



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/26928/2016

**THE IMMIGRATION ACTS**

Heard at Civil Justice Centre, Manchester  
On 8<sup>th</sup> May 2018

Decisions and Reasons Promulgated  
On 06<sup>th</sup> August 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MOHAMMAD IMRAN  
(anonymity direction not made)

Respondent

**Representation:**

For the Appellant: Mr Tan, Senior Home Office Presenting Officer  
For the Respondent: Mr Khan, Parkview solicitors

**DECISION AND REASONS**

1. Mr Imran sought and was refused leave to remain in the UK on human rights grounds. His appeal against that decision was allowed by First-tier Tribunal Judge Hindson for reasons set out in a decision promulgated on 8<sup>th</sup> September 2017. For reasons set out in a decision promulgated on 30<sup>th</sup> May 2018, the Hon. Mr Justice Lane found material errors of law in the decision of the First-tier Tribunal Judge and set aside the decision to be remade.

## Background and undisturbed facts.

2. Mr Imran, who was born in May 1979, entered the UK as a student in December 2010. He and his British Citizen wife met in 2014, married religiously in January 2015 and secularly in February 2015. She has two children by a previous relationship – one born in 1998 who is now an adult but still living at home and the second born in 2004 and aged 14. He and his wife have two children, one born in April 2016, now aged 2 and the second born in November 2017, now aged 8 months.
3. On 11<sup>th</sup> February 2012 Mr Imran applied for further leave to remain as a student. That application was granted and his leave to remain extended until 31<sup>st</sup> December 2013. On 12<sup>th</sup> November 2013, he applied for further leave to remain as a student, such application being granted and his leave to remain extended until 18<sup>th</sup> September 2015. On 28<sup>th</sup> August 2014, his student sponsorship was withdrawn because the English language test result submitted with the application of 12<sup>th</sup> November 2013 was not accepted. It does not appear from the papers that his leave to remain was curtailed. On 26<sup>th</sup> January 2015, he submitted an unmarried partner application which was varied to a marriage application in October 2015. On 15<sup>th</sup> April 2016, the SSHD refused the application and certified the underlying human rights claim under s94 (1) Nationality Immigration and Asylum Act 2002 as being clearly unfounded, the consequence being that Mr Imran could only appeal after he had left the UK. Following notification of the birth of their first child, that application was reconsidered by the respondent and refused on 23<sup>rd</sup> November 2016 but the certification was withdrawn. It was the appeal against that decision that came before First-tier Tribunal Judge Hindson.
4. The SSHD accepted that Mr Imran and his wife had a genuine and subsisting relationship and that they met the financial criteria under the Immigration Rules. The application was refused because

“...ETS undertook a check of your test and confirmed to the SSHD that there was significant evidence to conclude that your certificate was fraudulently obtained by the use of a proxy test taker...

....

Although [Mr Imran has] now submitted an ESOL Certificate from Trinity College dated August 2015 it is not acceptable that when [he] attended [his] [marriage] interview in October 2015 [his] level of English was so limited that [he] required an Interpreter throughout the interview.

In fraudulently obtaining a TOEIC certificate in the manner outlined above, [he] willingly participated in what was clearly an organized and serious attempt, given the complicity of the centre itself, to defraud the SSHD and others. In doing so [he] displayed a flagrant disregard for the public interest, according to which migrants are required to have a certain level of English language ability in order to facilitate social integration and cohesion, as well as to reduce the likelihood of them being a burden on the taxpayer.

...

In addition it is considered that [his] presence in the UK is not conducive to the public good because [his] conduct makes it undesirable to allow [him] to remain in the UK.....”

5. Before the First-tier Tribunal Mr Imran claimed he had taken the language test. He was comprehensively disbelieved and a clear finding of fact was made by the First-tier Tribunal that Mr Imran had not taken the test himself in 2011 but had

used a proxy test taker and that test had been utilised in the application for leave to remain as a student made on 12<sup>th</sup> November 2013.

