



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/01982/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19 July 2018

Decision & Reasons Promulgated  
On 3 August 2018

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMAD ASAD  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr L Tarlow, Home Office Presenting Officer  
For the Respondent: Mr S Karim, Counsel, AWS Solicitors Ltd

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge O'Rourke promulgated on 11 December 2017 in which he allowed the appeal of Mr Muhammad Asad against a decision of the Secretary of State to refuse him leave to remain on 19 January 2017.
2. The Secretary of State's case is set out in the refusal letter is that the respondent did not meet the suitability requirements of S-LTR 1.6 as his presence was not conducive to the public good because of his conduct. Specifically it was alleged that he had fraudulently taken a TOEIC English language test. Having not met the suitability

requirements, the respondent was ineligible to be considered under Appendix FM or paragraph 276ADE of the Immigration Rules.

3. It is important to note that the respondent's case is one of mistaken identity. He avers that the person identified by the Secretary of State as having undertaken a false or invalid test was not him but somebody who bears the same name and date of birth.
4. The judge accepted the respondent's case, finding in respect of the TOEIC test that it had not been shown that the respondent had taken the test or had relied on it and on that basis it followed that S-LTR 1.6 would not apply. The judge then went on to consider Article 8 and concluded, having had regard to Section 117B of the Nationality, Immigration and Asylum Act 2002 that the decision appealed against would cause the United Kingdom to be in breach of the law and its obligations under the 1950 Human Rights Convention. He did so on the basis that the public interest required the appellant to comply with the Rules in all respects in this case he did which was a weighty factor in his favour. The factors set out in Sections 117B(2) and (3) were neutral and that due weight should be given to his family life as Section 117B(4) was not applicable.
5. The Secretary of State appealed against that decision on three principal grounds. First that the judge had failed to give adequate reasoning for accepting the respondent's innocent explanation. Second, he had taken into account an irrelevant matter, that is that the appellant spoke good English which was not a matter which should be taken into account in assessing deception. Third, that the judge had misdirected himself in law in concluding that there were insurmountable obstacles and allowing the appeal pursuant to Article 8 it being alleged that the judge's proportionality assessment had been coloured by his error in respect of the finding in the appellant's use of deception.
6. Permission was granted in part by First-tier Tribunal Judge Simpson on 27 April 2018. It is accepted by the parties before me that permission was not given to challenge the judge's findings with respect to the TOEIC certificate. The judge did however grant permission on the Article 8 point and it is on that basis the appeal proceeded. Although he did not withdraw the Secretary of State's case Mr Tarlow accepted that it would be difficult to demonstrate that the decision involved the making of an error of law given that the only reason for refusal was non-compliance with S-LTR 1.6 and given that it was accepted by the judge that the requirements of the Immigration Rules particularly Appendix FM were met, that it could be proportionate to remove the applicant. In the circumstances and having had regard to the Rule 24 reply I did not see it necessary to hear submissions from Mr Karim.
7. I am satisfied that the judge gave adequate and sustainable reasons for concluding that the respondent did meet the requirements of the Immigration Rules. The sole basis for refusal was the alleged deception (and thus S-LTR1.6 not being met) which has fallen away. It is evident from the material provided, and it has not been suggested to the contrary, that all the other requirements of Appendix FM and Appendix FM-SE were complied with. It is in particular not suggested that the relationship is anything other than genuine nor it is suggested that the financial and other requirements of the Rules are not met.

8. In the circumstances I consider that there is little or no public interest in removal given that the requirements of the Immigration Rules are met. On that basis it is difficult to see how Section 117B(1) is actually engaged.
9. Viewing the circumstances overall I am satisfied that in the circumstances removal would not be proportionate. Given it is the Secretary of State's case that Appendix FM of the Immigration Rules in themselves are an expression of the United Kingdom's obligations under article 8, if an individual meets the requirements of those rules, it is difficult to see how removal could either be in accordance with law, or necessary, or proportionate.
10. Accordingly, in the circumstances I conclude the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision.

### **NOTICE OF DECISION**

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.
2. No anonymity direction is made.

Signed

Date 30 July 2018

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul