

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: HU/08847/2016**

**THE IMMIGRATION ACTS**

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| **Heard at Bradford** | **Decision & Reasons Promulgated** |
| **On 5th June 2018** | **On 12th June 2018** |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**baber khalid**

(ANONYMITY DIRECTION not made)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss A Chaudhry of Counsel instructed by Sky Solicitors Ltd

For the Respondent: Mr D Mills, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant’s appeal against the decision of Judge Heatherington made following a hearing at Bradford on 1st June 2017.

**Background**

1. The appellant is a citizen of Pakistan born on 8th November 1986. He arrived in the UK on 20th February 2010 with entry clearance as a student. He subsequently made a number of different applications including one for further leave to remain which was refused on 17th February 2016 and it was this decision which was the subject of the appeal before the Immigration Judge.
2. The respondent had refused the application for leave, inter alia, on the grounds that he believed that the appellant had employed deception by submitting a TOEIC certificate in an application dated 23 April 2012 which had been fraudulently obtained.
3. The judge stated that he had assessed the evidence in the round and applied the relevant case law, namely SM and Qadir v Secretary of State for the Home Department (ETS – Evidence – Burden of Proof) [2016] UKUT 00229 (IAC).
4. He then wrote:-

“I am satisfied that the Secretary of State has discharged the legal burden of proving dishonesty on the appellant’s part.”

1. The judge considered the Article 8 claim. He recorded that the appellant had been cohabiting with his partner since September 2015 and that there was evidence that she might be in the very early stages of pregnancy. His partner had a 2 year old daughter, who was not the appellant’s child.
2. The judge said:-

“He has not established that he has stepped into the shoes of a parent. The appellant merely acts in the capacity of the child’s nanny and in return Ms A supports the appellant financially.”

1. He dismissed the appeal.
2. The appellant sought permission to appeal on the grounds that the judge’s conclusions in relation to the deception issue were unreasoned and he had materially erred in law in finding that the appellant was not in a parental relationship with a qualifying child.
3. On 12th December 2017 Judge Kimnell granted permission to appeal in relation to the ETS issue but said that the judge had explained why he was not satisfied about the appellant’s relationship with the child and there was no arguable error in that regard.
4. Mr Mills defended the decision and submitted that, whilst he accepted that the judge had not set out his reasoning, all concerned understood the issues.

**Consideration of whether there is a Material Error of Law**

1. I am satisfied that the judge erred. It was incumbent upon him to explain why he had concluded that the Secretary of State had discharged the burden of proving dishonesty and a mere assertion that he was so satisfied will not suffice. According to the grounds of appeal the appellant gave oral evidence in relation to his attendance at the ETS centre on that day which was not referred to in the decision.
2. I invited Miss Chaudhry to make submissions in relation to the judge’s assessment of the appellant’s relationship with his stepdaughter, but Mr Mills said that he had no objection to the issue of whether he has a genuine and subsisting parental relationship with his stepdaughter being looked at afresh at a remitted hearing.
3. Evidence was produced today that the appellant and his partner now have a daughter of their own who, like her mother and stepsister, is also a British citizen.
4. Mrs Chaudhry said that she wanted to produce up-to-date witness statements both from the appellant and his partner and from other relatives in the UK. Mr Mills said that the Secretary of States policy in relation to the question of whether it would be reasonable to expect British national children had recently changed, and submitted that the proper course in this case would be a remittal to the First tier Tribunal.

**Decision**

1. The original judge erred in law by failing to give adequate reasons for his decision. His decision is set aside in its entirety. The appeal is remitted to the First-tier Tribunal when all issues will be at large. The appeal will be heard in the First-tier at Bradford before a judge other than Judge Heatherington.
2. No anonymity direction is made.

Signed Date 11 June 2018

Deputy Upper Tribunal Judge Taylor