



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

Appeal Number: HU/16465/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 10 November 2020**

**Decision & Reasons Promulgated
On 12 November 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

JIBIN RAJAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Youssefian, instructed by Paul John & Co Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of India born on 21 April 1987, appeals, with permission, against the decision of the First-tier Tribunal dismissing his human rights appeal.
2. The appellant entered the UK on 11 May 2010 with entry clearance as a Tier 4 student valid until 26 February 2012 and was granted further periods of leave on the same basis until 30 November 2015. He was then granted a further period of leave as a Tier 2 Dependant Partner, valid until 23 November 2019, but that leave was curtailed to expire on 27 December 2015, due to his

wife's employer's licence being revoked, and a further application for leave on the same basis was refused. Following an unsuccessful administrative review and the subsequent issuing of judicial review proceedings, the respondent agreed to consider a human rights application from the appellant.

3. The appellant then made an application for leave to remain on human rights grounds, on the basis of his family life with his wife and child, on 19 August 2019. The application was refused on 26 September 2019 on suitability grounds, under paragraph S-LTR.1.6, on the basis of allegations of fraud in relation to an English language certificate obtained through the Educational Testing Service (ETS) and submitted with the appellant's application of 8 November 2012 for further Tier 4 leave. The respondent also considered that the appellant could not meet the eligibility requirements of the immigration rules under Appendix FM because his partner was not British and was not settled in the UK, that he could not demonstrate very significant obstacles to integration in India and that there were no very compelling circumstances justifying a grant of leave outside the immigration rules.

4. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Moffatt on 31 December 2019. The judge concluded that the appellant had failed to produce an innocent explanation in response to the allegation of fraud and that he could not, therefore, succeed under the immigration rules as a result of the suitability provisions. The judge considered Article 8 outside the rules but concluded that the respondent's decision was proportionate and was not in breach of the appellant's human rights.

5. The appellant sought permission to appeal Judge Moffatt's decision on various grounds, which included, in ground 3, an assertion that the judge had failed to consider the fact that his English language test result was cancelled on the basis of being "questionable" rather than "invalid" and had thus failed to adopt a holistic approach when considering the allegation of fraud. Permission was granted by the Upper Tribunal on that basis.

6. The matter then came before me. At the hearing, Mr Lindsay quite properly conceded that ground 3 was made out and that that was a material error which affected the outcome of the appeal. In light of his concession, I set aside Judge Moffatt's decision and agreed to remit the matter to the First-tier Tribunal, as both parties proposed.

DECISION

7. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Moffatt.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 10 November 2020