



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

Appeal Number: HU/11191/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 25 February 2020**

**Decision & Reasons
Promulgated
On 16 March 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**MR PHURIWAT VICHENARAT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara, Counsel, instructed by Legend Solicitors
For the Respondent: Ms S Cunha, Home Office Presenting Officer

DECISION AND REASONS

The appellant appeals with permission against a decision of First-tier Tribunal Judge Widdup promulgated on 13 September 2019 dismissing his human rights appeal against a decision of the Secretary of State made on 12 April 2016 to refuse him further leave to remain in the United Kingdom as the spouse of a person present and settled here, Miss Wimonkasem.

There are two grounds for that decision. First, that the Secretary of State considered that the appellant had fraudulently obtained a TOEIC speaking test

certificate from ETS and second, that there were no insurmountable obstacles to family life being enjoyed outside the United Kingdom and that removal would not be disproportionate. It is, I think, unnecessary to recite the history of this appeal, which has already been before the First-tier Tribunal. It is set out in the decision of Judge Widdup and is not material to the issues before me.

The judge heard evidence and concluded at paragraph 47, having had regard to the evidence and the burden on the respondent to prove dishonesty, that that burden has not been discharged and that the allegation supporting the paragraph 322(5) point was not made out and accordingly the projection that the applicant did not meet the suitability requirements S-LTR.1.6 were not made out. The judge then went on to consider whether the suitability requirements of Appendix FM were met and considered paragraph R-LTRP(d) (iii), which in turn required him to consider EX.1. The judge concluded that EX.1 was not made out nor was he satisfied that paragraph 276ADE(1)(vi) was met nor did he consider that Article 8 would be breached by requiring the appellant to leave the United Kingdom.

The appellant appealed on the grounds that the judge had erred in that, put simply, having concluded that the dishonesty allegation was not met, he should then have considered whether the Immigration Rules, in this particular case R-LTRP(c), were met rather than R-LTRP(d). It is also stated that in any event the appellant did meet the requirements of R-LTRP(c) in that he had shown that his income was over the threshold, that this was supported by the necessary evidence and that he also met the English language requirement. Permission to appeal was granted by Designated Judge McClure on 8 January 2020.

When the appeal came before me it was accepted by Ms Cunha that there was a material error of law in the decision in that the judge had failed properly to engage with the correct provisions of the Immigration Rules, that is R-LTRP(c), not (d). On that basis, I set the decision aside for it to be remade, reserving the finding that there had been no dishonesty and to consider whether the requirements of R-LTRP(c) were met.

It was accepted by Ms Cunha that those requirements were met in light of the evidence of the appellant's wife's earnings both in the forms of a letter from her employer, wage slips and bank statements which were consistent with that. It was also accepted that the appellant met the requirements of the English language requirement in the form of a certificate from Trinity College showing a pass at CEFR Level B 1.1.

In the light of these concessions and having considered the matter for myself, I conclude also that all the requirements of R-LTRP(c) were met. That is because the appellant did have leave to remain for a period in excess of six years at the date on which he made the application for further leave to remain. Accordingly, for these reasons, I am satisfied that the appellant did meet all the requirements of the Immigration Rules.

Accordingly, and in line with the decision of the Upper Tribunal in **OA**, I am satisfied that there could of course be now no public interest in removal of the

appellant in light of the finding that the requirements of the Immigration Rules are met and accordingly, I am satisfied that removing the appellant would as he meets the requirements of the Immigration Rules be proportionate. I therefore remake the appeal by allowing the appeal on human rights grounds.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside

I remake the decision by allowing the appeal on human rights grounds.

Signed

Date 2 March 2020

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul