



IAC-AH-SAR-V1

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

Appeal Number: HU/15042/2018

THE IMMIGRATION ACTS

**Heard at Birmingham
On 22 November 2019**

**Decision & Reasons Promulgated
On 16 January 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**VASU DEV
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Kafim, instructed by AWS solicitors

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 4 September 1987 and is a male citizen of India. He first came to the United Kingdom in October 2010 as a student. When his visa expired, the appellant remained in the United Kingdom unlawfully. He met his wife in this country they married in June 2015. She is a British citizen. They have a child who was born in June 2016. The appellant appealed against a decision of the Secretary of State dated 7 July 2018 refusing him leave to remain in the United Kingdom. The First-tier Tribunal, in a decision promulgated on 18 April 2019, allowed the appeal on human rights (Article 8 ECHR) grounds. Although he succeeded

in his appeal, the appellant now appeals to the Upper Tribunal on the grounds that the First-tier Tribunal wrongly decided to uphold the Secretary of State's decision that the appellant had employed dishonesty in respect of an English language test in order to remain in the United Kingdom.

2. I find that the judge did err in law in determining that aspect of the appeal. I find that the judge made a legal error at [29] in his analysis of the innocent explanation for the test result provided by the appellant. First, the judge has not engaged at all with that innocent explanation which is set out in some detail in the appellant's written statement. Moreover, the judge has overlooked the fact that the appellant was required only to provide an explanation; by finding that the appellant had 'in reality... offered little or no explanation *or evidence* to dispute the results' [my emphasis] the judge has held the appellant to a higher standard than the minimum level of plausibility required.
3. For these reasons, I find that the judge's analysis is flawed in law. I have considered the question of disposal. Given that the appellant's Article 8 appeal was allowed (on the basis that, notwithstanding the judge's finding that deception had been used to obtain the right to remain in this country, it would nonetheless not be reasonable to separate the appellant from his child and wife) and in light of the fact that the Secretary of State has not sought to challenge the judge's decision, I do not consider it to be in the interests of justice to convene a hearing in the Upper Tribunal to remake the decision or to return the appeal to the First-tier Tribunal to do likewise; neither course of action would represent a proper use of the limited resources of the IAC nor would it properly represent the interests of all court users, including those waiting for their appeals to be listed. I shall, therefore, direct no further hearing or disposal of the appeal and make no finding other than that the judge's conclusion that the appellant had employed deception cannot stand. To that extent, the appeal is allowed.

Notice of Decision

The appeal is allowed to the extent that the First-tier Tribunal's finding that the appellant had used deception in an English language test cannot stand and is set aside.

Signed

Date 31 December 2019

Upper Tribunal Judge Lane