



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

Appeal Number: HU/10327/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 29 May 2019**

**Decision & Reasons Promulgated
On 2 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MR ADIL [R]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Daykin, Counsel, instructed by Makka Solicitors Ltd
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan born on 16 August 1988, is appealing with permission against the decision of the First-tier Tribunal promulgated on 31 December 2018 to dismiss his appeal against the decision of the Secretary of State to refuse his application for leave to remain in the UK on the basis of his family life with his wife.
2. The Secretary of State refused the appellant's application for a number of reasons.

3. Firstly, the appellant's application was refused on grounds of suitability under paragraph S-LTR 1.6 of Appendix FM (presence in the UK not conducive to the public good) of the Immigration Rules on the basis that in an application dated 12 December 2012 he submitted a TOEIC certificate from Educational Testing Service (ETS) that was fraudulently obtained.
4. Secondly, it was not accepted that there would be insurmountable obstacles to his relationship with his wife (Ms [K]) continuing outside the UK within the meaning of paragraph EX.1 of Appendix FM.
5. Thirdly, it was not accepted that there would be very significant obstacles to the appellant's integration into Pakistan such that paragraph 276ADE(1)(vi) would apply.
6. Fourthly, it was not accepted that there were exceptional circumstances that would warrant allowing the appeal outside the Immigration Rules.

Decision of the First-tier Tribunal

7. The appellant's appeal was heard by Judge of the First-tier Tribunal Bulpitt. In a decision promulgated on 31 December 2018 Judge Bulpitt dismissed the appeal.
8. The judge found, firstly, that the appellant obtained a TOEIC certificate by deception as alleged by the Secretary of State.
9. The judge also found that the appellant's relationship with Ms [K] began in 2013 at a time when his immigration status was precarious.
10. Ms [K]'s evidence was that her family are subject to serious threats in Pakistan. The judge rejected her evidence on this, finding at paragraph 30 that the suggestion of a serious threat to her life was not consistent with her trip to Pakistan in 2014. The judge stated at paragraph 30 that the assertion of a threat to Ms [K]'s life in Pakistan was not credible and had been invented for the purpose of supporting the application.
11. The judge also considered the evidence of the appellant, Ms [K] and others about the role played by the appellant and Ms [K] in the life of Ms [K]'s younger brother ([K]), aged 13 at the time of the hearing. At paragraph 31 the judge referred to letters from [K]'s school and other evidence which was said to support the view that the appellant and Ms [K] have assumed a parental role in [K]'s life. At paragraph 32 the judge stated:

"Taking this evidence in the round I find that the appellant does have a significant relationship with his 13-year-old brother-in-law [K] and that the appellant and Ms [K] play a major part in raising [K]. Additionally I find that there are other siblings of [K] who live close to him and he would be able to perform a similar role."
12. The judge also considered evidence concerning the health of the appellant's mother-in-law who suffers, amongst other things, from frozen shoulder, type 2 diabetes, back pain and anxiety with depression. The evidence of the appellant's mother-in-law was that Ms [K] and the appellant are her carers and she would not have anyone to support her if they moved to Pakistan as her other children have other commitments. At

paragraph 34 the judge found that the appellant's mother-in-law suffers from a number of ailments which cause her pain but that this has not prevented her from living independently. The judge also found that although Ms [K] and the appellant provide physical and emotional support to the appellant's mother-in-law her other children are well-placed and well-equipped to provide similar care and already do so on occasions.

13. Evidence was placed before the judge concerning Ms [K]'s health and the judge found that she suffers from back pain, leg pain, anxiety and depression.
14. The judge did not accept the appellant's claim that he estranged from and would not have support of his parents in Pakistan. At paragraph 36 the judge stated:

"Given the appellant's lack of credibility particularly in light of my finding on the TOEIC issue, I do not find this unsupported assertion likely to be true."

15. The judge found that the appellant and Ms [K] would be able to continue their family life together in Pakistan and that there are not insurmountable obstacles to them doing this. In the article 8 ECHR proportionality assessment the judge attached considerable weight to his finding that the appellant had used deception in an English language test and that his relationship with Ms [K] was established when his immigration status was precarious.

Grounds of appeal and submissions

16. The grounds of appeal, as amended following my decision promulgated on 1 April 2019, argue that the judge's finding that deception was used to obtain a TOEIC certificate is undermined by there being a discrepancy between the date given by ETS for the test which was declared invalid (12 December 2012) and the date given in the Secretary of State's refusal letter (21 September 2012).
17. The rest of the grounds of appeal are concerned with the judge's approach to the appellant's brother-in-law, [K]. It is argued that the judge failed to consider [K]'s best interests and the impact on [K] of the appellant being removed from the UK, particularly if this meant that his sister Ms [K] would also leave the UK. The grounds state that the judge failed to identify the impact on [K] of losing his significant carers/parental figures at a crucial stage of teenage development. The grounds also argue that the judge failed to apply Section 117B(6) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") as the appellant has a parental relationship with [K]. The grounds rely on *R (RK) v SSHD (s.117B(6): 'parental relationship')* (IJR) [2016] UKUT 00031 (IAC) to support the contention that term "parental relationship" in section 117B(6) applies to the appellant's relationship with [K].
18. At the error of law hearing Ms Daykin did not pursue the argument that a discrepancy in dates undermined the decision regarding the TOEIC certificate. This was because Ms Isherwood, who represented the

Secretary of State at the hearing before me on 18 March 2019, submitted a letter dated 21 May 2019 which explained that the appellant's listening and reading TOEIC was dated 21 September 2012 but the speaking and writing TOEIC was dated 12 December 2012, which corresponds to the ETS documentation concerning the speaking and writing test on 12 December 2012 which was declared invalid.

