



**Upper Tribunal  
(Immigration and Asylum Chamber)    Appeal Number: UI-2022-001176  
HU/01262/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 16 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE J KEITH  
DEPUTY UPPER TRIBUNAL JUDGE B KEITH**

**Between**

**RUKSANA BEGUM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: *Mr J Dhanji*, instructed by direct access.

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**Heard at Field House on 14 November 2022**

**DECISION AND REASONS**

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of her application for leave to remain, based on right to respect for her family and private life.
2. The background to this appeal as set out in the error of law decision annexed to these reasons. This Tribunal set aside the FtT's decision, without preserved findings of fact, but retained remaking in the Upper Tribunal.

## **The issues**

3. The representatives agreed that the issues in remaking the FtT's decision, are:
  - 3.1 Has the respondent proved that it is more likely than not that the appellant used deception in her Tier 1 application? If not, this appeal falls to be allowed on article 8 ECHR grounds, applying paragraph 34 of TZ (Pakistan) and PG (India) v SSHD [2018] EWCA Civ 1109, because the appellant meets the requirements under paragraph 276B of the Immigration Rules.
  - 3.2 If this Tribunal decides that the respondent has established that the appellant was dishonest, is the appellant's presence in the United Kingdom undesirable? If not, the appeal falls to be allowed, as above.
  - 3.3 If this Tribunal decides that the appellant's presence is undesirable, is the respondent's decision a disproportionate interference with the appellant's right to respect for her private and family life when her case is considered outside of the Immigration Rules? The appellant has a British citizen child born on 17<sup>th</sup> August 2017, who was registered as a British citizen, following her husband's grant of indefinite leave to remain on 23<sup>rd</sup> August 2022, so that section 117B(6) of the Nationality, Immigration and Asylum Act 2002 applies.

## **Background**

### **The respondent's refusal**

4. The respondent considered the appellant's application of 18<sup>th</sup> December 2015 for indefinite leave to remain, based on 10 years' continuous lawful residence. This was in the context of the appellant having entered the UK in 2005 on a student visa, with her husband as her dependent. She had applied in her own right for her student visa without legal assistance, which she had obtained and which was valid until 2007. She applied to extend her visa, which was rejected. She applied once again in January 2008, on her evidence, with the assistance of her college, which was granted until 31<sup>st</sup> October 2010. She then applied on 10<sup>th</sup> October 2010 for a Tier 1 post-study work visa, which was valid until 12<sup>th</sup> October 2012. She next applied on 12<sup>th</sup> September 2012 for a Tier 1 entrepreneur visa, which she varied on 18<sup>th</sup> December 2015.
5. The respondent rejected the appellant's application, because it did not meet the requirements of paragraphs 276B(ii) and (iii), because the respondent considered that false representations had been made in relation to the 2012 Tier 1 entrepreneur application. As a consequence, the application did not meet the requirements of paragraph 322(1A). Mr Dhanji submitted, and we accept, that this part of the refusal letter was an error, as that provision refers to false representations in a current, as opposed to a previous, application. However, Mr Dhanji accepts that the refusal letter referred in the alternative to paragraph 322(5), namely the undesirability of permitting the appellant to remain in the UK in light of her

conduct. It was for that reason that Mr Dhanji posed the questions set out in the issues, listed above.

6. We set out below the respondent's reasons for refusing the appellant's ILR application, following a "minded to refuse" process. These reasons are lengthy, but merit full repetition, given the complexity and gravity of the issues:

"You submitted a Tier 1 Entrepreneur application on 12/09/12. UKVI has collated evidence as part of the investigation that supported the prosecution during the Operation Meeker court case at Southwark Crown Court in November 2018 and June 2019 and from the information you have submitted, to assess your application. During the prosecution of AKM Rezaul Karim Khan, Enamul Karim, Kazi Borkhot Ullah, Mohammed Tamij Uddin, Mohammed Jillur Rahman Khan and Jalpa Trivedi at Southwark Crown Court in November 2018 and June 2019, it was proven that these individuals had been involved in falsely creating businesses. The aim was to make them appear as legitimate entities for the benefit of migrants to generate earnings or sources of funds for the purpose of obtaining leave to remain in the UK by deception.

The individuals identified have since been convicted for their involvement in this deception. Information identified through a witness statement and seizure of evidence during Operation Meeker, demonstrates that you have interacted with the individuals and companies concerned with the aim to falsely support the earnings and funding of the business requirements for your application.

In our letter of 05/10/20 we stated that we were minded to refuse your application on the grounds that false representations have been made. We put these concerns to you as follows:

A number of Tier 1 applications had either used the services of or were submitted by the representatives Rukaiya & Associates or Immigration4u. A large number of these applications were placed on hold pending an investigation due to their association to a suspected fraudulent enterprise, run by employees of Rukaiya & Associates or Immigration4u. A criminal investigation was carried out which led to a criminal trial. Five individuals from the two immigration advisors and an accountant from JTC Accountancy were found guilty of a number of criminal offences which included conspiracy to defraud in respect of immigration applications and cheating the public revenue. The five individuals found guilty were; AKM Rezaul Karim Khan, Enamul Karim, Kazi Borkhot Ullah, Mohammed Jillur Rahman Khan and Mohammed Tamij Uddin. The accountant from JTC Accountancy who was also found guilty was Jalpa Trivedi. They were sentenced to a total of over 30 years imprisonment in November 2018 at Southwark Crown Court. The companies above were proven to be supplying migrants for a fee with a UK company and registering the company with Companies House and/or HMRC. Company bank accounts were set up by the defendants. The companies involved in the fraud would proceed to invoice each other and transfer money between the relevant bank accounts. Shaheda Roxsana, Maksuda Begum and Mazharul Haque were found to have opened bank accounts that had been implicated in transferring and recycling of funds to support the abuse. The fraud would continue until the migrant had earned sufficient salary or demonstrated the required source of funds to meet the points

based requirements at the time. Shaheda Rozsana and Mazharul Haque were found guilty of conspiracy to defraud the Secretary of State by making false Tier 1 applications between 31 December 2008 and 27 February 2013. Shaheda Roxsana, Maksuda Begum and Mazharul Haque were also found guilty of conspiracy to cheat the public revenue, where tax rebates were claimed back on false earnings, between 31 December 2008 and 27 February 2013.

In your Tier 1 Entrepreneur application of 12/09/12 submitted by Immigration4U (who were found to have engaged in the fraud) you claimed that £53,000.00 had already been invested into your UK business (Channel S Global London Limited) and thus you met the point scoring assessment. An AR01 form held on companies house shows you hold 50 shares at a value of 1.00 GBP each.

A copy of your Tier 1 Entrepreneur application was seized by Immigration Enforcement upon a search of the offices at Immigration4U. UKVI, as part of the criminal investigation mentioned above and consideration of your Tier 1 Entrepreneur application, has reviewed the following information:

- Page 10 of the application shows your home address - [**address redacted**].
- Page 12 gives your correspondence address - Immigration4U, Unit 1 Grampian House, 205 Marsh Wall, E14 9YT
- Page 28 gives the details of your entrepreneurial partner - Pronati Rani Adikhary, a Bangladeshi national born 12/12/81.
- Page 31 and 33 shows £53,000.00 has already been invested into your UK business on 10/03/12.
- Page 34 gives your job title as Public Relations Manager.
- Pages 55-56 contain your declaration that all the information given is correct and that you are aware you are committing an offence by providing false information.
- Page 57-60 relate to your immigration advisor, Syed Ali at Immigration4U.

