



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

Appeal Number: HU/01719/2020 (V)
HU/01716/2020

THE IMMIGRATION ACTS

**Heard at Field House (by remote video
means)
On 19th July 2021**

**Decision & Reasons
Promulgated
On 19th August 2021**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**MANPREET KAUR
MANDEEP SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr B Malik of Counsel, instructed by Connaught Law
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no audio or visual difficulties during the course of the hearing. A face to face hearing was not held to take precautions against the spread of Covid-19 and as all issues could be determined by remote means. The file contained all of the papers in hard copy.

2. The Appellants appeal with permission against the decision of First-tier Tribunal Judge Dineen promulgated on 7 February 2021, in which the Appellants' appeals against the decision to refuse their human rights claims dated 15 and 16 January 2020 were dismissed.
3. The Appellants are nationals of India, born respectively on 26th November 1986 and 7 April 1987. The Appellants are husband and wife, the Second Appellant's appeal being entirely dependent on the outcome of the First Appellant's appeal.
4. The First Appellant entered the United Kingdom on 11 December 2010 with entry clearance as a Tier 4 (General) student with leave to remain to 28 February 2013; extended to 11 July 2016. The Second Appellant was granted leave in line as a dependent. On 2 September 2014, the Appellants were served with notice that they were liable to removal from the United Kingdom on the basis that the First Appellant had used deception in relying on a false English language test certificate. That decision carried with it an out of country right of appeal which was not exercised (an attempt to appeal in country was struck out). On 19 September 2014, the First Appellant was encountered working illegally and from November 2014 the Appellants ceased reporting as required (which resumed in 2019 as a condition of immigration bail). On 30 August 2018, the Appellant's made further representations by way of a human rights claim.
5. The Respondent refused the applications the basis that neither Appellant could satisfy the requirements of Appendix FM to the Immigration Rules on the basis of family life in the United Kingdom and neither satisfied the requirements of paragraph 276ADE of the Immigration Rules in relation to private life as there were no very significant obstacles to their reintegration on return to India. In addition, the First Appellant failed to meet the suitability criteria for a grant of leave to remain because of the previous use of deception in her English language test.
6. Judge Dineen dismissed the appeal in a decision promulgated on 7 February 2021 on human rights grounds. In summary, it was found that although the First Appellant had rebutted the initial evidential burden in relation to deception such that she did not fall to be refused on suitability grounds; there would be no disproportionate interference with the Appellants' right to respect for private and family life if removed to India. In particular, the tribunal referred to there being no significant obstacles to reintegration on return; the significant and unexplained delay since 2014 in challenging the Respondent's original decision based on the use of deception and that in accordance with section 117B of the Nationality, Immigration and Asylum Act 2002, little weight was to be attached to the Appellants' private life.

The appeal

7. The Appellants appeal on two grounds as follows. First, that following the finding that the First Appellant had not used deception in her earlier application, the First-tier Tribunal erred in not allowing the appeal on human rights grounds and directing the Respondent to grant a period of leave to remain in accordance with her own policy contained in the 'Educational Testing Service (ETS): casework instructions' v.4 dated 18 November 2020. Secondly, that the First-tier Tribunal failed to adequately consider the appeal under Article 8 of the European Convention on Human Rights given the evidence that the Appellants would have no support in India and would have to start from scratch on return there.
8. At the hearing, on behalf of the Respondent, Ms Isherwood accepted that in accordance with the Respondent's policy, the First Appellant would be entitled to six months' leave to remain following the finding that she had not previously used deception. However, it was submitted that the substantive findings on human rights grounds were open to the Tribunal, particularly in relation to whether there were very significant obstacles to reintegration on return. This was in essence a very weak Article 8 claim.
9. In a skeleton argument on behalf of the Appellants, Mr Malik submitted that the principal issue in this case was whether there was an 'historical injustice' against the First Appellant in 2014 with the Respondent's decision that she had used deception in her English language test. It was suggested that the Appellants had both suffered from this incorrect decision since and but for that decision, would have secured successive leave to remain in the United Kingdom. The failure of the First-tier Tribunal to recognise this and factor it in to the proportionality balancing exercise was an error of law.
10. At the hearing, Mr Malik agreed that the simpler issue in relation to the First-tier Tribunal's decision was that in circumstances where the Respondent's policy to grant six months' leave to remain to those who a Tribunal found had not used deception meant that there was no public interest in removal for the purposes of Article 8. The remaining arguments which had been put, which focused on an argument for restitution were not pursued as Mr Malik accepted that these could only be material to the question of what period of leave the Appellants should be granted and not whether the First-tier Tribunal's decision contained a material error of law; nor were they relevant to whether or not the appeal should be allowed on human rights grounds.
11. In all of the circumstances, the parties agreed that the First-tier Tribunal materially erred in law in failing to consider the Respondent's policy in relation to the finding that there was no deception which meant there was a failure to properly assess whether there was any public interest in removal. For those reasons, the First-tier Tribunal decision must be set aside. The parties further agreed that the appeals should be remade to allow them on human rights grounds.

Findings and reasons

12. The Respondent's position at the hearing in relation to whether there was a material error of law in the First-tier Tribunal's decision was entirely proper and appropriate and I find that there was such a material error of law in the First-tier Tribunal's assessment of whether the Appellants' removal from the United Kingdom would be a disproportionate interference with their right to respect for private and family life for the purposes of Article 8 of the European Convention on Human Rights. This is because when undertaking the proportionality balancing exercise, there was a failure to consider the Respondent's policy to grant leave to the First Appellant following the finding that she had not used deception in relation to an earlier English language test. Despite the unassailable findings of a very weak human rights claim on the Appellants' side of the proportionality assessment; there was a failure to consider that there was in essence no public interest in removal in circumstances where a person was to be granted leave to remain. Mr Malik appropriately did not pursue any other argument on behalf of the Appellants further than this simple point.
13. In these circumstances, the decision of the First-tier Tribunal involved a material error of law and must be set aside. For essentially the same reasons and as agreed by the parties, the appeal is remade to be allowed on human rights grounds.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remake it as follows:

The appeals are allowed on human rights grounds.

No anonymity direction is made.

Signed G Jackson

Date 1st August 2020

Upper Tribunal Judge Jackson