19. The focus of Ms Daykin's argument was on the relationship between the appellant and [K]. She argued that the judge failed to address the issue of what is in [K]'s best interest and the impact on him of his two parental figures leaving him at a key stage of his development. She referred to evidence that [K] has undergone counselling, which she maintains the judge had not engaged with.
20. She also argued that the judge's conclusion that the [K]'s other siblings, and in particular his elder brother, would take over the appellant's role is not consistent with the evidence. She referred to the evidence of [K]'s brother where he said he would not be in a position to assist [K]. She also drew attention to a letter written by [K] in which he describes the appellant as having the role of a father in his life.
21. Ms Daykin also advanced the argument that there had been a failure to apply Section 117B(6) of the 2002 Act. She argued that the evidence from [K]'s school shows that the appellant and his wife are [K]'s primary carers.
22. Mr Walker's accepted that the judge failed to consider Section 117B(6) but argued that this was not material given that [K] lives with his mother. He argued that even though there is a significant relationship between the appellant and [K] that does not mean that there is a parental relationship for the purposes of Section 117B(6).

Analysis

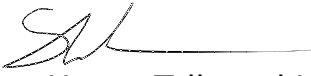
23. As acknowledged by Ms Daykin, the appellant's ground of appeal concerning the TOEIC certificate does not withstand scrutiny. The ground argues that the ETS test centre look up to tool print out, which was relied on by the Secretary of State to show that the appellant's speaking and writing test had been declared invalid, referred to a test taken on 12 December 2012 when the test was actually taken on 21 September 2012, which is the date given in the Secretary of State's refusal letter. It is contended that this is a clear discrepancy which goes to the heart of the allegation of fraud. The problem with this argument is that it is clear from the evidence, including the appellant's witness statement of 7 November 2018, that the appellant took two tests: a listening and reading test on 21 September 2012; and a speaking and writing test on 12 December 2012. It is the speaking and writing test, taking on 12 December 2012, that is referred to in the ETS look up tool. Although the refusal letter gave the wrong date, this is no more than a typographical error: the evidence is clear that the appellant's speaking and writing test was on 12 December 2012. There is therefore not a discrepancy that undermines the decision of the First-tier Tribunal.

24. I now turn to consider the appellant's argument that he has a "genuine and subsisting parental relationship" with [K] for the purposes of section 117B(6) of the 2002 Act. The extent to which there can be a parental relationship between a child and a person who is not his biological or legal parent was considered in *RK*. It is clear from this Upper Tribunal decision that whether there is a parental relationship depends on the individual circumstances - the key question being whether the appellant has effectively "stepped into the shoes" of a parent. The fact that the appellant is [K]'s brother in law - and not his father - does not mean that the appellant cannot be said in any circumstances to have a parental relationship with him under section 117B(6) and if that was the position adopted by the First-tier Tribunal it was an error of law. However, the evidence before the First tier Tribunal fell a long way short of showing that the appellant has "stepped into the shoes" of a parent. [K] lives with his mother, as well as the appellant and Ms [K]. The appellant is supportive of, close to, and a role model for, his brother in law. However, that does not mean that he is taking on the role of being a parent. [K] lives with his mother and it is his mother who has a parental relationship with him. The evidence before the First-tier Tribunal indicates that the relationship between [K] and the appellant is that of siblings where there is a significant age difference and the older sibling helps with the care of, and is looked up to by, his younger sibling. Accordingly, even if it was an error to not consider section 117B(6), the error was not material as it was clearly open to the judge, based on the evidence that was before the Tribunal, to conclude that there was not a parental relationship for the purposes of section 117B(6).
25. Ms Daykin is correct that the judge has not made an explicit or clear finding about the best interests of [K]. However, reading the decision as a whole, I am satisfied that the judge has had adequate regard to, and has taken proper account of, [K]'s best interests; and has treated this as a primary consideration in the proportionality assessment, as she was required to do. At paragraph 32 the judge found that the appellant plays an important role in [K]'s life and at paragraph 40(e) she found that a factor weighing in the appellant's favour in the article 8 proportionality assessment was that he would not be able to support [K] if removed. This shows that the judge considered the impact of the appellant's removal on [K] and recognised that it would not be in his best interest for the appellant to be removed.
26. In any event, given the judge's findings (which have not been successfully challenged) that the appellant used deception in an ETS test and that his private and family life in the UK was established when his immigration status was precarious, it was clearly open to the judge to find that that the appellant's removal would not be disproportionate. I am satisfied that a more thorough (and explicit) consideration of [K]'s best interests would not have changed the outcome.

Notice of Decision

The appeal is dismissed and the decision of the First-tier Tribunal stands.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 1 July 2019