



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/24046/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 25 September 2018

Decision & Reasons Promulgated  
On 10 October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

HARPREET KAUR  
(ANONYMITY DIRECTION NOT MADE)

Respondent

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

**Representation:**

For the Appellant: Mr Y Din, Counsel.

For the Respondent: Ms A Everett, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The Appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which the parties were known before the First-Tier Tribunal with the Secretary of State referred to as “the Respondent” and Harpreet Kaur as “the Appellant”.
2. The Appellant is a citizen of India who entered the United Kingdom on 3 October 2010 as a student. On 4 December 2013 she was granted leave to remain as a spouse valid until 4 June 2016. On 1 June 2016 she made a human rights application for leave

to remain on the basis of her marriage to Jagroop Singh Sangha. That application was refused. The Respondent noted that the English test submitted by the Appellant in her previous application had been withdrawn by ETS and declared questionable as voice recognition software detected the presence of a proxy tester who sat the test in her place.

3. The Appellant appealed and following a hearing at Birmingham, and in a decision promulgated on 25 September 2017, Judge of the First-Tier Tribunal Butler allowed the appeal "under the Immigration Rules".
4. The Respondent sought permission to appeal which was granted by Judge of the First-Tier Tribunal Pedro on 16 March 2018.
5. His reasons for so granting were:-

"1. The appellant is a citizen of India born on 24 August 1989.

2. The respondent seeks permission to appeal, in time against a decision of First-tier Tribunal Judge Butler promulgated on 25 September 2017 to allow the appellant's appeal made on human rights grounds against the decision of the respondent dated 3 October 2016 to refuse her human rights claim.

3. The grounds assert that the judge misdirected himself and made material errors relating to (1) the evidential burden upon the respondent and (2) in allowing the appeal under the immigration rules and not on human rights grounds in circumstances where the appeal was restricted to human rights grounds and could not be allowed simply on the basis that the respondent's decision was not in accordance with the Immigration Rules.

4. The grounds disclose arguable errors of law capable of affecting the outcome."

6. Thus, the appeal came before me today.
7. At the outset Ms Everett indicated that there had been discussions between the parties and it was agreed that the Judge had materially erred as asserted within the Respondent's grounds. However, given the Judge's findings and having reviewed the file, the Respondents position was that the decision should be remade in the Appellant's favour.
8. Naturally Mr Din did not seek to argue against this.
9. I share the above analysis. The Judge materially erred in allowing the appeal under the Immigration Rules. It should have been heard as a human rights appeal. Given the factual matrix and the acknowledgment by the Respondent that the decision disproportionately interferes with the Appellant's human rights under Article 8 of the European Convention and Human Rights and I find that the Appellant's appeal should have succeeded.

**Notice of Decision**

The appeal is allowed on human rights grounds.

No anonymity direction is made.

Signed

Date 1 October 2018

Deputy Upper Tribunal Judge Appleyard

**TO THE RESPONDENT**

**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140.00.

Signed

Date 1 October 2018

Deputy Upper Tribunal Judge Appleyard