



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11705/2015

THE IMMIGRATION ACTS

Heard at Field House
On 14th December 2018

Decision & Reasons Promulgated
On 16th January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MR MOHAMMAD ATIF HANIF
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mian, Counsel

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan who applied for leave to remain in the United Kingdom based on the partner route, he being married to Mrs [NB], a British citizen.
2. On 12th November 2015 the Respondent refused the application. The Secretary of State contended that there had been deception in the manner in which the Appellant had obtained his TOEIC certificate from Educational Testing Service. The Appellant appealed and his appeal was heard on 21st March 2018 by Judge of the First-tier Tribunal Mill sitting at Harmondsworth. Judge Mill found the Appellant credible in

every material particular but still dismissed the appeal on the basis that the Appellant could make application outside of the United Kingdom. I should say that the burden of proof was of course on the Secretary of State in respect of the deception and the Secretary of State failed to discharge the burden as found by Judge Mill.

3. Not content with the decision, by Notice of Appeal dated 9th April 2018 the Appellant made application for permission to appeal to the Upper Tribunal. That was refused, but a renewed application was allowed by Upper Tribunal Judge Kekić on 1st November 2018 and thus the matter comes before me.
4. Quite properly, in my view, the Secretary of State took the view that the judge had erred in law and that it was not possible to resist that. Mr Walker again, very reasonably in my view, concedes the appeal. I have to say that given the guidance in the case of *Chikwamba* it is unlikely that I would have come to any different view even if I had not heard any submissions.
5. Be that as it may, by consent the Secretary of State concedes the appeal and, for the avoidance of doubt, accepts that the appeal should recognise that this Appellant is entitled to rely on the "five-year route" with respect to his relationship with his spouse.

Notice of Decision

6. The decision of the First-tier Tribunal is set aside and remade in the Upper Tribunal, such that the appeal in the First-tier Tribunal is allowed.
7. No anonymity direction is made.

Signed

Date: 7 January 2019



Deputy Upper Tribunal Judge Zucker

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a full fee award in the sum of £140.00.

Signed

Date: 7 January 2019

A handwritten signature in black ink, appearing to be 'Zucker', written in a cursive style.

Deputy Upper Tribunal Judge Zucker