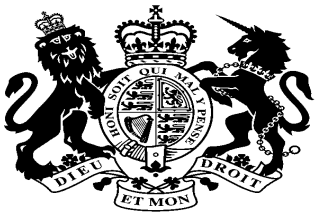

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09816/2019

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On Monday 10 February 2020	**On Tuesday 3 March 2020**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

PANKAJ ARORA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Charlton, Legal Representative of Bhogal Partners, Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Mathews promulgated on 27 August 2019 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 20 May 2019 refusing his human rights claim based on his private life in the UK and his relationship with his girlfriend.

2. The Appellant is a national of India who came to the UK in June 2012 with leave as a student valid to 28 August 2013. An in-time application to extend that leave was refused on 10 June 2014, apparently in reliance on the Respondent's assertion that the Appellant had cheated in an English language test by using a proxy test-taker ("the ETS allegation"). An application was made to reconsider that decision which culminated in a judicial review application in 2017 dismissed on 5 March 2018. The Appellant claims to know nothing of those proceedings.

3. Judge Mathews refused a request to adjourn the hearing before him. That request was made on the basis that the Appellant wished to adduce further evidence concerning the ETS allegation. The Judge heard oral evidence from the Appellant. He did not accept the Appellant's explanation in relation to the ETS allegation and therefore upheld the Respondent's conclusion that the Appellant did not satisfy the suitability requirements of the Immigration Rules ("the Rules"). In any event, the Judge found that the Appellant could not meet the Rules based on his relationship or otherwise and that the Respondent's decision to refuse leave was not disproportionate. He therefore dismissed the appeal.

4. The Appellant challenges the Decision on four grounds. First, he says that it was procedurally unfair for the Judge to refuse to adjourn the hearing. Second, it is said that the Judge erred by rejecting the Appellant's account and/or failed to consider the matter adequately. Third, he says that the Judge has erred by failing to take into account relevant case law. Fourth, he says that the Judge has erred by not considering the discretionary elements of the suitability requirements of the Rules.

5. Permission to appeal was granted by First-tier Tribunal Judge Keane on 12 December 2019 in the following terms so far as relevant:

> "... 2. The grounds assert in summary that the Judge materially erred in procedural fairness in that an application to adjourn was made on the grounds that the appellant's bundle and witness statement (and the statements of his partner and partner's mother in support) did not adequately address the issue of the alleged fraud regarding the ETS English language test certificate dated 14 July 2013 obtained from Eden College International. This test certificate was submitted in support of an application for leave to remain (as Tier 4 Student) made on 22 August 2013 and which was refused on 10 June 2014. A copy of that refusal letter was not produced by either party at the appeal and it is not known on what basis the application of 22 August 2013 was refused.
>
> 3. There is an arguable error of law that has been identified which merits further consideration. The judge arguably perpetrated a procedural irregularity affecting the outcome of the appeal and the fairness of the proceedings in exercising his discretion to refuse the request of an adjournment. The evidence which the Appellant wished to adduce was arguably significant and the effect of the judges decision was inevitably to exclude such evidence. It is arguable that an important factor in the

proportionality assessment, the length of the appellant's residence in the UK, has subject [sic] to contradictory findings of the Judge."

6. The matter comes before me to decide whether the Decision does contain any error of law and, if I so conclude, either to re-make the decision or remit the appeal to the First-tier Tribunal for re-making.

DISCUSSION AND CONCLUSION

GROUNDS ONE AND TWO

7. The circumstances of the adjournment request and refusal are set out at [7] to [13] of the Decision:

> "7. At the outset of the appeal an application to adjourn was made, it was put on the grounds that the witness statements provided had not addressed all pertinent issues , and that his girlfriend's mother, Ms [MN], wished to give evidence and required a Hindi interpreter.
>
> 8. The application was resisted on the basis that there had been more than adequate time to prepare the case already.
>
> 9. I allowed Mr Joseph as much time as he sought to take instructions by putting the appeal back in my list. I indicated that all matters in issue could be fully aired in evidence and that it was unnecessary to adjourn simply for fuller witness statements when there was more than sufficient hearing time to hear all matters.
>
> 10. I had a signed witness statement from Ms [MN], Miss Quan confirmed that she had no cross-examination for the witness, her witness statement contained a declaration as to its truth, and the witness was able with the English she does possess, to confirm its truth and adopt it as her evidence in chief. Mr Joseph was content to deal with Ms [MN]'s evidence in that way and so I did not adjourn for an interpreter to be found.
>
> 11. The appellant gave evidence before me as did his girlfriend Miss [DN] and her mother Ms [MN].
>
> 12. I have taken into account the following documents that have been placed before me, the respondent's bundle, the appellant's bundles (the witness statements followed in a later bundle), and all evidence, documents and submissions made at the hearing. I admitted from the appellant some documents, an employer's letter for Miss [DN], a Pearson examination appointment letter, student attendance details, and a home office costs letter, that were provided at the hearing.
>
> 13. There was no objection to their introduction, I found no prejudice in such a course, and I allowed their late admission given their potential relevance to the issues in the case."

