



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/13574/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 28<sup>th</sup> June 2018

Decision & Reasons Promulgated  
On 11<sup>th</sup> July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JAWAD JAMEEL  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer  
For the Respondent: Mr P Collins, Legal Representative, Zoi Bilderberg Law Practice

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Beech made following a hearing at Taylor House on 7<sup>th</sup> November 2017.

Background

2. The claimant is a citizen of Pakistan born on 20<sup>th</sup> April 1988.
3. His immigration history is as follows. He entered the UK on 22<sup>nd</sup> October 2011 with leave to enter as a Tier 4 Migrant. On 29<sup>th</sup> August 2012 he applied for further leave to remain as a Tier 4 student and was refused. On 3<sup>rd</sup> November 2015 he applied for leave to remain as the spouse of a person present and settled in the UK which was refused on 20<sup>th</sup> May 2016.

4. It is the Secretary of State's case that the claimant undertook a test to obtain a TOEIC certificate in 2015 but when ETS undertook a check of the test it was confirmed that there was evidence to conclude that the certificate may have been fraudulently obtained. He was satisfied that the claimant's presence in the UK was not conducive to the public good.
5. The claimant gave evidence to the judge about the ETS test. He said that he had met a person called Abid who had told him that he had to do an English language course and he paid him £2,500 to submit the TOEIC form to the Home Office. He went to the test centre at Harrow and accepted that he did not take the test, simply going to the centre and signing in. He was then told to leave without signing out. All he did was register his name and have his photograph taken.
6. The judge said that the claimant was aware that he required an English language test certificate and he must at least have been bemused by what had happened at the centre. It did not make sense that he would simply leave and make no further enquiries. The lack of action on his part suggested either a complicity in the deception or a lack of interest in ensuring that he fulfilled the requirements of the Rules. She concluded that it was more likely than not that the claimant realised that he had not completed the test and did nothing to address the fact, which called into question his conduct. Some element of deception was used even if he had not set out to be actively deceptive. He therefore fell foul of the suitability requirements of the Rules.
7. The Secretary of State had accepted that the claimant had a genuine and subsisting parental relationship with a qualifying child. He met his partner and moved in with her in September 2014 having undertaken a religious marriage. He was unable to register the marriage because of his immigration status. The couple have a child of their own and his partner has a child whom she looks after together with the claimant but who sees his biological father in the school holidays.
8. The claimant's partner is deaf.
9. In a detailed and thoughtful determination the judge concluded that there were no insurmountable obstacles to the claimant and his partner relocating to Pakistan because, although she communicates in her current sign language which is British, there was no evidence that she could not learn Pakistani sign language. She also concluded that there was insufficient evidence before her to show that the claimant would face very significant obstacles in integrating into Pakistan given that he had worked there in the past and had family there.
10. At paragraph 54 the judge wrote:

"I therefore consider whether it is appropriate to consider the appellant's case outside the Immigration Rules. This is a human rights appeal and there are therefore potentially wider considerations than simply the requirements of the Immigration Rules. If I consider only the Immigration Rules, the best interests of two British citizen children will not be taken into account because the appellant's relationship with them cannot fit within the Immigration Rules. This would potentially lead to two British citizen children being separated from the appellant or in them having to leave the UK without any assessment of whether it is

reasonable to do so. I find that this could lead to unjustifiably harsh consequences and that it is therefore appropriate to consider the appellant's appeal outside the Immigration Rules."

11. The judge considered the question of the two children at paragraph 59 of the determination. She noted that the claimant's stepchild had frequent holiday contact with his biological father and it was unlikely that they would be able to facilitate the same levels of contact if he was in Pakistan. She said that the conduct of the claimant fell below the threshold for deportation and, whilst it meant that he did not meet the Immigration Rules, he had not been charged with, or convicted of any criminal offence in relation to that conduct. She observed that in other respects his immigration history had not been poor given that he had applied for further leave and had had leave to remain in the UK for the majority of his time. The effect on the children of leaving the UK would be not only that they would lose the benefits of British citizenship but his stepchild would lose frequent contact with his biological father. There had been evidence that that child was suffering from behavioural problems which the school were seeking to address and a change of circumstances would have a further effect on him. His partner suffered from anxiety and would face some difficulties in relocating to Pakistan which would also likely impact on the children. They had a loving relationship with the wider family network who live nearby. Taking account of all the circumstances she concluded that it would not be reasonable to expect the children to leave the UK.

### **The Grounds of Application**

12. The Secretary of State sought permission to appeal on the grounds that the judge had failed to consider that there was another primary carer, i.e. the parent in the UK, with whom the children could remain which had not been properly considered in the proportionality assessment. She had also failed to have proper regard to the fact that the claimant was not financially independent, had had no stay in the UK, had failed to supply an English language qualification and had admitted to deception. There were strong public interest factors in this case and removal was proportionate. The judge had found that there was an absence of insurmountable obstacles to the family settling in Pakistan and that family life had been created at a time when the claimant was aware that he had no stay in the UK. Reliance was placed on R (on the application of) Agyarko v SSHD [2017] UKSC 11.
13. Permission to appeal was granted by Judge Alis on 2<sup>nd</sup> May 2018 for the reasons stated in the ground.

