



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

Appeal Number: HU/04449/2016

THE IMMIGRATION ACTS

Heard at Field House

On 18 January 2018

**Decision & Reasons
Promulgated**

On 23 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ALI [S]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr. C. Avery, Home Office Presenting Officer

For the Respondent: Mr. A. Seelhoff, A. Seelhoff Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Pacey, promulgated on 14 September 2017, in which she allowed Mr. [S]'s appeal against the Secretary of State's decision to refuse further leave to remain on the basis of his family and private life.

2. For the purposes of this decision, I refer to the Secretary of State as the Respondent, and to Mr. [S] as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. Permission to appeal was granted as follows:

“It is arguable that the judge has materially heard (sic) by failing to give adequate reasons for holding that a person who has a certain level of education would have no reason to secure a test certificate by deception.

Furthermore, it is arguable that the judge has failed to identify compelling circumstances such as to justify consideration of whether they would be a breach of Article 8.”

4. The Appellant attended the hearing. I heard submissions from both representatives following which I stated that the decision did not involve the making of a material error of law. My full reasons are set out below.

Error of law

5. The Respondent refused the Appellant’s application under the immigration rules for two reasons. The Respondent alleged that the Appellant had used deception in relation to his English language test, and he therefore did not meet the suitability requirements. Secondly he did not meet the eligibility requirements as he had failed to provide evidence that he had been granted contact with his child. He therefore failed to meet paragraph E-LTRPT.2.4. These were the two issues addressed by the Judge in her decision, first whether or not deception had been used, and secondly the position in relation to the Appellant’s son.

6. Given that the Judge found that the Respondent was not right to refuse the Appellant’s application with reference to the suitability requirements, and given that there was evidence before her of the contact order, as reflected in her findings relating to section 55, it appears that the Judge found that the Appellant met the requirements of the immigration rules in relation to family life as a parent. However, she did not state this expressly.

7. In relation to the first ground of appeal, the failure to give adequate reasons in relation to the allegation of deception, I was referred by Mr. Seelhoff to the factual narrative of the Appellant’s case as set out in paragraphs [9] to [12]. He referred to the fact that it had been acknowledged that the college where the Appellant had sat his test was “thoroughly corrupt and dishonest”. The Appellant’s then immigration adviser had owned the college where the Appellant had sat the English test. Mr. Seelhoff submitted that the Appellant had given a credible account of how he had come to sit the test and in what circumstances, and the Judge had been entitled to take this into account.

8. I have also considered the Appellant’s witness statement. He sets out at [8] to [10] and [19] to [21] an account of his dealing with Salman in

relation to his immigration issues, and sitting the English language test.

9. The Judge finds, with reference to the relevant caselaw, that the Respondent has satisfied the burden of proof which lies on her, and finds that the burden then shifts to the Appellant, [21] to [24]. At [26] and [27] she gives reasons for why she finds that the Appellant has met that burden. She accepts that he took the advice of someone who he thought would give him sound advice, and placed his trust in that person. She accepts his innocent explanation, and gives reasons for doing so. Her reasoning is adequate. I find that there is no error of law in the Judge's finding that the Appellant had discharged the burden on him.
10. The second ground refers to the failure of the Judge to identify any "compelling circumstances" so as to justify a consideration of Article 8 outside the rules. The Judge sets out at [28] to [36] the position of the Appellant's son, and the Appellant's relationship with him. As stated above, given that there was a Child Arrangements Order before her, and given that this was the only reason given by the Respondent for refusing the application under the eligibility requirements, it would appear that on the Judge's findings, the Appellant had satisfied the requirements of the immigration rules relating to Article 8 in any event.
11. The Judge has set out a narrative of the Appellant's case at [9], which includes the Appellant's relationships with his ex-wife and his child. The Judge is critical of the Respondent's lack of careful consideration of the position of the Appellant's child [28]. It is clear that there were compelling circumstances in the Appellant's case relating to his child. Even had she needed to show any, and especially given that it appears that the rules were met she did not need to do so, she is right to consider that the Appellant's child and his family situation constitute compelling circumstances.
12. Without rehearsing all of the Judge's findings from [28] to [36], she finds that it is "in the highest degree unlikely" that the Appellant's ex-wife will enable contact between the Appellant and his son if the Appellant left the UK [29]. She sets out the contact between the Appellant and his son. She refers to the report of this contact which stated that the sessions went well, and that the child responded well [30]. She refers to the Cafcass Case Analysis referring to the positive contribution that the Appellant can make to his son's life [32]. She also refers to the Family Court's criticisms of the Appellant's ex-wife [33].
13. The Judge makes a clear finding in relation to the Appellant's son's best interests at [35]. This finding was open to her. At [36] she refers to section 117B(6). On the basis of the unchallenged evidence of the Appellant's contact with his son and the son's situation, even had the Appellant not met the requirements of the rules, section 117B(6) would apply to the Appellant, such that the public interest would not require his removal. On the evidence before her, the Judge found that it would not be

reasonable to expect the Appellant's son to leave the UK. This finding was open to her. Had she found that he did not meet the suitability requirements, this failure to meet the suitability requirements would have to be considered in the assessment of reasonableness but, given the circumstances, which have not been disputed, there is no error in her finding that it would not be reasonable to expect the Appellant's son to leave the UK, and therefore that section 117B(6) would apply.

14. Although the decision could have been clearer as to whether or not the Appellant satisfied the immigration rules which relate to Article 8, or whether the appeal only succeeded under Article 8 "outside" the immigration rules, there is no material error of law in the decision.

Decision

15. The decision of the First-tier Tribunal does not involve the making of a material error of law, and I do not set it aside.
16. The decision of the First-tier Tribunal stands.
17. No anonymity direction is made.

Signed

Date 19 January 2018

Deputy Upper Tribunal Judge Chamberlain