8. I have regard when deciding this issue to the case of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) where the following guidance was given:

> "If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284."

9. In order to deal with ground one, it is necessary to consider the basis on which an adjournment was sought and why its refusal was said to be unfair. That has a considerable overlap with the Appellant's ground two which concerns the substance of the Judge's findings on the ETS allegation. For that reason, I consider the substance of the ETS allegation before considering the challenge to the adjournment refusal.

10. The ETS allegation stems from a test which the Appellant is said to have taken at Eden College International on 24 July 2013. The Respondent's bundle contains the following documents relating to that test:

- At [E1] an analysis record giving the date and place of the test, the certificate number and that the speaking score was 200 and the writing score was 190.
- The analysis record cross-refers to an Excel spreadsheet entry at [F1] which confirms the information and scores and states that the test was "invalid".
- There is then produced at [G1] an extract from the Respondent's CID notes produced on 29 May 2014 in relation to the Appellant's application of 22 August 2013 which states as follows:

> "English language
>
> English language (EL) level required is: B2
>
> Is a Secure English Language Test (SELT) required to evidence EL level? YES
>
> If Yes, has the SELT been submitted? YES
>
> Is the SELT valid? NO (Test taken on: 24/07/13)
>
> Test provider: Eden College International
>
> Reading: 425
>
> Writing: 190
>
> Speaking: 200
>
> Listening: 445

> Is the required EL level met? NO
>
> If No, explain why – TOEIC certificate have been deemed unacceptable
>
> Progression"

Although I accept that the refusal of the Appellant's earlier application for leave to remain rejected in June 2014 is not in evidence, it can be inferred from these notes that the reason for the refusal was the ETS allegation.

- At [H1-10] and [I1-14] appears what has come to be known as the Respondent's "generic evidence" being the witness statements of Rebecca Collings and Peter Millington.
- At [K1-2] the Respondent has provided the witness statement of Adam Sewell, a Home Office analyst dealing with the results of the relevant test centre.

11. In addition to that material, the Respondent's decision under appeal contains a significant amount of information about the ETS allegation, including the date and place of the test which was considered invalid, the certificate number and the analysis of the Eden College International scores. The decision also refers to case law concerning ETS allegations more generally and the expert evidence produced in the litigation concerning those allegations. The information in that regard runs to nearly three pages. The decision is also worthy of note in its reference to the TOEIC certificate having been produced in support of the application made for leave to remain on 22 August 2013, tending to corroborate the CID note showing that the ETS allegation was at least one if not the only reason for refusal of the earlier application for leave to remain. As it will become relevant in due course, I reiterate that the Respondent's decision under appeal is dated 20 May 2019 and is addressed to the solicitors with conduct of this appeal.

12. The Respondent also submitted a separate ETS bundle containing a witness statement from Professor French, one of the experts whose evidence has been relied upon in some of the ETS litigation. That bundle also contains a document entitled "Project Façade – criminal inquiry into abuse of the TOEIC: Eden College International" produced by Criminal Investigations (Immigration) which corroborates the Respondent's analysis of the scores emanating from that college.

13. Separately from the material regarding the ETS allegation and one of the documents referred to by the Judge when dealing with the adjournment request is a document being a letter from the Home Office addressed to the Appellant in person concerning recovery of costs dated 11 June 2018 and relating to the judicial review application. Attached to that is a notice of hearing, similarly addressed to the Appellant in person, giving details of the judicial review renewed permission hearing on 5 March 2018.

14. I turn then to the Appellant's application to remain in the UK which is at [A1-13] and the covering letter to that application at [C1-9]. Those documents are not generally relevant to the ETS allegation, first because the application is based on the Appellant's relationship with Miss [DN] and second because neither document mentions the ETS allegation. However, the application in particular is worthy of note for its confirmation that the Appellant had been refused a visa and had remained beyond the validity of his visa and reference to the cover letter dealing with those matters. Although the cover letter refers to the Appellant being in the UK without leave, it is entirely silent as to the refusal of further leave or the reasons therefor. The Appellant's solicitors, even if not acting at that time (which is not clear), must have been aware from the application itself that the Appellant had been refused leave to remain and that they needed to enquire about that (particularly following receipt of the Respondent's decision).

15. I turn then to the evidence in the Appellant's bundle. I begin by noting, as I pointed out to Ms Charlton at the outset of the hearing, that the Appellant's grounds of appeal make no reference at all to the ETS allegation. The Appellant does not take issue with the Respondent's refusal on suitability grounds. That is a fundamental point in this appeal. Since the Appellant did not challenge that aspect of the Respondent's decision, on one view at least, the Judge did not have to deal with it at all. However, since the Judge did in fact deal with it, I go on to consider the other evidence which was before the Judge.

16. The majority of the Appellant's bundle otherwise is taken up with photographs, cinema ticket confirmations, and a Travellodge booking confirmation. The bundle was submitted by fax on 19 July 2019, five days before the hearing. It is said that the witness statements would follow. Those were served late in the day before the hearing. The statements, from the Appellant, his girlfriend and her mother, deal entirely with the Appellant's relationship with his girlfriend. There is no mention of the ETS allegation.

17. The complaint regarding the Judge's refusal to adjourn concerns the evidence as to the ETS allegation and not the evidence of the Appellant's girlfriend's mother. It is therefore next necessary to set out the oral evidence which the Judge received as to the ETS allegation (and including the Appellant's immigration history) and his findings in that regard as appear at [23] to [39] of the Decision as follows:

> "23. The appellant's immigration history is disputed, in oral evidence before me he indicated that a previous representative had not informed him of the fact that in June 2014 his application for leave then refused, had made applications without his knowledge and had not shown him all documents relating to his immigration position.
>
> 24. I do not have before me any record of any formal complaint by this man about such a representative, and I note that the applicant could at any time have sought to confirm his own immigration status since he knew that his initial leave had ended in August 2013. I am not persuaded to find that

the appellant was unaware of his immigration position, given his failure to make his own enquiries and lack of previous formal complaint about his previous representatives.

25. Turning to the disputed examination results, I keep in mind the well-established case of **SM & Qadir v SSHD (ETS – evidence – burden of proof) [2016] UKUT 00229 (IAC)**. The judgment in that case provides valued guidance which is applied in the assessment of this appellant's appeal.

26. In appeals such as this there is an initial burden upon the respondent to establish by way of evidence that the appellant engaged in deception in obtaining his TOEIC certificate.

27. The first appellant states he is proficient in the English language and that he has been proficient in the English language for some considerable time. He has obtained academic accounting qualifications in the UK which were taught in English. He did not employ a proxy test taker and sat the test himself.

28. The appellant explains that he took an English test at Pearson College on 9th July 2013, it was a 4 part test involving speaking, listening, writing and reading, and he passed all sections other than reading, which he failed by 2 points. His agent then told him to attend a test at Eden College, he duly did, having been sent back on the first occasion to attend again few days later, and was told simply to complete a reading paper. A test certificate was then simply sent to his agent and submitted with the appellant's application for leave.

29. I have a copy notice of an exam appointment for the 9th July 2013 at Pearson, the appointment is shown on an online account with the appellant's name as the signed in name. I find from it that there was such an appointment, however in the absence of any documents showing the results of that test, I am not persuaded to find that the appellant passed three out of four papers as asserted.

30. On the appellant's own account he only completed one paper at Eden College, yet the respondent's 'generic evidence in this case' sets out, as is not disputed by Mr Joseph, that the test contained 4 components, and the appellant cannot have submitted a genuine set of results if he only completed one of four test areas.

31. Just as in the case of **SM & Qadir** the respondent relies upon the generic statement evidence of Ms Rebecca Collings in a statement dated 23 July 2014 and Mr Peter Millington in a statement of the same date. The Upper Tribunal found that both Ms Collings and Mr Millington gave truthful evidence but that their evidence suffered from multiple frailties and shortcomings which were identified in that judgment. However, even in the case of **SM & Qadir** the Upper Tribunal found that the respondent had discharged the evidential burden of proof (albeit narrowly) of establishing a prima facie case of deception on the part of the appellant. However, the Upper Tribunal accepted the appellants' prima facie innocent explanations. Therefore, the legal burden of proof falling upon the

respondent to establish deception on the part of the appellants had not been discharged.

