



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/05554/2018**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester
On 18 September 2018**

**Decision & Reasons Promulgated
On 01 October 2018**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR KABESA MWANSA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr A Tan, Home Office Presenting Officer

For the Respondent: Mr A Olufunwa, Legal Representative, Immigration Law Practice

DECISION AND REASONS

1. The appellant (hereinafter the Secretary of State or SSHD) has permission to challenge the decision of Judge Meyler of the First-tier Tribunal (FtT) posted on 12 June 2018 allowing on human rights grounds the appeal of the respondent (a citizen of Zambia) (hereinafter the claimant) against the decision made by the SSHD on 9 February 2018 refusing leave to remain.
2. The judge allowed the appeal because he was satisfied that the claimant met the requirements of paragraph 276B of the Immigration Rules and that therefore there was no public interest in removing a person who qualifies under the Rules. The judge was also satisfied that the SSHD had not proven that the claimant had made false representations.

3. The written grounds raised no challenge to the judge's finding that there had not been fake representations nor to the judge's findings on all the requirements of paragraph 276B dealt with in the decision. The grounds were confined to the submission that the judge failed to make any findings on paragraph 276B(iv) in respect of demonstration of sufficient knowledge of the English language and sufficient knowledge about life in the UK in accordance with Appendix KoLL.
4. I am satisfied that the judge fell into error in not dealing expressly with paragraph 276B(iv), but I am equally satisfied this did not constitute a material error of law since (as Mr Tan conceded) the author of the SSHD's grounds overlooked that the claimant had indeed demonstrated sufficient knowledge both of the English language and life in the UK and had produced satisfactory evidence to show he had done so in the form of a Pass Notification letter stating that he had passed the Life in the UK test on 6 May 2018 and a certificate from Trinity College, London confirming the award to the claimant of a Grade 5 CEFR Level B.1 with Distinction. Whilst therefore the judge should have addressed paragraph 276B(iv) specifically, the fact of the matter is that the appellant met its requirements and therefore met the requirements of paragraph 276B in full. Accordingly the judge's finding that because the requirements of 276B were met there was no public interest in removing the appellant, was unimpeachable.
5. At the outset Mr Tan sought to raise an issue regarding the judge's treatment of the deception issue pointing out that section 7.3 of the application form he filled in does request of applicants whether they have received any other penalty, e.g. a caution (to which the claimant had incorrectly stated "no"). Leaving aside that the same form also contains wording referring to arrest or charge (on which the judge relied), I am not prepared to accept any amendment of the SSHD's grounds to include this matter. It was not raised in the grounds and in the nature of the issue (an allegation of deception on which the burden rested on the SSHD) it would be quite inappropriate to permit the matter to be re-ventilated at this stage, when it was not raised in the grounds.
6. For the above reasons I conclude that the SSHD's grounds have fallen away and the decision of the First-tier Tribunal Judge must stand.

No anonymity direction is made.

Signed:

Date: 26 September 2018



Dr H H Storey
Judge of the Upper Tribunal