Further assessment of your application completed by the Home Office in addition to assessment of documents seized from Immigration4U and Rukaiya and Associates, has shown that you submitted the following in support of your Tier 1 Entrepreneur application:

- Accountants letter signed by Jalpa Trivedi at JTC Accountancy dated 12/08/12.
- Share certificate dated 10/03/12 witnessed by Mohammad Nazmul Hasan confirming you hold 50 shares in Channel S Global London Limited.
- Lloyds TSB Business Bank statements for Global S London Limited account number ending 6260 for August 2012.
- Report and Accounts dated 12/08/12 completed by Jalpa Trivedi of JTC Accountancy.

- Service agreement between Channel D Global London Limited and Rukaiya Properties Limited.

Your application for Tier 1 Entrepreneur leave was submitted by your appointed representative Immigration4U who you authorised to act on your behalf by completing the appropriate declaration within your application. This indicates your direct association with Immigration4U who were subsequently found to have acted fraudulently by the Court during the criminal investigation.

Your response to MTR states within the Bengali community Immigration4U and its lawyers were well known experts in immigration cases. Your good friend introduced you for being professional, competent and very renowned. You confirm you did not review the application form, as you were not given enough time. You stated the staff were always busy and Mr Karim and Mr Borkhot were always busy. You trusted them and had no suspicion they would do anything dishonest against you.

It is not considered credible that you would sign an immigration application form without reviewing it, to apply for leave to remain as an Entrepreneur. It is reasonable to expect if you were a genuine Entrepreneur of a business in the UK, you would be fully involved in the completion of the application form, providing as much information as possible relating to the business you were running and claiming to be a director of. It is considered you signed an immigration application form, without reviewing it, giving permission and taking responsibility for any information to be entered onto this form on your behalf, whether genuine or not. It should be noted that a refusal under general grounds 322 (1A) relating to providing false representations, is a mandatory refusal whether the false representations were provided with or without your knowledge.

You were asked about the relationship with your entrepreneurial partner. You have stated you knew your entrepreneurial partner from back home and she told you she had money to invest. It is considered however you have not provided a detailed or credible response to explain the circumstances that involved you going into business together.

The fraud involved multitudes of money loops which took place to make it appear that genuine businesses were operating.

Consideration has been given to your Lloyds TSB Business Bank account number ending 6260 for Global S London Limited. A witness statement from the financial investigator during the trial confirms this account was opened in May 2012 by yourself. There was a total turnover of just under £64,000.00 in 11 months between 30/05/12 and 11/04/13. After this, the account became dormant.

It is noted credits into the account amounted to £63,953.44 and debits amounted to £63,438.63.

A number of transactions within the account were made to and from companies that were deemed by the court to have been non-genuine, and created to conduct the defendants fraudulent business.

I have listed some of the transactions below that were shown within the August 2012 bank statement you provided in support of your application involving companies that were featured heavily during the trial;

Date	Name	Credit/Debit	Amount
02/08/2012	London Broadcasting	Debit	£2,350.00
03/08/2012	Rukaiya Properties	Debit	£1,250.00
06/08/2012	TDT UK Ltd	Debit	£100.00
06/08/2012	Richmount International	Debit	£200.00
07/08/2012	KDC Communication	Credit	£160.00
07/08/2012	Mrs Sadia Karim	Debit	£834.34
14/08/2012	Mrs Sadia Karim	Debit	£834.34
15/08/2012	Rukaiya Properties	Debit	£1,075.00
21/08/2012	Moslem AKT	Debit	£5,000.00
22/08/2012	Falcon IT	Debit	£1,700.00
22/08/2012	Rukaiya Properties	Debit	£1,250.00
28/08/2012	Jubeda Enterprise	Credit	£2,475.00

You were asked within the MTR, to provide an explanation for these transactions, and to provide supporting evidence like invoices and contracts. You were asked to provide detail to explain how you obtained work from these companies.

Your response states that you know nothing about these transactions and that your bank account and company matters were controlled by Mr Kazi Borkhot Ullah. This has not been considered a credible response. This is because it is reasonable to expect a genuine entrepreneur and director of a company would have knowledge of their clients and contracts. It is reasonable to expect you would have knowledge of the work your company was completing. Instead, you indicate you had no involvement in the company at all, and that Mr Kazi Borkhot Ullah controlled the company instead. This response falls in line with the fraud that was being undertaken by the defendants. Migrants were provided with companies for a fee and these companies were invoiced by other non-genuine companies to make it appear that the company was operating genuinely. Your lack of knowledge of your companies' clients and dealings indicate you were not a genuine director of this company and were seeking leave to remain as an Entrepreneur using false representations. Furthermore, you confirm Mr Borkhot would charge you a fee for his managerial services, however you have not provided supporting evidence.

You were asked why your company paid Mrs Sadia Karim £834.34. Sadia Karim is the wife of AKM Rezaul Karim who was found guilty for his part in the fraud. Your response states you did not know Mrs Sadia Karim personally and you have no knowledge of the transaction as your accounts and company matters were controlled by Kazi Borkhot Ullah.

You were asked why your business bank account became dormant in April 2013 but you state you have no idea as your accounts and company matters were controlled by Kazi Borkhot Ullah.

This calls into question your credibility of your application. The Secretary of State is not satisfied, on the balance of probabilities, that your business activity claim is genuine and it does not appear to be a reflection of genuine

business transactions and no relevant details have been submitted to corroborate your claim of business earnings.

The witness statement also confirms you made large payments to Mr Zaheedul Islam (£10,366.23), Mrs M Begum (£7,671.44), Mrs Kabir Nila (£6,583.02) and Sharif Md Parvez (£9,766.59). I can confirm where payees have received multiple payments from the account, the payments have been aggregated.

You state you have no relationship with these people and can only assume that Kazi Borkhot Ullah was doing business with them. It is not credible that you would not be aware of large payments made out of your business account. Furthermore, the payments to Kabir Nila and Md Zaheedul Islam were referenced 'salary.' It is therefore considered if you were a genuine director of a small company, you would have knowledge of your employees.

The witness statement also refers to a Barclays account ending 3796 in the name of Channel S Global London Limited. This account was opened by yourself in June 2012 and you stated you were the sole director of the company. As part of the account opening process, you produced a share certificate dated 06/06/12 witnessed by Kazi Borkhot Ullah of [**address redacted**]. The bank account was active for a period of 4 months between 06/08/12 until 17/12/12 before it was closed. Credits to the account during the period amounted to £15,970.00 and debits amounted also to £15,970.00.

Debits were made to Kabir Nila (£10,971.70), Zaheedul Islam (£4,955.34), Richmount International (£25.50) and to an account ending 5186 (£5.00).

You state you have no idea of these transactions, your bank account and company matters were controlled by Mr Borkhot.

Credits were from a number of sources including TDT UK (£1,900.00), Richmount International (£4,315.00), Redhil (£400.00), Falcon IT (£200.00) and Jubeda Enterprise (£1,975.00).

You state you have no idea of these transactions, your bank account and company matters were controlled by Mr Borkhot.

You were asked why when you opened your business bank accounts did you state you were a sole director when in fact you were a joint director with Pronati Rani Adhikary. You were further asked why you closed one of your business bank accounts in December 2012. You state that Mr Borkhot took you to the bank and he did most of the talking. This falls into line with the fraud that was taking place as the defendants would set up business bank accounts for the migrants. Your response leads the Secretary of State to believe you were not a genuine director or entrepreneur of Channel S Global London Ltd.

Furthermore, it is unclear how a business bank account could be closed without your knowledge if the account was in your name being the director of the business at the time.

