



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

Appeal Number: IA/01187/2016

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 18 December 2018**

**Decision & Reasons Promulgated  
On 9 January 2019**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**MUJEEB MOHAMMED ISMAIL**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr N Paramjorthy, Counsel

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of India, born on 10 May 1977. He has been given permission to appeal against the decision of First-tier Tribunal Judge Kinnell dismissing his appeal against the respondent's decision to refuse his human rights claim.

2. The appellant entered the United Kingdom in March 2011 with leave to enter as a student valid until 28 June 2013. He was granted further leave to remain as a student until 11 September 2014. On 31 March 2015 he applied for leave to remain on private life grounds.

3. The appellant's application was refused in a decision dated 29 January 2016. The respondent considered that the appellant failed to meet the suitability requirements in paragraph S-LTR.1.6 as his presence in the UK was not conducive to the public good because his conduct made it undesirable to allow him to remain in the UK. The relevant conduct was fraudulently obtaining a TOEIC certificate and thus willingly participating in an organised and serious attempt to defraud the Home Office and others. The respondent noted that the appellant had submitted, with his application of 28 June 2013, a TOEIC certificate from the Educational Testing Service (ETS) in relation to an English language test taken at Stanfords College on 24 April 2013. The respondent had been informed by ETS that a proxy test taker had been used and that they had declared the appellant's test result as invalid and cancelled it. The appellant was therefore unable to meet the requirements in paragraph 276ADE(1). The respondent considered further, and in any event, that there were no significant obstacles to the appellant's integration in India and that there were no exceptional circumstances justifying a grant of leave outside the immigration rules.

4. The appellant appealed against that decision. His appeal was heard on 27 February 2018 by First-tier Tribunal Judge Kinnell. He was represented at the appeal by Mr Paramjorthy of Counsel. The judge was satisfied that the appellant had sought to obtain leave by deception through the use of a fraudulently obtained English language test certificate provided by ETS, but did not accept that that was sufficient in itself to justify the view that his presence in the UK was not conducive to the public good. The judge considered that the appellant could not, however, meet the requirements in paragraph 276ADE(1) as there were no very significant obstacles to his integration in India. The judge went on to consider Article 8 outside the immigration rules, taking account at [36] of the public interest factors in section 117B of the Nationality, Immigration and Asylum Act 2002. At [37] he said that "*as Mr Paramjorthy was obliged to acknowledge, on the evidence there is little to show any meaningful private life in the UK since the appellant has no home of his own here and not in employment, whereas he does have family in India and....*". The judge concluded that the respondent's decision was not a disproportionate interference with the appellant's Article 8 rights and he dismissed the appeal.

5. An application was made on behalf of the appellant for permission to appeal the judge's decision to the Upper Tribunal, on three grounds. Firstly that it was procedurally wrong for the judge to make a finding against the appellant in regards to him having engaged in deception when he was not questioned about the TOEIC test owing to the judge making it clear that the respondent's allegation of deception was untenable in the absence of the specific evidence demonstrating that he had used a proxy test taker. Secondly that the judge had erred in law in finding that the respondent was correct in noting that the appellant did not meet the suitability criterion and that the judge failed adequately to engage with the insurmountable obstacles to the appellant returning to India. Thirdly that the judge had made a material mistake of fact in that Counsel had never stated that the appellant had not developed a meaningful private life in the UK.

6. Permission was initially refused in the First-tier Tribunal but was then granted in the Upper Tribunal in light of a statement from Mr Paramjorthy. It was asserted in that statement that Judge Kinnell had made an inadvertent procedural error as he had specifically stated in open court that the respondent could not sensibly rely upon his allegation of deception in the absence of specific evidence supporting the contention that the appellant had used deception and, furthermore, he had misrepresented Counsel's submission at [37]. Permission was granted on the basis that if Counsel was correct and the judge had misunderstood his submissions making the concessions on the appellant's private life in the UK, then it was arguable that the judge's procedural error in indicating that the respondent's evidence did not show that the appellant had cheated in his English test so that Counsel did not ask him questions about the test, would be material.

7. Following the grant of permission, Judge Kinnell was invited to comment on the grounds and he did so in a note dated 6 November 2018.

8. At the hearing before me it was agreed by the parties that the Presenting Officer's note of the proceedings in the First-tier Tribunal was not helpful in resolving the issue. Mr Paramjorthy accepted, in light of Judge Kinnell's comments on the grant of permission, that the judge may well be correct and he therefore accepted that he (Counsel) may have been incorrect in his assertion that the judge had misrepresented his submissions on the appellant's private life in the UK. He apologised for his error and accepted that I may find, in the circumstances, that the other point was therefore not material.

9. Having heard submissions from Mr Avery, and in the light of Mr Paramjorthy's comments, I advised the parties that I intended to uphold Judge Kinnell's decision.

10. Judge Kinnell was plainly entitled to take account of Mr Paramjorthy's submissions on the appellant's private life in the UK, as he did at [37], and to conclude that the appellant had failed to demonstrate any meaningful private life in the UK. In the circumstances any issue taken as to whether the judge gave an indication which led to the appellant providing no oral evidence in regard to the TOEIC certificate is immaterial. On the evidence before the Tribunal the appellant plainly could not succeed on Article 8 grounds, either within or outside the immigration rules, in any event. The judge considered all relevant matters and had full regard to the appellant's circumstances in the UK and in India. He was fully entitled to dismiss the appeal on the basis that he did.

## **DECISION**

11. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed  
Upper Tribunal Judge Kebede

A handwritten signature in black ink, appearing to read 'Kebede', is written over a faint, circular official stamp or watermark.

Dated: 19 December 2018