32. The respondent's evidence from Ms Collings and Mr Millington is precisely similar in this appeal.

33. The respondent has adduced additional evidence in this appeal in the form of a report dated 20 April 2016 prepared by Professor Peter French. Professor French in the preparation of that report considered the evidence of Dr Harrison who produced the expert report on behalf of the appellants in the case of **SM & Qadir.** Professor French concludes that

> 'If the 2% error rate established for the TOEFL pilot recordings were to apply to the TOEIC recordings, then I would estimate the rate of false positives to be very substantially less than 1% after the process of assessment by trained listeners had been applied. This is because:
>
> (a) There was stringent criteria for verification by the trained listeners;
>
> (b) The trained listeners had potentially more speech available from the tests than that processed by the ASR;
>
> (c) The trained listeners had available a much wider range of speech features on which to base their Decisions than just vocal tracked resonances as reflected in an MFCC analysis performed by the ASR.
>
> (d) Even if the TOEIC recordings were on average somewhat shorter and poorer in quality than the TOEFL, pilot test recordings, on the basis of the information that has been provided, I would still estimate the number of false positives emanating from the overall process of ASR analysis followed by assessment by two trained listeners to be very small'

34. Having read the witness statement of Professor Peter French, I have no hesitation in assessing him as a genuine expert witness. The report of Professor French is cogent evidence but is as generic as the evidence of Ms Collings and Mr Millington. The conclusions of Professor French include caveats such as, '**if** (my emphasis) the 2% error rate established for the TOEFL pilot recordings were to apply to the TOEIC recordings, then I would estimate the rate of false positives to be …'

Additionally, at paragraph 4 of his conclusions Professor French reports that, '... I would still estimate the number of false positives emanating from the overall process of ASR analysis followed by assessment by two trained listeners to be very small.'

I find that his evidence focuses upon the general position and not the specifics of the appeal. Therefore, I find that the evidence of Professor French positively assists the respondent's case in establishing a prima facie indication of deception on the part of the appellant but that I also have to assess the particular evidence of the appellant himself.

35. In his oral evidence the first appellant set out the matters above. On his own account he did not complete three of the four papers at Eden

> College, and yet he submitted results purporting to show a fully and properly completed assessment.
>
> 36. I do find that the evidence served by the respondent in this case has discharged the evidential burden of proof of establishing a prima facie case of deception on the part of the appellant.
>
> 37. Considering all the evidence as a whole upon this important issue, I am not satisfied that the evidence given by the appellant establishes to the appropriate standard an innocent explanation to the prima facie case raised by the respondent. I am not satisfied that this first appellant himself sat either a Pearson test or Eden College test himself, indeed he accepts not having done three of the four Eden papers. I am not persuaded as to his account of results from the Pearson Test given the lack of copies of such results.
>
> 38. It follows from what I have said that I am not satisfied that the appellant fulfils the suitability requirements of the Immigration Rules as set out in the reasons for refusal letter.
>
> 39. I find that the respondent has made out a prima facie case of cheating on the part of the appellant. Moreover, considering all the evidence as a whole, I find that the appellant committed a fraud in relation to his English language tests and that he has failed to meet the suitability requirements set out in the Immigration Rules. The lack of copies of Pearson results, the lack of complaint about previous representatives blamed by the appellant, the lack of detail as to the actual test, or agent said to have guided the appellant in the way alleged, all combine to prevent me from finding that the appellant was innocently duped into a fraud as he sought to suggest in his evidence."

18. Turning then to the Appellant's challenge to the Judge's refusal to adjourn, as I have already noted, this must be considered in the context of the fact that the Appellant did not raise this as an issue in the grounds of appeal before Judge Mathews. That undermines the Appellant's case to have had inadequate time to prepare for the case.

