



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

Appeal Number: IA/25947/2014

THE IMMIGRATION ACTS

**Heard at Glasgow
on 7 July 2015**

**Determination issued
On 10 July 2015**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MANOJ PAL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Brown, of Drummond Miller, Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nepal, born on 19 August 1987. In his determination promulgated on 5 February 2015 First-tier Tribunal Judge Morrison came to the following conclusions:
 - (a) The appellant cheated in his English test. The respondent was entitled to curtail his leave and to refuse his application for leave as a spouse under paragraph SLTR.1.6 of the Immigration Rules on the basis that his presence in the UK was not conducive to the public good.
 - (b) Removal of the appellant would be disproportionate in terms of Article 8 of the ECHR. The most persuasive factor was that it

would effectively end the marital relationship. The effect on his wife would be serious. She was a UK citizen who had spent her life in the UK with no suggestion that she was complicit in her husband's deception. If the appellant were to be removed then through no fault on her part her life would be irrevocably changed, causing considerable stress. "In coming to this conclusion I acknowledge that the appellant has behaved badly and that in most circumstances his removal would have been appropriate but in this case he is benefiting from the effects which his removal would have on his relationship with his wife and on his wife's future well-being."

2. The appellant was granted leave to appeal to the Upper Tribunal against the outcome under the Immigration Rules, and the respondent was granted permission to appeal against the outcome under Article 8.
3. The SSHD's grounds of appeal are:
 - (1) failing to give adequate weight to material matters, namely the findings on cheating and under paragraph SLTR.1.6, when assessing the proportionality balance;
 - (2) failing to give adequate weight to material matters, namely the public interest in ensuring that persons whose presence is not conducive to the public good are restricted from benefiting from the effects of their deception, and giving "no explicit regard to public abhorrence of situations in which deception actually benefits the wrong-doer";
 - (3) failing to give adequate reasons for material findings, namely that the appellant's wife would find life in Nepal unduly harsh, when there was only limited medical evidence about her and neither he nor she said in evidence that she would not accompany him to Nepal; misapplying the burden of proof in respect of lack of evidence of initial income to obtain accommodation in Nepal; and
 - (4) failing to properly apply or to consider primary legislation, namely section 117B of the 2002 Act.
4. Mr Matthews submitted thus. Grounds 1 and 4 overlap. Section 117B(4) requires little weight to be given to the appellant's private life or to his relationship with his wife established while he was in the UK unlawfully. Although he was not formally here unlawfully when the relationship was initially formed, and his leave had been curtailed only after deception came to light, that did not imply that he could say he was here lawfully up to that time. The provision should be read to the effect that his presence here was unlawful from when he used deception in October 2012, although the notice curtailing his leave was dated only 20 June 2014. Mr Matthews could not say that the point had been put in quite that way to the First-tier Tribunal, but this was a matter of fact, and there had been reliance on the sub-section. As to Ground 2 although matters of weight were generally for a judge, and the grounds did not allege perversity, this is codified in statute rather than left to broad discretion. There was

considerable public interest in appellants not benefitting in a case like this where the appellant was one of the participants in a large scale fraud. The judge had shown that he was aware of that, but the weight given was not sufficient under the provisions of the statutory scheme. As to Ground 3, Mr Matthews accepted that the judge's decision is a careful one, but he pointed out that the onus was always on the appellant to show the difficulties his wife might encounter in Nepal, and there had been no detailed medical evidence about her condition. At paragraph 59 the judge effectively reversed the burden of proof about the lack of evidence of conditions to be encountered in Nepal. That was more than a semantic point.

5. Mr Matthews accepted my observation that the crux of the decision was obviously the significantly adverse effect of removal on the wife of the appellant. He also accepted that the grounds do not go so far as to say that there could properly have been only one outcome.
6. I indicated to Mr Brown that I did not need to hear from him on the Article 8 grounds. In my opinion, the determination makes it plain why the judge thought that although she was not specifically asked, the evidence from the wife and her parents showed that her relocation to Nepal was not a realistic possibility. That view was open to him and is properly explained. He by no means minimised the significance of the appellant's use of deception. He found the case to be finely balanced. The respondent's point in terms of section 117B(4) was perhaps made more sharply in the Upper Tribunal than it had been in the First-tier Tribunal. The point about the burden of proof amounts to a criticism of phrasing rather than of substance. On the issue which tipped the balance, no error is shown. It is not said that the conclusion reached was not properly open to the judge. The determination is particularly thorough and careful. It is always possible to find something to quibble. I do not think the grounds amount to more than that. They do not show the centrepiece of the decision to be flawed.
7. Mr Brown withdrew the appellant's grounds of appeal.
8. The determination of the First-tier Tribunal shall stand.



Upper Tribunal Judge Macleman
8 July 2015