### **Submissions**

14. Ms Everett confirmed that there was no challenge to the credibility findings made by the judge in this determination and that there were unusual facts in this case. There was also no criminal history. Nevertheless she submitted that the judge had erred in not considering whether the claimant could himself return to Pakistan. Although the claimant's deception was five years ago, in effect it was a continuing deception because he had subsequently relied on it, and a serious issue which could not be glossed over.

15. She accepted that the effect of the judge's decision, had the appeal been dismissed, would be that the family would be severed since the British citizen children could not be expected to go to Pakistan because that in itself would severely disrupt the relationship of the stepchild with his natural father.
16. Mr Collins submitted that the decision was wholly sustainable. The claimant admitted that he had not done the test which was to his credit and the Secretary of State was not relying upon S-LTR.2.2, namely asserting that he had submitted false documentation. Instead the refusal was on general conducive grounds. This was a very thorough determination in which the judge had looked at all of the evidence in the round. The circumstances were exceptional and overall the judge had reached a balanced decision.

### **Findings and Conclusions**

17. The claimant is not in a position to meet the requirements of the Immigration Rules because of his admittance that he did not take the English language test. Hence he fails to meet the suitability requirements. The judge also found that there were no insurmountable obstacles to his reintegrating into Pakistan and he cannot meet the requirements of paragraph 276ADE(1)(vi).
18. The Secretary of State does not in fact challenge the judge's decision as to whether it was appropriate in this case to consider Article 8 outside the Immigration Rules. He says that her assessment of proportionality is flawed.
19. There are indeed exceptional circumstances in this case. The obvious one is that the claimant's partner is deaf. Her first language is British sign language and English. She also suffers from anxiety.
20. The second exceptional factor is that she has an older child, the claimant's stepson, who has an ongoing relationship with his natural father but who himself also suffers from behavioural problems. The school provides counselling help for him and he saw a specialist in 2017.
21. In R (on the application of) Agyarko v SSHD [2017] UKSC 11 the Supreme Court said:
 

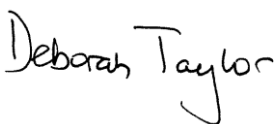
"In cases concerned with precarious family life it is likely only to be in exceptional circumstances that the removal of the non-national family member will constitute a violation of Article 8. That reflects the weight attached to the contracting state's right to control their borders as an attribute of their sovereignty and the limited weight which is generally attached to family life established in the full knowledge that its continuation in the contracting state is unlawful or precarious. ...A state is entitled as a matter of well-established international law and subject to its treaty obligations to control the entry of non-nationals into its territory and their residence there. ...The Convention is not intended to undermine that right by enabling non-nationals to evade immigration control by establishing a family life while present in the host state unlawfully or temporarily and then presenting it with a *fait accompli*"
22. The question to be determined is whether the judge was entitled to conclude that these circumstances here are so exceptional such that the strong public interest factors in this case are outweighed.

23. The unchallenged evidence is that the claimant plays a large part in the upbringing family life of his children. His partner works full-time and he drops both children off at school and collects them both. She confirmed that she and the claimant work as a team and it would be very difficult for her to manage without him, particularly as her elder son as behavioural difficulties. She said that the claimant has been an incredible support to her and his absence would have a serious effect on both of them. He is a very good father. They are a close-knit family within the larger extended family.
24. Her mother also gave evidence and said that the claimant provided practical and emotional support to her daughter. She confirmed that he looked after the children and she had no criticism of him.
25. It is not the position of the Secretary of State in fact that the family could return as a unit to Pakistan because of the position of the British citizen older child and his relationship with his stepfather. It is his position that the judge erred in not considering whether the claimant could return alone. Ms Everett accepted that this would mean the severance of this family's relationship with each other.
26. Whilst the judge did not in terms at paragraph 59 consider whether the claimant could return to Pakistan alone I am not satisfied that this amounts to a material error of law. This is a vulnerable family for whom the claimant provides much-needed support. She had already found that his presence was very important indeed both to his disabled partner whom he had married in a religious ceremony and to his children, one of whom requires assistance through a counsellor in his school. There is no basis at all for concluding that she did not have in mind the correct test as set out in Agyarko. The judge was plainly aware of the public interest arguments cited in the grounds, including that the claimant was complicit in some element of deception.
27. In summary, the judge, in a lengthy and well-considered determination, reached credibility findings which have not been challenged. She reached a decision open to her on the accepted facts. Accordingly I find that there is no error of law which is material in this decision.

### **Notice of Decision**

28. The original judge did not err and her decision stands. The claimant's appeal is allowed.

No anonymity direction is made.



Signed

Date 8 July 2018

Deputy Upper Tribunal Judge Taylor