



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/22689/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 November 2017

Decision & Reasons Promulgated  
On 16 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M N

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Respondent: Mr A Slatter, counsel  
For the Appellant: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. It is the Secretary of State who pursues this appeal. However, I maintain the descriptions of the parties as they were in the First-tier Tribunal, for ease of reference, and refer to the Secretary of State as the respondent.
2. The appellant is a citizen of Pakistan who appealed against the respondent's decision to refuse the his application for leave to remain on human rights grounds. His appeal against that refusal was allowed by Judge of the First-tier Tribunal Easterman ("the FTTJ") in a decision promulgated on 20 February 2017.
3. I maintain the anonymity direction which was made in the First-tier Tribunal.
4. Permission to appeal was sought on the grounds that the FTTJ had misdirected himself in law, having failed to assess the evidence in line with **SM & Qadir (ETS – Evidence – Burden of Proof) UTIAC 21 April 2016** [sic]. It was averred the FTTJ had failed to give adequate

reasoning as to why the respondent had not met the legal burden of proving deception by the appellant.

5. Permission to appeal was granted by First-tier Tribunal Judge Lambert on 6 September 2017 on the grounds sought.
6. Thus the appeal came before me today.
7. Mr Clarke, for the respondent, accepted that, irrespective of the outcome of the challenge to the FTTJ's reasoning on whether or not the appellant had used deception in an earlier application, given the absence of challenge by the respondent to the findings of the FTTJ with regard to the human rights claim, any error of law would not be material. He nonetheless adopted the grounds of appeal to this tribunal.
8. I agree with Mr Clarke. Even if I were to find an error of law in the FTTJ's decision that the appellant had not used deception in obtaining an English Language Test Certificate in support of an earlier application for leave to remain as a student, the findings of the FTTJ on the human rights aspects of the appeal would remain undisturbed. The Article 8 findings and decision are not challenged by the respondent, even on the basis that, had a finding of deception been made, this would have had a material impact on the proportionality assessment pursuant to Article 8 jurisprudence.
9. That being the case, I find there is no material error of law in the decision of the FTTJ. I make this finding without having considered the merits of this appeal.

### **Decision**

10. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
11. I do not set aside the decision.
12. This appeal is dismissed.

Signed **A M Black**  
Deputy Upper Tribunal Judge A M Black

Dated 15 November 2017