19. Also undermining of that point is that the Appellant was on notice at the latest following receipt of the Respondent's decision under appeal of the ETS allegation. That was over two months prior to the hearing. The Appellant's assertion in the grounds before this Tribunal that the Respondent had not produced sufficient evidence to deal with the ETS allegation does not withstand scrutiny when the content of the Respondent's decision is considered. Even if that was information rather than evidence, most of what was later produced by the Respondent is evidence which was readily available in the public domain. The specific allegations were sufficiently particularised for the Appellant to deal with them (as to date and place of the test) and I reiterate that the Appellant did not challenge the allegations (at least within this appeal) prior to the hearing before Judge Mathews. The Appellant's assertion that he was unaware of the previous refusal of leave and subsequent allegations does not withstand

scrutiny either, given the fact that the Appellant issued the judicial review proceedings himself.

20. That brings me on to the assertion that the Appellant was unaware of the reason for the refusal of the earlier application. I am unable to accept that this is the case. There is evidence in the form of the CID notes which indicates that the 2013 application was refused based on the ETS allegation. That the Appellant was aware of that refusal is shown by the judicial review application issued by him which, although it challenged (as I understand it) a refusal to reconsider the refusal of the 2013 application, must have led to him being aware of the reasons for refusal of that application even if he was not earlier (and, as the Judge points out, there is only the Appellant's word that he was not so aware and he has not provided details of the representatives who he says were at fault).

21. I accept that one (although not the only and probably not the main) reason for the Judge's rejection of the Appellant's evidence is lack of supporting documentation. However, that brings me on to the second fundamental difficulty with the Appellant's case on ground one, namely the failure to provide any such evidence since. There has been no application to adduce further evidence. Ms Charlton indicated that she had not been provided with any further documents by the Appellant. Although she did indicate on instructions from the Appellant at the hearing before me that he has some other documents including possibly the certificates from the Pearson test centre, no attempt has been made to produce those since the hearing before Judge Mathews which took place some seven months ago. The Decision under challenge was promulgated over five months ago. There is no explanation why those documents could not have been submitted by way of application to adduce further evidence since those dates. That is undermining of the Appellant's case that he has been seriously disadvantaged by the refusal to adjourn.

22. The Appellant was given the opportunity and did provide oral evidence at the hearing notwithstanding the failure to raise the ETS allegation as an issue or to deal with it in his witness statement. The Judge showed considerable latitude in putting the hearing back to enable the Appellant's legal representative to take instructions and provide any additional evidence.

23. For those reasons, I am entirely satisfied in the circumstances of this case that the Appellant was given a fair hearing of his case. He had the opportunity to challenge the Respondent's decision in the way in which he and his advisers saw fit. That they did not, for whatever reason, see fit to challenge the ETS allegation until the eleventh hour is unexplained but, having left it until late, they should at least have taken steps to ensure that they had the necessary evidence prepared in order to do so. The Judge took steps to ensure that the hearing was fair by giving the Appellant additional time to prepare on the day of the hearing. The Appellant was able to give oral evidence in support of his

case. That this was not accepted does not indicate that the hearing was unfair. Moreover, there has been a complete failure by the Appellant and his advisers to put forward any documentary evidence on which they say that the Appellant could have relied, even now. Ground one therefore fails.

24. In relation to ground two, that largely overlaps with ground one in relation to, for example, the Appellant's case that he did not sit all four parts of the test at Eden College International having already sat a test at Pearson College. There is no failure by the Judge to consider that aspect of the Appellant's case. Nor is it irrational to find that the Appellant did not sit (or at least did not pass) the test at Pearson College. There may be all manner of reasons why, having booked a test, the Appellant did not attend it, or he may have attended and failed. Indeed, his case is that he failed one of the papers and yet on his account was able to pass it only a couple of weeks later at a different college. The Appellant did not deny that he had attended Eden College International to take a test; he did not provide evidence to counter the evidence produced by the Respondent showing that the only certificate provided was that from Eden College which showed results for all four papers. It was for the Appellant to explain how that was so if he did not sit all four papers. That evidence undermines rather than supports his case.

25. The Judge also considered the Appellant's evidence that he was the victim of fraud. He deals with that case in particular at [39] of the Decision where he provides reasons for rejecting it, specifically due to the lack of any detail as to those who are said to have duped him or failed to keep him informed. I note again that it is the Appellant's case that he was unaware of the earlier proceedings including the judicial review application challenging the Respondent's refusal to reconsider the earlier refusal and yet he cannot have been unaware because he issued those proceedings himself.

26. The Appellant does not and could not say that the Judge has failed to apply the correct legal test. It was open to the Judge to reach the findings he did for the reasons he gave. Those reasons are adequate. Ground two therefore fails.