You were unable to explain why you made debit transactions from account ending 6260 to Falcon IT, TDT UK and Richmount International, but also received credits from the same companies into account ending 3796. These companies were deemed non-genuine during the court case. You state you

have no idea of these transactions; your bank account and company matters were controlled by Mr Borkhot. As money was being debited and credited to the same companies, it is considered this is an example of the money loops used by the defendants to make it appear that companies were operating genuinely. Furthermore, you have not supplied any documentary evidence to indicate that any of the transactions in your business accounts were genuine or that your company did any genuine work.

The business bank statements were addressed to your home address, it is therefore not credible that you are unable to comment on any of the transactions.

The witness statement confirms you provided a share certificate dated 06/06/12 witnessed by Kazi Borkhot Ullah of [**address redacted**] during the bank account opening process.

Kazi Borkhot Ullah was an immigration advisor for Rukaiya and Associates. He is responsible for opening a number of bank accounts linked to the fraud and was convicted of conspiracy to defraud the Secretary of State between 2008-2017 and cheating the public revenue.

A share certificate dated 10/03/12 witnessed by Mohammad Nazmul Hasan confirming you hold 50 shares in Channel S Global London Limited was produced in support of your Tier 1 Entrepreneur application.

You stated you were introduced to Mr Borkhot Ullah as a business expert, but that you did not know who Mohammad Nazmul Hasan is. It is considered reasonable to expect if you were a genuine director of a company, you would have knowledge of the person who signed your company shares certificate that you used to support your immigration application.

You state you had no idea that fraud was being committed by Mr Borkhot Ullah or any of the other staff at Immigration4U. This explanation has not been considered credible. This is because you have confirmed that Mr Borkhot Ullah ran all company dealings and business bank accounts, and you have not provided any information or documentary evidence to show you were involved in the company at all. Given you were registered as the director of the business, but claim to have not had any involvement, your explanations lack credibility. It is considered that you were aware that fraud and false representations were taking place, as you were seeking to obtain leave to remain as an entrepreneur and a director of a company that you had no involvement in and was instead as you have claimed ran by Mr Borkhot Ullah, who was convicted for his part in the fraud.

The witness statement also refers to a Natwest account ending 8515 in the name of Channel S Global London Limited. This account was opened by yourself in June 2012 and you stated you were the sole director of the company. The bank account was active for a period of 6 months between June and December 2012. Credits to the account during the period amounted to £850.00 and debits amounted to £778.12. It is noted this account was held alongside other business bank accounts being used at the same time. It is further noted you stated you were a sole director when opening the bank account however Pronati Rani Adhikary was listed as a director also on companies house at the time. A letter was seized from the



offices of Immigration4U from Natwest to Channel S Global London Limited enclosing the pin number for the account.

You were asked why neither of the 3 above mentioned business accounts appear to show any regular debits that would be expected for an ongoing genuine business such as office rental, stationary, utility bills etc. You state you have no idea of these transactions as your bank account and company matters were controlled by Mr Borkhot Ullah. This explanation lacks credibility as it is reasonable to expect a director of genuine company would be able to explain how they paid for expenses expected to be paid when running a business.

You have stated that Mr Borkhot was your manager and was controlling the bank accounts and company affairs, he kept all documents including the pin number for your business bank account. It is considered by your explanations that you were not a genuine director of Channel S Global London Ltd and instead were listed as a director and completed the relevant paperwork in order to obtain leave to remain in the UK as an Entrepreneur, using false representations. You have not supplied any supporting documentary evidence which evidences your position with the business, nor that the business you were named as a director of was operating genuinely.

I have reviewed your company Channel S Global London Limited on companies house. This company was incorporated on 21/02/12. There have been a number of director changes for this company.

Director	From	To
Md Mahamudur Rashid	21/02/2012	06/03/2012
Md Anjar Hossain	07/03/2012	10/03/2012
Ruksana Begum	10/03/2012	30/10/2013
Pronati Rani Adhikary	10/03/2012	26/02/2014
Sikder Muhammad Saiful Islam	26/02/2014	Current

**[Addresses redacted]**

Md Mahamudur Rashid's address is owned by AKM Rezaul Karim, who was convicted for his part in the fraud.

Md Anjar Hossain's address **[address redacted]** is linked to the immigration advisors Immigration4U and Rukaiya and Associates.

The company is linked with the convicted defendants and address' used to operate the fraud. You state you do not know any of the previous or present director of Channel S Global London Ltd, apart from your entrepreneurial partner Pronati Rani Adhikary. You were asked to explain the circumstances in which you obtained or purchased the company from Anjar Hossain. You state you are not aware of this as it was all done by your manager Mr Borkhot Ullah. It is considered reasonable that a genuine director of a company who was investing £26,000 into it, would be aware of the previous director and the nature of the transfer of the company to them.

You were asked why you resigned from being a director of 30/10/13. You state you have no knowledge of resigning. It is not credible that if you were genuinely involved in Channel S Global Ltd and were a genuine director, you would be aware that you had resigned from the company, as you would be no longer conducting work for the company. The fact that you were unaware you were no longer conducting work for the company, concerns the Secretary of State. A TM01 form is available on companies house, signed by you on 30/10/13. Although you state Mr Borkhot Ullah had your signature, the signature appears to be the same as on your Tier 1 Entrepreneur application form, which you confirm you did sign. Nevertheless, the TM01 form was available to you on Companies House, that you could have accessed at any time knowing you were listed as a director of this company. Your response states that you varied your application in May 2013 so how can it be that you resigned in October 2013. Whether or not you were a director of a company bares no relevance to you wanting to vary your application to Indefinite Leave to Remain, as this is not a factor in long residence rules. However, it should be noted that your application was not varied until December 2015.

You were asked what arrangements were made during your resignation regarding the funds that you invested into the business or any outstanding profit that you were entitled to being a director of the company. You were asked did you sell your business, who to, and for how much and to supply supporting evidence. You state that you were not aware that you had resigned, you had no idea of the funds, and you have no knowledge of the business being sold. All these matters were within full control of Mr Borkhot Ullah. This explanation has not been considered credible. It is considered that if you were a genuine director of a company, you would be aware that you were no longer a director and that another person had taken over as director. Furthermore, you invested £26,000.00 into the business, and your explanation lacks credibility that you have no idea what happened to this investment nor that you would walk away from the business, with no knowledge of who was taking over and without being paid what you were entitled to, being a joint shareholder in the company at the time. Your explanations and lack of knowledge lead me to believe that you were not a genuine director of Channel S Global London Ltd and that false representations were made within your Tier 1 Entrepreneur application.

You were asked to demonstrate the source of the funds that were used to invest into your business, and to claim points within your Tier 1 Entrepreneur application. You responded to say that as Mr Borkhot Ullah was running the company, he is the only person that can explain the dealings. You supplied a letter in support of your Tier 1 Entrepreneur application, from JTC accountancy which states 'Mrs Ruksana Begum has invested the amount of £26,500.00 on 10/03/12 into Channel S Global London Ltd.' Your response indicates that you did not invest this money into the business, as you have stated you have no knowledge of it. You have not supplied supporting evidence. It is therefore considered that the funds you claimed to have invested into the business to obtain points to seek leave to remain in the UK, were not genuine and that false representations were made in your application. It is also noted that Jalpa Trivedi was the accountant for JTC Accountancy and was convicted for her part in the fraud. Later in your letter, you state you told Mr Borkhot you had around £26,000.00 to invest in the UK but he told you to hold onto that because he needed to build the business profile first. This conflicts with the letter you provided in support of

your application which stated 'Mrs Ruksana Begum has invested the amount of £26,500.00 on 10/03/12 into Channel S Global London Ltd.' It is therefore considered the funds claimed to have been invested into the company by letter dated 10/03/12 were not genuine.

