



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

Appeal Number: IA/49332/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 03 October 2017**

**Decision &  
Promulgated  
On 27 October 2017**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between  
M K M A**

**(ANONYMITY DIRECTION MADE)**

**and**

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

Appellant

Respondent

**Representation:**

For the Appellant: Mr Z Khan of Universal Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

- 1.** The appellant is a national of Bangladesh, born in 1981. He entered the United Kingdom on 20 October 2010 with leave to remain as a student. His leave was extended until 30 September 2014. In April 2014, he married a British citizen Rahela Choudhury and maiden in time application to remain as a partner. Rahela Choudhury has 2 British citizen children born on 11 June 2005 and 24 December 2007.
- 2.** On 19 August 2014, the respondent refused the application on the basis that the appellant had previously sought leave to remain in the United Kingdom by deception because ETS had informed them that his English language speaking test taken on 18 September 2012 at Synergy Business

College of London had been taken by proxy. The respondent concluded that the appellant did not meet the suitability requirements in S - L T R. 2.1 of appendix FM to the Immigration Rules. The failure of the suitability requirements deprived the appellant of the Gateway to the partner requirements in appendix FM, and in particular to the exceptions at EX 1. Respondent went on to conclude that in any event those provisions were not met and there were no compelling circumstances so that his removal was proportionate.

- 3.** The appellant appealed to the First-tier Tribunal. Judge Walters found that the respondent was unable to rely upon deception using a previous application in any event. As a result, the judge revisited the family and private life aspects of the decision and concluded that removal was proportionate in the context of his relationship with his partner. In considering the proportionality of the removal in the face of the family life with the partner's children the judge concluded that he was unable to attach weight to their circumstances in the context of the immigration rules or section 117 of the Nationality, Immigration and Asylum Act 2002 because as a "stepfather" he was unable to conclude that there was a qualifying parental relationship.
- 4.** The appellant was granted permission to appeal to the Upper Tribunal on the basis that test of a genuine and subsisting parental relationship with a qualifying child could include a stepfather.
- 5.** In the rule 24 response the respondent conceded that there was an error of law but argued that in light of the judge's conclusion that there were no insurmountable obstacles to the appellant's wife returning to Pakistan with him so as to continue to enjoy family life included the position of the children so that the result would in any event be the same.
- 6.** Before me Mr Melvin recognise the difficulty of that position in light of clear responsibilities of a judicial decision to address the best interests of children affected by immigration decisions. As parties recognised in this case there was insufficient judicial findings in respect of the facts pertinent to the children so as to assess the character and quality of the family life enjoyed and the impact of severance/separation or relocation. Any assessment also requires the inclusion of countervailing public interest factors including, on the facts of this case, whether or not there had been deception practised in the earlier application. Judge Walters had not found it necessary to make the relevant findings. Previous judicial consideration of the appellant's claim had been overtaken by the recent case law which assessed the respondent's generic evidence, when combined with specific evidence such as an individualised printout, to be sufficient to discharge the burden of deception.
- 7.** The representatives were in agreement that I should set aside the decision of the First-tier Tribunal, and in light of the extensive fact-finding exercise that remained outstanding, remit to the First-tier Tribunal De Novo.

**Decision**

- 8.** The decision of the First-tier Tribunal is flawed by legal error and I set it aside. The matter is remitted to the first-tier tribunal.

Signed

E. Davidge

Date 26 October 2017

Deputy Upper Tribunal Judge Davidge