to say that Paragraph 322(5) cannot apply where Paragraphs 322(1A) or 322(2) do apply. Even if we are wrong about that, the Respondent was also considering the conduct, character and association of the Appellant. Even if she had wrongly applied Paragraph 322(5) therefore, in the wider context of Paragraph 276B(ii), she was entitled to refuse the Appellant's application on the basis of that conduct.
49. It follows that if the Judge fell into similar error (if error it was) at [28] of the Decision, the findings there made apply equally to the Appellant's conduct when assessed in the context of Paragraph 276B (ii). As we have already noted, that was not an issue in Mahmood as the application for

ILR on grounds of long residence was not the decision under appeal. If Judge Farmer did err therefore either by applying Paragraph 322(5) or failing to consider Paragraph 276B(ii), that error could not affect the outcome. The findings in relation to the former inform the latter.

50. Moreover, as is clear from [28] of the Decision read as a whole, the Judge did consider the overall exercise of discretion under Paragraph 276B. That includes Paragraph 276B(ii) and is sufficient to dispose of the Appellant's third point under this ground.
51. We turn then to the suitability grounds in relation to which Mahmood has potentially more relevance. As we have already noted, however, Mahmood is distinguishable from the Appellant's case.
52. First, Mahmood was concerned only with false representations. The issue of conduct which arises under Paragraph 276B(ii) was not part of the Respondent's decision there under appeal. Second, the general grounds had no direct application because the decision under appeal was one under Appendix FM to the Rules and not Paragraph 276B. Third, the reason why the Tribunal concluded as it did in Mahmood is because the false representations made were not to the Respondent at all but to an employer in order to secure employment. As the Tribunal indicated at [3] and [4] of the headnote, the false representation must have been made in support of an application for immigration status and must not be "peripheral to that application".
53. Unlike in Mahmood, the false representation made by the Appellant was clearly made with a view to securing immigration status. The false representation in the Appellant's case was not peripheral to the application to remain on grounds of long residence. That long residence depended on the success of the assertion that the Appellant was entitled to remain after 2012 as a Tier 1 entrepreneur. The false representation was made to secure status in that category.
54. We turn then to the suitability provisions which the Judge dealt with at [29] to [31] of the Decision as follows:
 - "29. The next issue relates to the appellant's claim under Paragraph 276ADE(1) based on her private life. Her claim is put under (vi) namely that there would be very significant obstacles to her re-integration into Bangladesh should she have to return there.
 30. The first issue relates to suitability. The respondent has stated that the appellant falls for refusal under S-LTR.1.6 or S-LTR.2.2. Ms Wass relies on Mahmood (paras S-LTR.1.6 & S-LTR.4.2; Scope [2020] UKUT 00376 (IAC) as authority for the proposition that S-LTR.1.6 does not cover the use of false representations or a failure to disclose material facts in an application for leave to remain or in a previous application for immigration status. I accept that this case does specify that S-LTR.1.6 cannot apply when the suitability refers to false representations made.
 31. Ms Wass did not address me on the suitability provisions contained in S-LTR.4.2. Mahmood deals with this at para 84 of the decision. In order for this suitability provision to apply there must have been a false

representation in respect of a previous application (as I have found there was in this appeal). In addition it must not be peripheral to the application and in that case it was found to be peripheral to his private life and ILR application. However in the current appeal the false representations were not peripheral but central to the application and on that basis I find that S-LTR.4.2 would apply to this appellant and she would fail to meet the suitability requirements on that basis. She therefore cannot succeed under Paragraph 276ADE(1).”

55. As we have already concluded, since it was the Appellant’s case that the wrong provision of the Rules had been relied upon (dealing with representations made in current not previous applications) and the Respondent appears to have accepted that (whether rightly or wrongly) but relied upon the alternative provisions, there was an issue in dispute which the Judge had to resolve and did so. She was entitled to apply the alternative provision of S-LTR.4.2 (even if as we have observed it might be argued that the Respondent had rightly relied upon S-LTR.2.2). We also repeat what we said earlier. The issue for the Judge was whether the Appellant could meet the Rules. If the Appellant failed in relation to any of the suitability requirements, then she could not succeed under the Rules. It was therefore incumbent on the Judge to consider that issue.
56. Even if the Judge had erred when considering the suitability requirements (which we do not accept), any error could not impact on the outcome given the Judge’s findings at [32] of the Decision (which are unchallenged) that the Appellant could not meet any of the subparagraphs of Paragraph 276ADE (1) of the Rules.

CONCLUSION

57. We have accepted there to be a minor error in one of the Judge’s factual findings at [19] of the Decision. However, in the context of the overall adverse credibility findings, that error could not affect the outcome. Even if the Respondent were wrong to apply Paragraph 322(1A) of the Rules and S-LTR.2.2 of Appendix FM to the Rules, the Judge was entitled to consider the Appellant’s case under the alternative provisions of Paragraph 322(2) and S-LTR.4.2 of Appendix FM. The Appellant had taken issue with the provisions relied upon. The Respondent did not apparently argue that she had applied the right provisions but instead relied upon the alternatives. It was therefore open to the Judge to determine that issue. Indeed, on the findings of fact made it is difficult to see how she could have avoided doing so.
58. As we have observed, the Judge had to consider the wider issue of whether the Appellant could succeed under the Rules. That included considering also the Appellant’s conduct within the provisions of Paragraph 276B.

59. Finally, we repeat the point we made earlier that the only ground of appeal was whether the Respondent's decision breached the Appellant's Article 8 rights. Having found that the Appellant had made false representations and exercised deception when making her application as a Tier 1 entrepreneur, it is very difficult to see how a Judge could find in the Appellant's favour when balancing any interference with her private life against the public interest.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Farmer dated 6 March 2022 does not contain a material error of law. We therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

L K Smith

Upper Tribunal Judge Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 September 2023