You were asked to explain your company, and detail how you were involved in the day to day operational and financial running of the company. You responded to this question in the MTR stating Mr Karim handled your immigration application and the business was handled by Mr Borkhot Ullah. You state you did tell Mr Karim and Mr Borkhot about your experience running business in Bangladesh, but they informed you that banks and business customers do not respect experience from Bangladesh. It is considered you have failed to explain what Channel S Global London Ltd did as a business, nor supplied supporting evidence. This cannot be considered a credible response, if you were a genuine director of the company and had invested £26,500.00 into it, it is considered reasonable that you would be able to explain what the business did for business. Your response leads me to believe you were not a genuine director of this business, as detailed within your Tier 1 Entrepreneur application, because you have no knowledge about the business or its dealings. It is considered even if you had support from a manager in the business, you would still have knowledge regarding the business and dealings, being the company's director.

You were asked whether your business had employees. You state you have no idea because Mr Borkhot was running the company. This is not considered a credible response, being a director of a company, it is reasonable to expect you to have knowledge about whether your company had other employees or not.

You were asked to provide an explanation of any business ideas or ventures you were involved in before you set up the business venture you have used to support your application. You stated you had a company in Bangladesh. You state you were told your business experience from Bangladesh has no value in the UK. Mr Borkhot was recommended to run your business instead. It should be noted you have not supplied any supporting documentary evidence to support your claims. The Tier 1 Entrepreneur guidance states you must provide a business plan, which would set out your proposed business activities in the UK and how you plan on making your business succeed. It is considered you have not provided a business plan, nor have any knowledge whether a plan was made, nor do you have knowledge of the proposed business activities.

You submitted reports and accounts dated 12/08/12 for your company in support of your tier 1 application. These reports were created by Jalpa Trivedi at JTC Accountancy. Jalpa Trivedi was convicted for her part in the fraud of conspiracy to defraud the Secretary of State between 2008-2013 and cheating the public revenue.

You were asked in the MTR about your relationship with Jalpa Trivedi. You state Mr Borkhot chose the accountant and told you he would deal with the business trading accounts. You state you did not provide any information to Jalpa Trivedi as it was all provided by Mr Borkhot Ullah and Mr Karim. This has not been considered a credible response. It is noted you have signed the profit and loss accounts, and is considered reasonable to expect a genuine director, would have some involvement in the creating of financial accounts for their business.

You were asked in the MTR why your company made a loss of £48,318.00 after you had been a director for 6 months. You responded to say you have no idea. All company affairs were handled by Mr Borkhot Ullah. It is not considered credible that you would not be aware that your company, which you were a director of, had made a loss. Furthermore, you signed and approved the profit and loss account on 12/08/12, created by Jalpa Trivedi. The profit and loss was provided by you in support of your Tier 1 Entrepreneur application, therefore it is considered you did have access to the details prior to applying.

Company expenses were recorded as £57,818.00 between February and August 2012 and included rent, advertising, stationary, accountancy fees, light and heat etc. You were asked to supply evidence of the payments made for these expenses and any supporting evidence. You replied to the MTR and stated you have no idea; all company affairs were controlled by Mr Borkhot Ullah. It is his or the accountant that can explain on this. This response has not been considered credible, and you have supplied no supporting evidence as requested. Being a director of a company, you must have been aware of your company expenses. Furthermore, these expenses were shown in your company profit and loss that you supplied in order to seek leave to remain. It is therefore not credible that you cannot comment on this, nor could obtain documents to explain these expenses, given you were the director of the company at the time.

I have noted a service agreement between Channel S Global London Limited and Rukaiya Properties Limited dated 09/07/12. Rukaiya Properties was one of the companies featured during the trial and was deemed none genuine and setup and used to support the fraud. The service agreement was signed by your co director Pronati Rani Adhikary and Tahrima Sultana on behalf of Rukaiya Properties. It is noted Tahrima Sultana had resigned as director from Rukaiya Properties on 10/10/11.

You were asked a number of questions relating to this service agreement, to establish credibility and to establish whether the service agreement was genuine and whether your company was operating genuinely. The questions asked were;

- Please provide evidence of how you contacted this company to undertake the services you provided to them?
- Please provide an explanation of what services this company provided?
- Please provide evidence of the work that you undertook for this company?
- Please provide evidence of the payment made for the work completed?
- Why does the service agreement state the total cost is £2,000.00 but the monthly cost is shown as £750.00 for a contract length of 3 months?
- Why did Tahrima Sultana sign the service agreement after she had resigned as director of Rukaiya?

To each question, your legal representative responded and answered, 'she does not know, this was the duty of Mr Borkhot as the company manager.' This response is not deemed credible as it lacks detail. The service

agreement was provided by you in support of your Tier 1 Entrepreneur application, to support genuine earnings of your company. It is considered not credible that you would be unaware of its existence nor have knowledge regarding any further details. Furthermore, you have not provided any evidence to suggest your company earned any money through genuine operation.

Based on the information we have from the criminal and Home Office investigation conducted, and the information you submitted in support of your Tier 1 Entrepreneur application, UKVI has considered that the evidence and information you submitted in support of your Tier 1 Entrepreneur application is not genuine. We note that there would have been a clear benefit to you by submitting information to support your earnings from a non-genuine company, to enable you to meet the points required to obtain leave to remain in the United Kingdom as a Tier 1 Entrepreneur.

We have also considered and assessed any exceptional mitigating factors you set out within your response. However, we are satisfied that based on the information you have provided, there are no such exceptional circumstances that outweigh the deception involved in the submission of non-genuine earnings in support of your application and leave outside the rules is not appropriate.

You have provided representations stating you fully trusted Immigration4U. However, it is considered you sought leave to remain as an Entrepreneur, being fully aware you were not a genuine director of the business nor were anyway involved with the company and did not provide the investment as required in the immigration rules. Furthermore, your Tier 1 Entrepreneur application has been varied to your current application of indefinite leave to remain. A refusal under 322(1A) is a mandatory refusal on general grounds if false representations have been made with or without your knowledge.

You state Mr Borkhot Ullah would set up the company, build business profile, get other companies to do business with your company, get an accountant to prepare business accounts, he will be a manager and will charge you for your services. Your explanations confirm that you were not involved in the company in anyway, nor were you a genuine director of the business. You have no knowledge of the company dealings, as confirmed by the lack of detail in response to MTR. This leads the Secretary of State to believe that false representations were provided in your Tier 1 Entrepreneur application dated 12/09/12. You have not supplied any documentary evidence, to support your application or indicate that your company was genuine, investment funds were genuine, your company earned genuine income nor that you were a genuine director in the UK.

You state you were a victim of the unlawful activities completed by the Immigration Advisor, however, it is considered you sought leave to remain as an entrepreneur, in the knowledge that Mr Borkhot was running the company and you did not have any involvement, as demonstrated by your lack of knowledge and omission of supporting evidence.”

## **Discussion**

### **The law**

7. It is unnecessary for us to recite in detail the law which the representatives agreed placed the burden on the respondent to show that the appellant was dishonest. We accept that it was also necessary to consider whether the appellant's presence in the UK was undesirable, notwithstanding any dishonesty. We accept Mr Dhanji's submission that were we to find, on balance, that the appellant was not dishonest, then that would be determinative of her appeal, in her favour, as her application for ILR would otherwise have succeeded.
8. We also accept that the question of the undesirability of the presence in the UK is not answered solely by the question of whether the appellant was dishonest, but also factors such as the period of the appellant's presence in the UK, and the development of her private life, including for example, having worked in care homes, as well as factors such as her family life, which crossed over into the separate issue of the appellant's right to respect for her family and private life, for the purposes of Article 8 ECHR.
9. In relation to article 8 ECHR, we bore in mind section 117B of the 2002 Act. In particular, (but not limiting our consideration) we bear in mind section 117B(6), as the appellant has a genuine and subsisting relationship with her British citizen daughter, so regardless of whether the appellant was dishonest, that is irrelevant to the test under section 117B(6). If it would not be reasonable to expect the appellant's daughter to leave the UK, her appeal on article 8 grounds must succeed, as there would be no public interest in her removal (the so-called 'benevolent' provision' - see para [12] of NA (Bangladesh) & Ors v SSHD [2021] EWCA Civ 953). In answering the section 117B(6) question, our focus must be on the child, bearing in mind her best interests (section 55 of the Borders, Citizenship and Immigration Act 2009). In considering reasonableness, our focus is on the 'narrower' factors relating solely to the child, rather than the 'wider' approach including the appellant's immigration history and conduct. The latter only becomes relevant in the event that the appellant does not satisfy section 117B(6).

### **Evidence and findings**

10. In terms of the evidence, we were provided with multiple (four versions) of various bundles running to thousands of pages.
11. That being said, the vast majority of the facts are not in dispute. The events which the respondent set out in her refusal decision in relation to the perpetrated fraud are not disputed. Put simply, the appellant did appoint Immigration4U as her immigration representatives. They applied, on her behalf, and with her knowledge, for the Tier 1 Entrepreneur visa, on 12<sup>th</sup> September 2012. She signed the visa application form. She said that she did not read its contents. She did open a Lloyds TSB business bank account, before the Tier 1 visa application was made, which was active from 30<sup>th</sup> May 2012 until it became dormant from 11<sup>th</sup> April 2013. The appellant explained that she opened the bank account in person, accompanied to the branch by Mr Borkhot. The so-called "money loops"

(artificial debits and credits to and from her account) did take place, but the appellant claimed to have been ignorant of any and all transactions, and claimed that she handed over all post addressed to her, received at her home address, whether relating to the bank or otherwise, unopened, to Mr Borkhot. She also opened a second Barclays Bank account in June 2012, which was closed on 17<sup>th</sup> December 2012, during which time similar 'money loop' transactions took place. While the appellant acknowledged that she had attended the bank branch when the account was closed in December 2012, Mr Borkhot accompanied her and did all of the talking. She opened a third NatWest account, which was active from June until December 2012. During the periods when the accounts were open, the appellant was a director of the company (albeit not the sole director) to which the accounts related. The appellant did dispute that she had signed a form resigning her directorship, saying that Mr Borkhot had her signature, as well as disputing her knowledge of her claimed investment into the company of which she was director. She had no idea of whether the company employed anyone, or the fact of its losses, despite signing the company's profit and loss accounts, as director. Everything, the appellant asserted, was the responsibility of Mr Borkhot, and she disclaimed any responsibility for, or knowledge of, the activities of the company of which she was a director.

12. The core issue was the appellant's knowledge of the above activities, which have been established as having taken place. If we were to conclude that the appellant did have knowledge of these activities, Mr Dhanji accepted, in our view realistically, that the only conclusion would be that the appellant was dishonest.

### **Dishonesty**

13. We return first to the question of whether the appellant was dishonest. It is for the respondent to prove, on the balance of probabilities. The allegations are serious, and we are conscious of not making such findings likely. Before us, in oral evidence, the appellant repeated her denials of any knowledge of the deception. She accepted that in applying for the Tier 1 visa, she had signed an application form, which referred to an investment of £53,000 already having been made into the business (box G11 at page [28] of the respondent's bundle) via shares in Channel S Global Limited, (page [30]). The form detailed her law degree, from Thames Valley University, following her studies from 2007 to 2010 (page [46]). At page [51], she signed the form, stating:

"I understand that you will check whether the information and supporting documentation that I have supplied to the UK Border Agency (UKBA) from a bank...is correct. 'Correct' means that documents are unaltered originals issued by the bank...and that the information on them is correct and applies to me or the person named as a customer on the document.... I understand that providing information or documentation that is not correct will normally result in my application being refused and may lead to my prosecution for a criminal offence."

14. On the appellant's own case, the bank documents were not correct, as the information on them contained the money loops. She signed a second 'applicant declaration', at page [53], which included the following:

**"It is mandatory to complete Section V. If it is not complete the application will be invalid and will be returned to the applicant.**

**The applicant must sign below to show that he/she has read and understood the following declaration. It must be authorised by the applicant and not by a representative or other person acting on his/her behalf...."** [bold in original form]

The information I have given in this application is complete and is true to the best of my knowledge... If there is a material change in my circumstances or any new information relevant to my application becomes available before it is decided, I will inform the UK Border Agency....

I understand that if I knowingly submit any document or documents which are forged) fraudulent or not genuine, and the Secretary of State has sought to verify the documents using processes specified by him, and has been unable to verify conclusively that they are genuine, the application will be refused....

I am aware that it is an offence under the Immigration Act 1971, as amended by the Immigration and Asylum Act 1999 and the Nationality, Immigration and Asylum Act 2002, to make, to a person acting in execution of any of these Acts, a statement or representation which I know to be false or do not believe to be true, or to obtain or seek to obtain leave to remain in the United Kingdom by means which include deception."

15. The appellant said that she trusted Mr Borkhot. His firm's offices, were large, at a premier location, Butlers Wharf. Also, he was respected in the Bangladeshi diaspora community in the UK, as what she referred to as a 'mufti.' She was aware of the length of the form, but Mr Borkhot said that there was not enough time for her to read it, and she must just sign the final two pages. She added her oral evidence that she had never opened any mail addressed to her at her home address, (which she shared with her husband) and that she had forwarded all mail to Mr Borkhot. She claimed that it was only after around eight months later, when she had heard nothing further, that rumours began circulating in the Bangladeshi community, that she tried to contact Mr Borkhot's offices, and later, the police.
16. She was asked why she had relied on Mr Borkhot, when she had previously applied, successfully, for visas. She said she was busy with her studies. When it was suggested to her that her studies had concluded in a ten month period from 2011 to 2012, when she undertook the 2011/12 Bar Training Course, the transcript for which was at page [267] of the appellant's bundle, she referred to having to take a number of resits, which lasted until 2014. When asked why her husband had not assisted her with the business, even opening mail, as he had been identified as a co-worker, she said that he had no involvement in the business. When she was asked why her husband had provided no witness statement, she did



not answer the question, instead, reiterating Mr Borkhot's standing within the local community.

17. We had no hesitation in concluding that the respondent has shown, on the balance of probabilities, that the appellant was dishonest. Mr Dhanji accepted that it might stretch plausibility to assert complete ignorance, but that this was answered by the appellant's trust in Mr Borkhot. In reaching our conclusion, we bear in mind that the appellant was, and is, highly educated. She is a former member of the Dhaka Bar Association, as an advocate, as her identity card at page [276] of her bundle confirms. On her own case, she also had practical business experience in Bangladesh, running a business importing dates from Saudi Arabia. While running a business in Bangladesh is unlikely to be the same as in the UK, which might explain engaging a UK lawyer to make an entrepreneur application, the appellant will have developed business and financial acumen. She also has a law degree in English, awarded in September 2010, and from 2011, her Bar Professional Training Course included modules such as advocacy, drafting, professional ethics and company law. She is therefore someone who will be aware of the importance of documentation, the accuracy of declarations, and the consequences for false declarations. All make it highly implausible that the appellant would have been willing to sign a form, which she knew to be lengthy, but the contents of which she had not read and still signed as accurate, because of perceived time pressure.
18. We also reject as wholly implausible (even Mr Dhanji accepted that it was unusual) the claim that the appellant would have forwarded all of her post received at her home address, regardless of its sender, unopened, to Mr Borkhot. She was unable to explain how she knew who the letters were from or what they concerned as she did not open any mail that was delivered to her address. Her claimed trust in him fails to explain why she would have done so, for post which was unconnected with the business, but related to her personal home affairs. It is also implausible in the context of the appellant as a professional lawyer, with a background in business. The falsehood of this proposition has to be maintained, because if the appellant admitted opening any of the bank statements, she would be fixed with knowledge of those transactions. We find that she did open the correspondence, and was aware of the transactions. We find that she has concocted a wholly implausible story as to her lack of knowledge. In reaching this conclusion, we bore in mind the absence of any witness statement from the appellant's husband, which might obviously bear on the couple's arrangement for opening the family post. We also bore in mind that even on the appellant's case, she had applied to remain in the UK as an entrepreneur in a business and it would be natural for the appellant to open post, sent from her own bank, in relation to her own bank account, addressed to her, in relation to a business of which she was an entrepreneur. However high Mr Borkhot's standing in the community, we do not regard that explanation as plausible. We have little doubt that opening the correspondence addressed to her, relating to the company, would have informed the appellant as to what was going on, if she did not