GROUND THREE

27. That brings me on to the third ground which concerns the general ETS litigation. As I have noted above, it is not asserted, and nor could it be, that the Judge has failed to apply the correct legal test as to burdens and standards when dealing with the ETS allegation. What is said under this head is that the Judge failed to consider a particular ETS case when looking at the general position. The case in question is Khan & others v Secretary of State for the Home Department [2018] EWCA Civ 1684.

28. I note first that there is no indication that either party drew the Judge's attention to this authority. The Appellant had legal representation at the hearing. His legal representative could have produced this authority if he

considered it material. It appears suggested by this ground that the Judge should have had regard to the decision of his own volition because he referred to the case of SM & Qadir.

29. There is no conceivable merit in this ground for the following reasons. First, the reason the Judge had regard to SM & Qadir is because the Respondent relied upon it but also and more importantly because that case gives guidance as to the appropriate legal test. It therefore concerns a matter of principle at the heart of this case. Second, and as the Judge points out at [31] of the Decision, that case does not wholly favour the Respondent. In fact, the Tribunal found that the Respondent had failed to discharge the legal burden in that case. Third, and fundamentally, it is difficult to see how the judgment in Khan has any bearing on this Appellant's case. Those appeals were concerned with ETS allegations raised in decisions which could only be challenged by way of judicial review. The appeals to the Court of Appeal were compromised by the Respondent on the basis that the appellants should be given the opportunity to appeal. Neither the compromise nor the judgment says anything about the quality of the evidence or anything which casts doubt on the evidence on which the Respondent relies. The guidance given in SM & Qadir that the generic evidence meets the evidential burden remains good law. That is the basis of the Judge's reliance on that case.

GROUND FOUR

30. The Appellant also says that the Judge has failed to consider the discretionary nature of the suitability requirements under the Rules. I can deal with this shortly. First, and reiterating a point I have now made several times, the Appellant did not challenge the Respondent's refusal on suitability grounds let alone on the basis that discretion should have been exercised in his favour even if the ETS allegation was made out. Second, and flowing from this, there is nothing to suggest that this was raised as an issue for the Judge to determine and therefore, more importantly, there is nothing to show why the Appellant says that discretion ought to have been exercised in his favour if, as the Judge found, the ETS allegation was made out. It is said in the grounds that "[i]t is not inevitable even if there is no material error in the FTTJ's findings that the Appellant committed fraud in relation to his English language tests, he should be refused on grounds of suitability". That may be so, but it is for the Appellant to put forward the reasons why discretion should be exercised in his favour notwithstanding the finding of deception.

31. That brings me on to a final point and that is whether the Appellant could ever have succeeded in this appeal based on the other findings which are not challenged and therefore whether any of the grounds challenging the ETS allegation findings could have been material even if made out (which I am satisfied they are not). That is because the core of the Appellant's case was an entitlement to remain based on his relationship. However, the Judge found at [41] of the Decision, that the Appellant's girlfriend did not qualify as his

"partner" under the Rules. The Appellant could not, for that reason, satisfy the Rules based on his family life.

32. It could not sensibly be said that the Appellant could succeed under the Rules based on his private life. In that regard I do not understand the point made by Judge Keane that there is any inconsistency as to the Appellant's period of residence which it is common ground stems only from July 2012. The Appellant's status throughout has been either precarious or unlawful.

33. The Appellant has not challenged any of the findings made in relation to his family and private life. The only challenge is as to the reliance on suitability grounds as a reason for refusal and the reliance on the ETS allegation as enhancing the public interest (at [53] of the Decision). However, if those factors are taken out of the equation and having in mind that this is an appeal against the refusal of a human rights claim, it is difficult to see how the Appellant could possibly succeed based on the other findings at [40] to [57] of the Decision. I am in any event satisfied that the Appellant has failed to show any error of law in the Judge's findings as to the ETS allegation or the suitability requirements under the Rules.

CONCLUSION

34. For the above reasons, I am satisfied that there is no material error of law disclosed by the grounds of appeal. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

DECISION

I am satisfied that the Decision does not contain a material error of law. I uphold the decision of First-tier Tribunal Judge Mathews promulgated on 27 August 2019 with the consequence that the Appellant's appeal stands dismissed

Signed Dated: 20 February 2020
Upper Tribunal Judge Smith