6. The First-tier Tribunal judge allowed the appeal against the refusal of the human rights claim. In setting aside the decision Lane J held

“11. ....The point in issue is whether it would be unreasonable ..... to require a British Child to leave the United Kingdom. That however requires an analysis of the evidence in order to decide whether the British citizen child or children would in fact leave if the claimant were to leave the United Kingdom. Given the family situation concerning [Mr Imran's] wife, there is plainly an issue to be decided on the facts as to whether in all the circumstances the children including [Mr Imran's] biological children, would leave the United Kingdom if he were required to do so.

12. The issue therefore is whether the disruption or interference with the family life of the family in question which would be occasioned by requiring [Mr Imran] to leave the United Kingdom would be in all the circumstances proportionate. That in turn requires an analysis of the significance of the finding of deception....”

7. Before the First-tier Tribunal, Mr Imran's wife's evidence was that neither she nor any of the children would leave the UK to travel with Mr Imran to Pakistan if he were required to leave the UK. That evidence was repeated in witness statements for the hearing before me. Lane J stated that there was a factual issue to be decided - whether Mr Imran's wife would leave the UK with her children<sup>1</sup>. It was accepted before me that she would not leave either with the two youngest children leaving the two oldest in the UK, or with the three minor children. Although there was an interpreter for Mr Imran for the hearing before me, it was agreed by both representatives that there was no need for oral evidence, it being accepted that the significant issue to be determined was the proportionality of the decision refusing Mr Imran leave to remain based on his human rights claim ie the qualitative exercise. The SSHD accepts the marriage is genuine and subsisting, that there is family life, that the four children live at home and that Mr Imran has family life with his wife and two birth children; that he meets the financial eligibility criteria and that the Trinity language certificate he obtained in April 2015 is not the subject of an allegation of fraud. It was not directly accepted by Mr Tan that Mr Imran has family life such as engages Article 8 with his 14-year-old step daughter but nor was it rejected – as to which see below.

### **Remaking the decision**

8. Mr Khan took me through the various criteria set out in s117B Nationality Immigration and Asylum Act 2002. Although there may be some quarrel with Mr Iman's language ability, I do accept he has obtained a language certificate from Trinity College in 2015 which indicates at least a basic language skill which would, arguably, meet the necessary threshold even though it was obtained more than 2 years ago and there does not appear to be an up-to-date certificate. For the purposes of this appeal I have taken the view that he meets the necessary language ability.

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<sup>1</sup> If the submission had been that they would leave the UK because that was the only way the family could stay together and that would be a breach of the children's Zambrano rights, different considerations may come into play in the light of Zambrano and the SSHD's policy. That is not the issue here, however.

9. Similarly, for this appeal and in the light of the lack of objection by the respondent, I accept that there is no issue that there would be a burden on public funds and the financial criteria are met.
10. S117B(4) provides that little weight is to be placed upon a relationship with a qualifying partner that is established whilst the person is unlawfully in the UK. As Mr Khan submitted, the relationship with the spouse commenced when Mr Imran had leave to remain in the UK. His sponsorship had been withdrawn but his leave to remain had not, so far as I am aware, been curtailed. Nevertheless, he had submitted a language test certificate which had been fraudulently obtained in December 2011. His application for leave to remain had been granted because of the fraudulent certificate. Had it been known that the certificate had been fraudulently obtained when his application was submitted, he would not have been granted further leave to remain. Although not, at that time unlawfully in the UK, he was in the UK because of a deception perpetrated upon the SSHD. Plainly that cannot put him in a better position than someone who was unlawfully present having overstayed his leave. He also knew, at the time he embarked upon the relationship, that his sponsorship had been withdrawn because of the deception. It cannot be successfully submitted that he would have been unaware that he had obtained leave to remain by deception. It follows that I can place little weight upon that relationship, even though it appears he did not tell his wife that he had obtained leave to remain by deception.
11. In so far as Mr Imran's private life is concerned, this is bound up with his family life. If his family is left out of account, his private life could not on any legitimate basis result in him succeeding in his appeal – he arrived in the UK as a student with no expectation that he would be granted leave to remain on a permanent basis and he obtained a language certificate by deception in December 2011 to obtain an immigration advantage; he has only been in the UK some 8 years. On any view, his residence in the UK has been precarious since December 2011, a year after he arrived in the UK. His private life claim is hopeless and could not on any legitimate basis succeed.
12. Nevertheless, the length of time he has been in the UK is a factor that should be considered given that during that time he has developed close family ties.
13. Although the oldest child, a British citizen, still lives at home it is only a matter of time before he will be making his own way in the world. There was nothing disclosed in the papers before me which indicated that Mr Imran played or plays a significant role in that young man's life who, after all, was already 16 or so when they first met. There is no indication what this young man is currently doing – whether he is at college or undertaking an apprenticeship or working. Whatever he is doing, there is nothing in the evidence to suggest that Mr Imran's presence in the UK is of any significant assistance to him such that he relies upon him to any real extent or is needed for his future; it seems unlikely that such would be the case in any event. This young man has said in a letter, that Mr Imran's presence has resulted in them being what he describes as a "complete" family and he seems to be suggesting that there would be financial struggles if he were to leave. But taking these matters at their highest and accepting they have developed some sort of bond as family members, this does not begin, on the

evidence before, me to show a bond between this young man and Mr Imran that attracts protection under Article 8.

14. The position is different for the younger step child who is currently working towards her GCSEs. I note that Mr Imran's wife does not say in her witness statement that this child looks upon Mr Imran as her father and, when referring to the possibility of leaving the UK refers only to that child, if left behind, being deprived of a mother. The child refers to Mr Imran as a 'father' and refers to various activities he undertakes with her. Despite the lack of significant and cogent evidence that he is a real 'father-figure' and is not only undertaking such activities with her because they share a household and she is a child, I have, for the purposes of this appeal accepted that their relationship amounts to family life for the purposes of Article 8. The child was only 10 when they first met and they have been living as a family unit since then. Whilst I do not doubt but that it is in the best interests of this child for Mr Imran to remain in the UK as part of her family life, I am also satisfied that given the relatively short period of time that he has been a part of her life compared to the other adults in her family (her mother and older brother), if Mr Imran were required to leave the UK this would not have an adverse long-term impact upon her. There is no evidence before me to suggest otherwise. I also find that they would be able to continue their relationship through Skype/WhatsApp/ Facetime and so on as well as by arranging visits.
15. I have no difficulty at all in concluding that it is in the best interests of the two younger birth children that Mr Imran remain in the UK to participate in and contribute to their upbringing.
16. Mr Khan submitted that the relationship between the two younger children, particularly the 2-year-old, and their older half-brother was an important relationship which would be significantly fractured if the children were to leave the UK with Mr Imran. The young man has not said he would not leave the UK, although his mother has said he would not. It is reasonable to conclude he would not. Although he was born in Pakistan and it is not clear when he arrived in the UK and how much memory he has of Pakistan, he is a British Citizen and his mother's evidence is that he does not speak Punjabi although he understands the language. There is no reason to find that he would either wish to leave the UK or that he would leave the UK; it is a perfectly reasonable decision for him to come to; his life is here in the UK. I accept and find that there is a relationship between him and the 2-year-old but I do not accept that he plays a significant part in her life. They live together in the same house but there is no evidence that he plays any particular paternal role in her life; he does not refer to the two-year-old in his letter in support of Mr Imran. Of course, living in the same household he will have daily contact with the child and will look after her on occasion. But he does not play a role that could not be replicated through regular frequent visits if she were to go to Pakistan. As time goes on such contact will be increased through Skype and similar.
17. Although there were no submissions made about the 14-year-old and her older brother, I take the same view; there is more than likely a close brother/sister relationship but it is not, based on the evidence before me, one that could not be

replicated through visits and through Skype/WhatsApp/Instagram and similar methods of communication.

18. The relationship between the 14-year-old and the two-year-old is again likely to be close. Although there was no evidence before me how that manifests itself, it is reasonable to conclude that it is in the best interest of those two children (and the baby) for them to remain in the same family unit and that the relationship between those children engages Article 8 for the purposes of determining the proportionality of the decision the subject of appeal.

19. Mr Imran's wife is undoubtedly in a very difficult position. She really is "between a rock and a hard place". As her recent witness statement said

4. in the event that my husband is refused leave to remain in the UK, there would be only two options available to me; a) leave the UK with my two younger children (biological children) in order to prevent them from being deprived of a father and leave my two older children in the UK so as to deprive them of a mother or b) remain in the UK and deprive my two younger children of a father.