know already. The appellant's assertion that she was entirely unaware and is a victim, is just that, a bare assertion, with implausible explanations.

### **Undesirability**

19. We turn to the question of the undesirability of the appellant's presence in the UK. We bear in mind, as Mr Dhanji invited us to, the period of time since the appellant has been in the UK, namely since 2005 and the period of time when not only had she studied but also she has worked, for example, in a care home and has paid relevant taxes in doing so. In other words, her immigration history is not one where she has provided no contribution to UK society. We bear in mind the time that has elapsed since her application, based on the deception (2012). Moreover, we also bear in mind that she sought to vary her application based on long residence in the UK in 2015 and her period of leave on the basis of Section 3C of the 1971 Act, extended until 16<sup>th</sup> November 2020. Mr Dhanji sought to distinguish the appellant's case, for example, from other cases where all of the various periods of leave or further applications are based on the initial period of leave. We note her ties to her British citizen adult son and her youngest daughter, and that she is a home owner, with economic ties in the UK. However, and notwithstanding that the appellant has worked, for example, in a care home and provided some contribution to UK society, with economic and family ties to the UK, we also accept Ms Cunha's submission that since her original application in 2012, the remaining further periods of leave have all followed on from her acquiescence in a complex, large-scale fraud (albeit not as a ringleader) to undermine immigration control. The fact that she was willing to be part of such a fraud, in circumstances where she has not admitted to any involvement at all, and even on her own case, her claimed willingness to sign, as accurate, documents which she has not even read, which she knew the importance of, renders the appellant's presence in the UK undesirable.

### **Section 117B(6) and Article 8 Considerations**

20. We turn to consider the first question of whether it would not be reasonable to expect the appellant's daughter to leave the UK, taking into account her best interests. We remind ourselves that in answering this question, the appellant's dishonesty should not be a factor in answering that question. We have been provided with limited evidence about the appellant's daughter. She is a British citizen, born on 27<sup>th</sup> February 2017, so is only 5 years old. In leaving the UK, she would lose the benefit of education and society within the UK. She has recently started school and the appellant describes her as happy at that school. No health or other educational developmental needs have been identified but it is also worth adding that the appellant enjoys a close relationship, it is said, with her older sibling brother, aged 29, who still lives in the family home (he has provided a witness statement). The family live in a property owned by the appellant and her husband, albeit with finance provided by one of the appellant's siblings who lives in the US and who has sponsored her previous US visa application. We are also conscious that it is no answer to

the question of the child's best interests to say that these are to remain with her parents as part of a family unit in Bangladesh. We also note the appellant's case that she has no family in Bangladesh, which we take at its highest.

21. However, we also reflect on the regular visits to the UK by the appellant's siblings from the US and also their significant financial support for her, over many years. We find that this is likely to continue in the event that she is returned to Bangladesh. We further bear in mind the appellant's professional qualifications, including as a member of the Dhaka Bar, albeit accepting Mr Dhanji's point that she is not at the beginning of her career, now being aged [56]. We do not accept that even at the late stage of her career, the appellant would be unable to find professional or business work in Bangladesh, given her education and entrepreneurial background.
22. We conclude that it would be reasonable to expect the appellant's youngest child to leave the UK with her parents. In a 'real world' analysis we accept that this would most likely be without her 29 year old sibling who would remain in the UK, but with her father, who has ILR, but about whom there is very little other evidence to which we have been directed. The youngest child has no specific educational or medical needs and would be returning as a part of close, loving family unit, with Bangladeshi national, professional parents, with likely significant financial support from the wider family. The daughter will, no doubt, miss her older sibling and never having been to Bangladesh herself, it would require a period of adjustment, but with her natural focus, given her age, on her parents.
23. We consider finally the wider article 8 analysis, and the other elements of section 117B of the 2002 Act. The appellant speaks English and there is no suggestion that she is a drain on the public purse, both factors of which are neutral. We bear in mind the appellant's period of time spent in the UK for a lengthy period, but we have also borne in mind, as we have set out in the earlier analysis on undesirability that a key point in that history, the application in 2012, was on the basis of deception, so that the period of her lawful residence must consequently attract more limited weight.
24. In terms of a balance sheet analysis, by reference to proportionality, we bear in mind on the one hand, the private and family life developed over many years since 2005 and the separation of a family from the older sibling, age 29, who has lived with his parents, it would appear, the whole of his life. There is no substantive evidence that he would be unable to cope without his parents. We recognise the appellant's previous work in the UK, in her care home role. We also recognise her attempts to better herself through her studies to become a member of the English Bar although, given our findings on her dishonesty, her suitability to do so would have to be in question. We also bear in mind that in returning with her, her husband has recently obtained ILR, the benefits of which he would cease to enjoy (although there is limited other evidence about him, to which we have been directed). We note again (as Mr Dhanji invited us to) the factors relevant to 'undesirability'. We consider the obstacles, if any, to the appellant's integration into Bangladesh and the consequences on

return there. We do not accept that the appellant would return without the ability to integrate as an insider. She is clearly somebody who has close connections with the Bangladeshi diaspora community and even on her own case, had relied upon Mr Borkhot as a prominent member of that very community. We have no doubt that she would swiftly be able to integrate as a member of the community in Bangladesh, with her husband and young daughter. In the circumstances, and given her dishonest complicity in the fraud by which she sought leave to remain, we conclude that the interest in immigration control is overwhelming and renders the refusal of leave to remain proportionate and in accordance with Article 8 ECHR. As a consequence, the appellant's appeal fails and is dismissed.

**Decision**

**The appellant's appeal on human rights grounds is dismissed.**

**No anonymity direction is made.**

Signed: J Keith

**Upper Tribunal Judge Keith**

Dated: **9<sup>th</sup> January 2023**

## ANNEX: ERROR OF LAW DECISION



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

Appeal Number: UI-2022-001176

### THE IMMIGRATION ACTS

**Heard at Field House  
On 2<sup>nd</sup> September 2022**

**Decision & Reasons Promulgated  
On**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**RUKSANA BEGUM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

#### **Representation:**

For the appellant: *Mr J Dhanji*, instructed directly.

For the respondent: Mr D Clarke, Senior Home Office Presenting Officer

### **DECISION AND REASONS**

#### **Introduction**

1. These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 2<sup>nd</sup> September 2022.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Cowx (the 'FtT'), promulgated on 23<sup>rd</sup> December 2021, by which he dismissed her appeal against the respondent's refusal on 16<sup>th</sup> November 2020 of her application for indefinite leave from the remain based on long

residence and right to respect for her family and private life under article 8 ECHR.

