



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

Appeal Number: IA/40331/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 May 2015**

**Determination  
Promulgated  
On 18 June 2015**

**Before**

**DEPUTY JUDGE DRABU CBE**

**Between**

**Mr BILAL SHAHID**

ANONYMITY DIRECTION NOT MADE

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr E Mahood, Legal Representative , Nationwide Law Associates.

For the Respondent: Mr Esen Tufan, Senior Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the appellant who is a national of Pakistan against the decision of Judge Black, a Judge of the First Tier Tribunal, who upheld the respondents' decision dated 1 October 2014, refusing his application to remain as a spouse of a British citizen under Article 8.
2. The appellant was granted permission to appeal to the Upper Tribunal by First Tier Judge P J M Hollingworth on 18 March 2015. In granting permission the Judge said, "An arguable error of law has arisen in relation to the construction to be placed upon the wording of S-LTR.2.2 (a). At paragraph 4 the judge has stated that the Respondent refused the current

application on suitability grounds that the Appellant used deception in a language test in a previous application as a student. The wording of S-LTR.2.2 is couched on the basis of information provided in relation to the application including false information submitted to any person to obtain a document used in support of the application". Judge Hollingworth went on to say, "At paragraph 8 the Judge has stated that the fact that the Appellant took a further language test in 2014 is not material. The Judge at paragraph 8 has referred to the main thrust of the Respondent's case being that the Appellant was ineligible because of the previous deception used in an immigration application. The Judge referred to and considered the evidence produced in support of that. The Judge found the Appellant had used deception in a previous application for leave to remain as a student. The Judge concluded the requirements under S-LTR.2.2(a) were not met. The Judge has concluded that Article 8 was not engaged. An arguable error of law arises in relation to the Judge's conclusion that the decision was proportionate since it was made in accordance with the Rules relating to family life. It is arguable that the proportionality exercise has not been conducted on as wide a footing as it should have been" Judge went on to say," At Paragraph 8 the Judge has stated that he found the Appellant used deception in a previous application for leave to remain as a student. An arguable error of law has arisen on the basis of relationship between that finding and the wording of S-LTR.2.2."

3. At the hearing before me Mr Mahood representing the appellant argued that whilst it is accepted that deception was used in the previous application, it was not used with regard to the application which the respondent had refused. The appellant had not used any deception in relation to the current application and therefore the Judge had made a material error in law.
4. Mr Tufan for the respondent argued that the appeal had been brought under Section 10 (1)(b) as it was in force at the time and according to that the wording was simply "deception" and not in relation to any specific application.
5. I note that the respondent has relied on the wording of S-LTR2.2 to refuse the application under Rules. I also note that the application which the respondent refused on 1 October 2014 had been made by the appellant on 24 July 2013. I further note that the admitted deception was made in relation to a previous application made on 22 February 2012.
6. Having read the suitability requirements under S-LTR.2.2 (a) I conclude that the wording of the requirement is such that it cannot and should not have been stretched to any deception or concealment of material facts in relation to the present application. It clearly states "false information, representations or documents have been submitted in relation to the application (underlining of the word "the" is mine.) including false information submitted to any person to obtain a document used in support of the application: (underlining of the word "the" is mine.)

or

(b) there has been a failure to disclose material facts in relation to the application.” I have underlined the word “the” in the two requirements (a) and (b) which in my respectful view means simply what it says. The requirement set out applies to the application that is being considered and not to any other.

7. To that extent Judge Black’s decision is in material error of law. As a consequence I also find that Judge Black’s conclusion on the engagement of Article 8 and the proportionality exercise carried out was also materially flawed. The decision is therefore set aside.
8. In remaking the decision I conclude that the respondent’s decision to refuse to vary the appellant’s leave to remain was not in accordance with the immigration rules, in that she was wrong to refuse the application under S-LTR.2.2. The appellant had not fallen foul of the requirement under S-LTR.2.2.
9. The respondents’ decision on the engagement of Article 8 was, as can be seen from the reasons for refusal letter, based upon her flawed conclusion about the appellant’s suitability as well as eligibility under the Rules as is evident from paragraph 16 of the letter of refusal. The respondent was also not satisfied that the relationship between the appellant and his wife was genuine and subsisting as there was insufficient evidence of that when she considered the application (see paragraph 15). Judge Black heard live evidence from the appellant as well as his wife. She found (paragraph 9 of the determination) that “the appellant is in a lawful marriage that is genuine and subsisting and his wife is a British citizen.” Judge Black found (paragraph 10 of the determination) that “There is family life as the parties are married and cohabiting, there would be an interference with that life if the appellant were removed and his wife remained in the UK and as such sufficiently grave”. She then went on to find that the decision on non-engagement of Article 8 is “lawful as it is in accordance with the Immigration Rules.” Judge Black, as has already been stated in this determination, erred in finding that the decision was in accordance with the Immigration Rules.
10. Judge Black then went on to find that the “decision is proportionate as it was made in accordance with the rules relating to family life.” Her consideration of the appellant’s claim under Article 8 was clearly contaminated by this material error and I find that the respondent’s decision on Article 8 claim was a disproportionate interference in the family life of the appellant and his wife.
11. Reminding myself that I must carry out the balancing exercise on proportionality fairly I find that the balance is tilted in favour of the appellant. No public interest will be served by the break up of this young family. Further, I find that there are exceptional circumstances in this case in that the appellant’s wife is a British citizen with ailments that

require good medical facilities. As a British citizen she cannot be compelled to leave the United Kingdom and if she does not leave the United Kingdom her family life and that of the appellant will come to an end. As a British citizen she does not have a right to secure permanent settlement in Pakistan without abandonment of her British citizenship.

12. This appeal is allowed both under Immigration Rules as well as Article 8 of the ECHR.

K Drabu CBE  
Deputy Judge of the Upper Tribunal  
Date: 13 June 2015