5. ...I cannot leave the UK....I cannot expect [my two older children] to leave their lives behind in the UK and relocate to Pakistan and they are not willing to do so. It would simply be unfair, cruel and a complete infringement of article 8 rights. Therefore, there is no prospect of us all leaving the UK as a family and I cannot leave without them.

....

8. Moreover, all of my children are British and it would be in their best interest to remain in the UK where they can enjoy the privileges that come with their British Nationality, all of which they would not receive in Pakistan.

...

10. ...There is no prospect of my children and I leaving the UK to join my husband in Pakistan if he was not permitted to stay. It would simply be the end of our marriage.

20. As is made clear in *MA (Pakistan)* [2016] EWCA Civ 705 [19] the questions to be asked are

- (1) Does the applicant have a genuine and subsisting parental relationship with the child;
- (2) Is the child a qualifying child as defined in s117D;
- (3) Is it unreasonable to expect the child to leave the UK?

21. The best interests of the children in this case, are a primary consideration and are highly relevant in considering the concept of reasonableness. The children are British citizens; the SSHD accepts that it is not reasonable to expect a British Citizen child to leave the UK. The youngest step child has been in the UK all her life and although a step child who has been with Mr Imran for only 4 years or so, this is also relevant in considering the proportionality of the decision to refuse Mr Imran leave to remain with the consequence that he would be removed to Pakistan. Although I have doubts that Mr Imran has a *parental* relationship with the 14-year-old stepdaughter, I do accept that the nature of the relationship engages Article 8 and that it is a genuine relationship in as much as he takes care of her, is a part of family life generally and his absence would result in a diminution of that family life. The extent to which it could be characterised as a parental relationship is not evidenced. Taking the relationships of the children with each other (bearing in mind that the youngest two are only 2 years old and a baby) and

their mother and with Mr Imran as a whole, I accept that family life as presently enjoyed would be best continued if they could remain together as a family unit. Not perhaps to the extent that would be the case if they had been together as a family unit for longer or the younger children were older, but nevertheless considerable weight should be attached to the strength of that family unit.

22. As made clear in *MA (Pakistan)*, that is not the end of the issue. Public interest considerations as they bear upon the parents, impact upon the reasonableness test.
23. It is uncontroversial that the children's best interests are a primary consideration and that those best interests lie with the children being within the family unit which includes Mr Imran as a spouse, parent and step-parent. But those best interests must, where necessary, yield to public interest considerations, for example where one parent is convicted of a criminal offence and goes to prison. Between those two positions, a balance has to be struck between the competing interest of the public interest in the maintenance of the integrity of the scheme for the control of immigration, approved by Parliament, and the Article 8 rights of Mr Imran and the family members. The question in this case is how that balance is struck, informed by the test of reasonableness. The question arises because of Mr Imran's immigration status in the UK.
24. The test of reasonableness is not the same as whether it would be unduly harsh. Something can be unreasonable without it being unduly harsh and I have borne this in mind in reaching my decision.
25. The assessment of the weight to be placed upon the public interest must vary depending on the circumstances. I have not, in considering this case, considered s117C Nationality Immigration and Asylum Act 2002. Mr Imran has not been convicted of any criminal offence and has not been charged with a criminal offence. s117C does not arise for consideration in this appeal. S117C, when applied to an assessment of the impact upon a qualifying child, calls for an analysis of the impact upon that child if the parent is deported leaving the child in the UK or if, in order to maintain the parental relationship, the child also leaves the UK. In contrast, S117B(6) is concerned with whether it would be unreasonable to expect the child to leave the UK (and of course the SSHD's policy is that it is unreasonable to expect a British Citizen child to leave the UK). On a literal reading s117B(6) does not require an assessment of the reasonableness of expecting the child to remain in the UK without the parent. As is clear from S117A(2), the considerations set out in s117B are not an exhaustive list and, as was observed by Elias LJ at para 45 of *MA (Pakistan)*:

“... the only significance of s117B(6) is that where the seven year rule is satisfied, it is a factor of some weight leaning in favour of leave to remain being granted”

But, as explained in the judgment of Elias LJ, balanced against that is the overall conduct of the parent concerned.

26. *MA (Pakistan)* establishes that if the answer to the question “is it unreasonable to expect the child to leave the UK?” is “yes” that is not determinative of the appeal.

It is logical that it will also be necessary, where appropriate, to carry out an assessment of whether it would be unreasonable to expect a qualifying child to remain in the UK without the parent facing removal, an assessment that is to be informed by the circumstances as a whole.

27. If Mr Imran's relationship had been formed when he had valid leave to remain that had not been obtained by relying on a fraudulently obtained language certificate and the two youngest children (or even just the first) had been born during the currency of that leave it is most probable that his appeal would succeed. Whether a human rights claim would be successful if he had been an overstayer, where there had been no dishonesty or deception, when he commenced his relationship and/or had his children would be fact-sensitive but it may be that such a claim would have been arguable.
28. In this case, however Mr Imran formed his relationship with his wife when he knew he had obtained his leave by deception. He cynically and dishonestly manipulated the immigration system to extend his leave to remain. Had he not exercised deception or if it had been known to the SSHD at the time he considered Mr Imran's application, he would not have been granted further leave to remain in the UK and he would have been expected to leave the UK before December 2011; he would have been liable to be removed if he had not left. Furthermore, this was not an individual act of deception but was an act of deception carried out in the context of an organised and sophisticated scheme over a lengthy period that caused a significant threat to the integrity of the system of immigration control. It follows that where there has been deception of this level of seriousness, the public interest is of considerable weight in assessing the concept of reasonableness. To have it otherwise would be to fail to recognise that deception is of a more serious calibre and has more serious consequences than overstaying. A clear distinction must be drawn in terms of the weight to be placed upon the public interest considerations between an individual who seeks to rely upon family life built when an overstayer and one who does so during a period of leave secured by deception. Put another way, in striking the proportionality balance in an article 8 case, public interest considerations weigh against both a person who has overstayed and a person who has used deception to secure leave during which a private and family life is built but it is plainly the case that a person who has used deception to secure leave to remain faces a significantly more formidable task in displacing the public interest considerations speaking in favour of his removal from the UK.
29. In this case, the two birth children are very young. Both are British Citizens and their best interests lie in remaining in the UK with both parents and, although to a lesser extent, their half siblings. The 14-year old's best interests, also a British citizen, are also served by remaining in the UK with her siblings and her mother and Mr Imran. All will suffer to a greater or lesser extent if Mr Imran is required to leave the UK; his wife because she has struggled to keep her family; the two youngest children because they will lose the day to day contact with their father; the 14-year-old because she will lose day to day contact with her father-figure.
30. This is an example of a case where the integrity of immigration control has been compromised not simply by one individual acting alone but by his participation in



an extensive well-organised fraud; the public interest considerations are particularly important and carry significant weight in the assessment of the reasonableness of the decision. As I have said I have held very firmly in mind that Mr Imran has not been convicted of a criminal offence and the test is one of reasonableness and nothing more. I accept that Mr Imran's wife will not take the children to Pakistan and that his removal would result in their separation and the cessation of contact with the two youngest children for some time, but the fact that an appellant has knowingly participated in the widespread and well organised fraudulent ETS abuses, designed by those involved to subvert the scheme of proper regulation of English language test certificates in order to secure for himself an immigration advantage that he knew very well he was not entitled to is a weighty matter and he will need, in support of his Article 8 claim, to point to reasons of particular cogency to outweigh those considerations. In this case the appellant has failed to achieve that.

31. For these reasons, I find that, whilst it is wholly understandable that they will choose not to do so, and that they most probably will not do so, if they wish to remain together as an intact family unit, given the circumstances overall in this case, and despite the children being British Citizens, it would not be unreasonable for them to leave the UK. Whether Mr Imran and his wife take that decision is, in the circumstances a matter for them. I am also satisfied that it would not be unreasonable, given the circumstances, to expect the qualifying children to remain in the UK without Mr Imran, even though family life has been established.

32. Mr Imran's appeal against the refusal of his human rights claim is dismissed.

Conclusions:

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

The decision was set aside by the Hon Mr Justice Lane on 30<sup>th</sup> May 2018.

I re-make the decision in the appeal by dismissing it



Date 30<sup>th</sup> July 2018

Upper Tribunal Judge Coker