



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/10944/2016

**THE IMMIGRATION ACTS**

Heard at Civil Justice Centre, Manchester  
On 5<sup>th</sup> June 2018

Decision & Reasons Promulgated  
On 22<sup>nd</sup> June 2018

Before

**UPPER TRIBUNAL JUDGE COKER**

Between

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

And

**H U**

Respondent

**Representation:**

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer  
For the Respondent: Ms S Tabassum, Broudie Jackson & Canter

**DECISION AND REASONS**

1. The Secretary of State sought and was granted permission to appeal the decision of First-tier Tribunal Judge Shanahan allowing Mr H U's appeal against a decision refusing his human rights claim. First-tier Tribunal Judge Shanahan found that Mr H U had exercised deception in obtaining his ETS language certificate. In paragraph 30 of his decision he said:

I have considered the exceptions the [SSHD] has set out in her guidance above. I acknowledge that [Mr H U] has used deception in his student application but having weighed this in the balance against the best interests of the child and the positive impact contact has in circumstances where the child is in care, be it that he lives with his maternal grandmother, I am satisfied that it would be disproportionate for both the child and [Mr H U] for

him to be removed to Bangladesh.in conclusion therefore while [Mr H U] is unable to meet the requirements of the Immigration Rules I am satisfied that the decision to refuse him leave on the basis of his family life with his son breaches his and his son's family life and his appeal is therefore successful on human rights grounds.

2. Permission to appeal was granted on the grounds that it was arguable that the issue of deception and Mr H U's poor immigration history ought to have outweighed other factors in the balancing exercise undertaken in the Article 8 proportionality exercise. Mr Duffy acknowledged that the decision of the First-tier Tribunal Judge was not perverse but submitted that inadequate weight had been placed upon the deception and poor immigration history in the balancing exercise.

3. I note that the care order made on 22<sup>nd</sup> December 2015 states

Contact with father is essential to promoting [the child's] cultural heritage, and will remain under review as part of the LAC process. [Mr H U] aspires to play a significant role in [the child's] life in the future.

4. On the date of the hearing Mr H U had unsupervised access with his child twice a week with increased hours of contact since the making of the care order together with school events and religious occasions. The First-tier Tribunal judge set out with care and in detail the adverse factors relating to Mr H U. He set out and applied the respondent's guidance and took full account of the deception and immigration history. Although what could be considered a very generous decision, it was within the range of decisions open to an immigration judge who heard oral evidence from Mr H U and from the child's grandmother, with whom the child lives. The decision of the First-tier Tribunal judge cannot be characterised as perverse or irrational. There is no indication that the judge failed to take into account relevant evidence or submissions made or that he failed to have adequate regard to the respondent's policy. It may be that another judge would have come to a different decision but based on the evidence and submissions made to the First-tier Tribunal Judge, it was a decision that was open to him.

5. There is no material error of law.

6. I dismiss the Secretary of States' appeal.

7. The decision of the First-tier Tribunal stands.



Date 6<sup>th</sup> June 2018  
Upper Tribunal Judge Coker