



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/08856/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Birmingham Civil Justice Determination Promulgated  
Centre**

**On 4<sup>th</sup> March 2019**

**On 16<sup>th</sup> April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**N J**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R H Rashid (Counsel)

For the Respondent: Mrs H Aboni (Senior HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Parkes, promulgated on 13<sup>th</sup> September 2017, following a hearing at Birmingham Sheldon Court on 23<sup>rd</sup> August 2017. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Pakistan, and was born on 7<sup>th</sup> January 1982. He appealed against the decision of the Respondent dated 14<sup>th</sup> March 2016, refusing his application for leave to remain in the UK on the basis of his family life.

## **The Appellant's Claim**

3. The Appellant's claim is that he has a wife and a daughter in this country. He had entered with entry clearance as a spouse from 12<sup>th</sup> January 2010 until 12<sup>th</sup> April 2012. He was granted further leave to remain as a spouse until 16<sup>th</sup> May 2015. He had then applied for permanent leave to remain with his wife in mid-April 2015. This had been rejected on the basis that the Appellant had exercised deception when sitting for an ETS test. He maintains that he is not in fact engaged in fraudulent behaviour.

## **The Judge's Findings**

4. The judge, in a careful, detailed and comprehensive determination, set out the Appellant's explanation with regard to the allegation against him. It was noted that the Appellant had approached the college in Alum Rock, where the test centre was based, with respect to the allegation against him, but he had not directly contacted the ETS. He had gone to London to take the test. He had studied for it in Birmingham. The judge also heard evidence from the Appellant's wife. She stated that only her husband could help her with their daughter, who needed extensive medical attention because of her ill health, "as he is the only one who knows how to look after her and has been trained how to do so". The daughter does not eat much although she has had surgery. The Appellant's wife herself could not live in Pakistan because she had lived in the UK for seventeen years and it was too hot there. Their daughter could not live there either because she gets sores on her stomach (see paragraph 11).
5. The judge went on to consider the aspect of deception in this case. On the day that the Appellant took the test the overall rate of invalid tests was 84% (paragraph 15). The Appellant had said that he was told of the college in London when he had made inquiries of family and friends (paragraph 17). However, there was a discrepancy in how the Appellant got to the test centre in London, which led the judge to conclude that he did not take the tests in April 2012. The judge observed that, "his suggestion in evidence that he was unaware of anything wrong does not sit well with the numbers involved in taking the tests that day at that centre and the level of tests declared invalid." (See paragraph 18).
6. However, ultimately, despite this finding, the judge concluded that the appeal should be allowed because

"There are a number of medical reports concerning the Appellant's daughter who was born with a blind oesophagus, i.e. it had not formed fully and did not form a functioning tube to her stomach. That

had developed mental issues neonatally and for her development as she grows older”.

The judge went on to say that there have been a number of surgical procedures, and this “resulted in the unintended removal of her spleen as explained in the doctor’s letter of 19<sup>th</sup> May 2017.” Indeed, the judge observed that “further surgery may be needed to avoid a spinal deformity” (paragraph 21).

7. The appeal was allowed.

### **Grounds of Application**

8. The grounds of application state that the judge had allowed the appeal on human rights grounds, despite finding that the Appellant had exercised deception in seeking to obtain leave using a falsely obtained ETS, TOEIC, certificate. In so doing, the judge failed to consider that the Appellant had a poor immigration history. Obtaining leave to remain by deception is a criminal offence and is evidence of criminality. Had the judge not misdirected himself in law, he may well have come to a different conclusion. As for the Appellant’s daughter needing medical treatment, there would be no requirement for the daughter to leave the UK, and the judge has failed to adequately consider that 95% of settlement applications in Pakistan are decided within twelve weeks, during which time alternative care could be provided for the Appellant’s daughter, whilst he was in Pakistan, awaiting a decision on his application to return.
9. On 5<sup>th</sup> March 2018, permission to appeal was granted.

### **Submissions**

10. At the hearing before me on 4<sup>th</sup> March 2019, Mrs Aboni, representing the Respondent Secretary of State as the Senior Home Office Presenting Officer, relied upon the grounds of application. She in particular emphasised that the judge (at paragraph 19) had referred to the Section 117B consideration with respect to the maintenance of immigration control, but did not explain why it was not reasonable for the Appellant to go back to Pakistan.
11. For his part, Mr Rashid submitted that it was not the case at all that the judge had not taken into account the fact that the Appellant had a poor immigration history or that deception had been used, because the judge expressly draws attention to this at paragraph 19 of the determination, observing that “the Appellant’s conduct could be characterised as involving criminality”, because “there is nothing in the guidance to say that actual conviction is required”. Furthermore, the judge noted how “the doctor’s view was that it would not be reasonable to expect her [the child] to live in Pakistan” (paragraph 22). It was not the case at all that the judge had not considered all that needed to be considered before arriving at his decision.

12. In reply, Mrs Aboni stated that the judge failed to consider that alternative care may still be found for the Appellant's daughter during the time when he was awaiting the outcome of his entry clearance application to return to the UK, and this would mean that the decision on proportionality reached by the judge was wrong.

### **No Error of Law**

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law, such that it falls to be set aside (see Section 12(1) of TCEA 2007). My reasons are as follows.
14. First, the Grounds of Appeal state that the judge has failed to adequately consider the Appellant's poor immigration history and that deception had been used. In fact, nothing could be further from the truth. The judge repeatedly states that, "were it not for the position of the Appellant's daughter the Appellant would have little to complain at being removed. He is in a situation of his own making. The case in reality turns on the position of their daughter". The evidence before the judge was that it was the Appellant who was looking after this severely disabled child, and in these circumstances, the judge observed that he had to consider "the impact on the remaining parent as this may affect the remaining parent's ability to work and therefore to care for any child affected" (paragraph 20). This clearly shows that the judge took a very nuanced and careful account of the facts before him.
15. Second, in the same way, the judge had regard to the medical evidence, observing that "the doctor's view was that it would not be reasonable to expect her to live in Pakistan". The judge did so whilst recognising that it was not clear what knowledge the doctor had about the medical system in Pakistan. However, also deserving of consideration was the fact that
 

"If she were to go to Pakistan medical treatment would have to be paid for and she would lose the benefit of the NHS care that she has and there would be a break in the continuity of her care. She is a British citizen and clearly receiving considerable benefits from that fact in the UK. She could not be expected to leave the UK and it is not suggested that she will have to" (paragraph 22).
16. Having said all this, the judge still returned to emphasise that, "were it not for the significant and continuing medical needs of the Appellant's daughter I would have had no hesitation in dismissing this appeal ..." (paragraph 24).
17. The final concluding paragraph of the determination is that, "given his daughter's profound and continuing medical needs, the role that he plays in her care and facilitating his wife's ability to provide for them financially, I find that their circumstances are sufficiently compelling ..... ." (paragraph 25). The Judge was entitled to conclude as he did.

**Decision**

18. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.
19. An anonymity Order is made.
20. This appeal by the Secretary of State is refused.

Signed

Dated

Deputy Upper Tribunal Judge Juss

15<sup>th</sup> April 2019