### **The respondent's decision**

3. In essence, the appellant's application was considered in the context of convictions (not of the appellant) arising as a result of 'Operation Meeker'. That was an criminal investigation into, and prosecution of, those involved in what was described as organised criminal fraud on an 'industrial scale' to obtain Tier 1 visas. It related to individuals connected with the appellant's former immigration representatives, Immigration4U (see the criminal case of Uddin & Ors v Regina [2021] EWCA Crim 14). I emphasise that there may have been many entirely innocent clients of that firm. As a result of the convictions, the respondent adopted a "minded to refuse" process under which it wrote to individual applicants about whom it had concerns that they may have been implicated in the fraud. The appellant was one such person where the respondent had concerns. In response to the "minded to refuse" correspondence, the appellant sought to distance herself from the application submitted on her behalf and which she had signed. The respondent did not accept the appellant's claimed lack of knowledge, as an educated person with prior business experience, of the details of the forms she had signed. The respondent did not accept the appellant's account of her reasons for going into business with her claimed business partner, because of the lack of detail in the appellant's reasons. The respondent also referred to "money loops" that had taken place, to make it appear that genuine businesses were operating when they were not. The appellant was provided with a schedule of various payments in relation to her bank account and she was asked to explain the transactions, which she was unable to do. She was also unable to explain why her bank account then rapidly became dormant after April 2013. The respondent raised a number of other issues which, for the sake of brevity, I do not repeat, including her reason for resigning as a director, of which she claimed to be unaware. The respondent was satisfied that false representations were made when the appellant applied in 2012 for leave to remain as a Tier 1 general migrant. The respondent refused her application for indefinite leave to remain by reference to paragraph 322(1A) in relation to previous false representations; and paragraph 322(5) of the Immigration Rules, based on her character and conduct not being deemed desirable. As a consequence, her application was also refused under paragraph 276D.
4. Whilst the appellant was married with two children, aged 27 and three, the respondent considered that neither her husband nor three-year-old child were British or settled in the UK. The youngest child was not a 'qualifying child', due to her age, for the purposes of Appendix FM of the Immigration Rules.
5. The respondent considered the appellant's application outside the Immigration Rules. She had lived in her country of origin, Bangladesh, for approximately 41 years, including her formative years and there would be no language or cultural barriers to integration into that society.

Notwithstanding the best interests of her minor child, (see: section 55 of the Borders, Citizenship and Immigration Act 2009), that child could return as part of a family, with the appellant and her husband.

6. The respondent considered the appellant's medical conditions relating to carpal tunnel syndrome, haemorrhoids and lumbar disc degeneration, meaning that the appellant could not sit for long periods. Nevertheless, the respondent did not accept that those medical conditions met the requirements of articles 3 or 8 ECHR.

### **The FtT's decision**

7. The FtT considered the burden and standard of proof, at §10 of his decision. The burden of proof was said to rest with the appellant. The FtT noted that the appeal was by reference to human rights but nevertheless it is permissible to consider whether the appellant met the substance of the Immigration Rules. At §17, the FtT referred to reasons why it would be undesirable for the appellant to be given indefinite leave to remain, based on her character and conduct. Moreover, her character and conduct were deemed not desirable and therefore her application also failed under paragraphs 322(1A) and 322(5).
8. The FtT discussed Operation Meeker at §20 onwards and the appellant's particular circumstances, including her education to degree level, with a law degree and her ambition to become a barrister. She was conversant in English and had previous business experience. The FtT did not regard as applicable paragraph 322(1A), as while a false representation had been made, it related to the previous Tier 1 application. However, at §31, the FtT concluded that paragraphs 276B(ii)(c) and 322(5) applied. The respondent determined that the appellant's conduct was undesirable through her association with Immigration4U, when she knew or suspected that she was participating in a dishonest enterprise. At §32, the FtT concluded that it was reasonable for the respondent conclude that it would be undesirable and contrary to the public interest to allow the appellant to remain in the UK. The fact that she was not prosecuted did not give her credit, given the sheer numbers of people implicated in the fraud.
9. In relation to article 8, the FtT noted the appellant's residence in the UK for 16 years, with a young child born in the UK and currently at primary school. However, she spoke Bengali as a first language, was an educated woman with a middle-class family and there were no obstacles to her family continuing their life in Bangladesh. The older child was an adult, with indefinite leave to remain in the UK in his own right. The younger child did not have any independent attachment to the UK beyond her parents and it would be in her best interests to integrate with her parents in Bangladesh. At §41, the FtT concluded that refusal of leave to remain was proportionate.

### **The grounds of appeal and grant of permission**

10. The appellant lodged grounds of appeal which are as follows:

- 10.1 Ground (1) - the FtT misdirected himself as to the burden of proof. AA (Nigeria) v SSHD [2010] EWCA Civ 773 and Sadovska v SSHD [2017] UKSC 54, were both authorities for the proposition that the burden of proof rested with the respondent.
- 10.2 Ground (2) - the FtT misdirected himself when deciding whether it would be undesirable to grant the appellant indefinite leave to remain. The FtT had considered the respondent's decision on public law principles under judicial review proceedings rather than as a statutory appeal, as per the FtT's reasoning in §31 and 32. Ashfaq (Balajigari: appeals) [2020] UKUT 00226 (IAC) was authority for the proposition that a Tribunal should examine the evidence and decide whether the refusal should be upheld, by deciding the facts, not on judicial review principles.
- 10.3 Ground (3) - the FtT had erred in his assessment of the proportionality of the respondent's decision. At §38, the FtT had referred to the appellant and her family overstaying after 12<sup>th</sup> October 2012, when in fact the appellant and her family had had leave until 16<sup>th</sup> November 2020, by virtue of section 3C of the Immigration Act 1971.
11. Upper Tribunal Judge Grubb granted permission on 30<sup>th</sup> May 2022. The grant of permission was not limited in its scope.

### **The hearing before me**

#### **The appellant's submissions**

12. Mr Dhanji reiterated the FtT's error in relation to the burden of proof at §10. The FtT had not explained that the burden of proof in relation to dishonesty was on the respondent, and the way in which it applied in practice. That was an error, not only in the misdirection but also the absence of proper application in the findings at §§20 to 32, in particular at §27. This Tribunal could not be satisfied that the FtT had appropriately applied, even if not cited, the relevant burden of proof.
13. In relation to the second ground that the FtT had impermissibly applied a judicial review standard, this was illustrated at §32. The appellant accepted that the FtT had correctly cited the law, but Mr Dhanji argued that the FtT had not applied it.
14. In relation to ground (3), this error was material because at §38, the FtT had referred to applying little weight to the appellant's period of residence in the UK, on the basis that she had been disingenuous about her period of lawful residence and to apply greater weight would offend against the public interest. In particular, here, Mr Dhanji argued, section 117B(4) of the Nationality, Immigration and Asylum Act 2002 did not apply because the appellant's husband had an extant application for leave, and there was therefore no basis to apply only little weight to the appellant's period of residence in the UK.

#### **The respondent's submissions**



15. Mr Clarke submitted that the FtT's reference at §10 was correct, when read as meaning that the overall burden in any human rights appeal was on an appellant. He accepted that the burden on a specific legal issue could be on the respondent but reiterated that experienced judges could be expected to be aware of relevant authorities and to apply them. The lack of reference to the burden being on the respondent in relation to deception was not an error of law.
16. As DK & RK (ETS: SSHD evidence; proof) India [2022] UKUT 00112 (IAC) had made clear, the burden was the same in every case. In particular, here, the respondent had established her *prima facie* case. It was accepted, for example at §29, that the business with which the appellant had been involved was a sham. Rather, the focus here was on the appellant's explanation. In that context, Mr Clarke referred in detail to the FtT's examination of the appellant's circumstances: that she was well-educated; that she had been a managing director of an import/export business previously, with familiarity in navigating foreign rules and procedures; that she had been involved with Mr Borkhot, one of those convicted; that she had allegedly invested substantial sums of money, £26,500, with someone she now claimed was a virtual stranger, which the FtT had rejected as not credible; that she had no experience as a public relations manager, her claimed role; that she knew nothing about the day-to-day business in which she purported to be an entrepreneur and the FtT rejected her claimed naivety. She had previous experience of UK immigration law, having previously made five applications. Applying the well-known authority of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67, at §29, no objective analysis would conclude that the appellant had been an unwitting participant in the deception. This was, in essence, an appeal of substance over form.
17. In relation to the second ground that the FtT had imported public law considerations of reasonableness at §32, that ignored the reference, in particular at §31, to the relevant provisions of the Immigration Rules and at §32, the FtT's statement, "I do not find that the appellant meets the substance of the Immigration Rules because, on the balance of probability, I find it was reasonable for the respondent to conclude that it would be undesirable...". All the FtT was doing was reflecting the test set out in the Immigration Rules. The FtT had made clear in its use of the word "or" in §31 that the FtT was considering whether the appellant knew or suspected that she was participating in a dishonest exercise.
18. In relation to ground (3), concerning family and private life in the context of section 3C leave, Mr Clarke accepted that the FtT had erroneously concluded that section 3C leave ended in 2012, when instead it continued until 2020. However, the point in relation to this was the wording in §38, which had considered the affront to the public interest because of the period of lawful leave was while the parties were awaiting the outcome of the Operation Meeker prosecutions. Section 3C leave was only one aspect of the FtT's analysis. The FtT had gone on at §§36 and 37 to make other significant findings about family and private life, including, for example, the appellant's adult son, the appellant's financial means, her

language and cultural familiarity and ability to integrate in her country of origin. Mr Clarke asked the rhetorical question, what were the compelling circumstances, even if it was said that any assessment was a nuanced one by reference to proportionality and the FtT had erred when considering the length of lawful residence?

### **Discussion and conclusions**

19. Notwithstanding Mr Clarke's detailed and pertinent submissions, I conclude that he FtT erred in law, for the following reasons.

#### **Ground (1)**

20. I accept Mr Clarke's submission that an experienced judge can be taken to have considered and applied the relevant law and need not set out every aspect of the law generally. However, the crucial point here is that one of the two central focusses of the appeal was the appellant's alleged involvement in fraud as described in Operation Meeker. The FtT's first error was the statement in §10:

"10. The burden of proof lies with the Appellant. The Appellant can succeed in her appeal relative to her application if she satisfies the Tribunal that, on balance of probabilities relating to issues of fact, the statutory ground of appeal is made out and the relevant date for testing the position is as at the date of hearing."

21. The question is what the FtT considered to be the issues of fact before it. It was clear from the FtT's findings that the central (but not sole) issue was the appellant's involvement or otherwise knowingly in the Operation Meeker fraud. Whilst I accept that the FtT made detailed, cogent and structured findings, I accept the force of Mr Dhanji's challenge, that whilst he cannot point to any particular part of the findings between §§20 to 32, where the FtT has specifically referred to the burden of proof again, it is far from clear from anywhere in those findings that the FtT had been mindful of, and had applied the burden of proof as lying on the respondent with respect to the allegations of deception.

22. Mr Clarke posed the question of whether this made no material difference because of the FtT's detailed analysis of the evidence and findings. However, those findings are necessarily informed by where the FtT viewed the burden as lying. Notwithstanding the detail of the analysis, I accept that it was based on a material misdirection on the law in relation to the allegation of deception.

#### **Ground (2)**

23. I turn to the second ground and in particular, the FtT's reference at §32 to it being "reasonable" for the respondent to reach certain conclusions. I am conscious of not taking isolated phrases out of context, particularly where a judge can be considered to have considered all the evidence, which I have not had the opportunity to do so.

24. I am also conscious, as Mr Clarke points out, that there is a reference at the beginning of §32 to the appellant not meeting the substance of the Immigration Rules on the balance of probability. However, I also accept Mr Dhanji's point that the FtT's subsequent reference, immediately following, "it was reasonable for the respondent to conclude that it would be undesirable and contrary to the public interest" confuses that analysis.
25. I also accept that the FtT's reasoning at the end of §32 that, "*if such a decision [to allow the appellant to remain in the UK] had been taken by the Respondent, it would have been an affront to the British public who expect the proper enforcement of immigration controls*" does support the challenge that the FtT was applying a public law review test.
26. I am also satisfied that ground (2) is made out.

### **Ground (3)**

27. In relation to ground (3), I considered Mr Clarke's submission that while the FtT had erred in considering the length of the appellant's lawful residence, it was not material because there were not very compelling or exceptional circumstances in this case.
28. However, the reason that the error is material is that the FtT's analysis was directly linked, at §38, to the issue of deception and the FtT's error on ground (1): "*After that date [2012] she and her family lived in the UK without leave and it appears her length of residence in the UK was prolonged largely as a result of a lengthy criminal investigation to which she was inextricably linked.*" As a consequence, the FtT gave little weight to the argument that she should be given credit for the period of her residence. Moreover, the mistake over the period of lawful residence was not for a small period – the FtT mistook lawful residence to be between 2005 and 2012, rather than 2005 and 2020. Where proportionality is always a nuanced assessment, as part of a balancing exercise, I cannot be satisfied that the error made no difference to the FtT's analysis. The appeal on ground (3) also succeeds.

### **Decision on error of law**

29. In summary, whilst in many respects the FtT's judgment was structured, clear and detailed, I am satisfied that the FtT erred in law, such that his decision is not safe and cannot stand. I set it aside without any preserved findings, bearing in mind that those findings were based on an erroneous application of the burden of proof. However, where the appellant's evidence was recorded in unambiguous terms by the FtT, the respondent is not prevented from referring to the appellant's evidence given to the FtT (as distinct from the FtT's findings) in any remaking. To the extent that there is any dispute as to the recorded evidence, there may need to be consideration of the record of proceedings, or a transcript, if available.

### **Disposal**

30. With reference to paragraph 7.2 of the Senior President's Practice Statement, while on the one hand, I have not preserved any findings, on

the other, the issues are narrow and the respondent has set out, in extensive detail, as part of her “minded to refuse” process, the respondent’s case. I therefore regard it as appropriate to retain remaking in the Upper Tribunal.

Directions

31. The following directions shall apply to the future conduct of this appeal:

31.1 The Resumed Hearing will be listed at Field House on the first open date, time **estimate 3 hours**, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal. There is no need for an interpreter.

31.2 The appellant shall no later than **4 PM, 21 days** before the Resumed Hearing, file with the Upper Tribunal and serve upon the respondent’s representative any updated evidence as to the current circumstances of the appellant and her family members.

31.3 The respondent shall no later than **4 PM, 14 days** before the Resumed Hearing, confirm to the appellant and this Tribunal whether she regards any updated evidence as constituting a “new matter”; and if she does, whether she consents to this Tribunal considering any new matter.

31.4 The appellant shall no later than **4 PM, 7 days** before the Resumed Hearing, file with the Upper Tribunal a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which she intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

31.5 The parties shall also file and serve skeleton arguments not later than **4pm, 7 days** before the Resumed Hearing.

**Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside, without preserved findings.**

**No anonymity direction is made.**

Signed J. Keith

Date: 16<sup>th</sup> September 2022

Upper Tribunal Judge Keith