



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/21780/2016  
HU/21784/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 18<sup>th</sup> March 2019

Decision and Reasons Promulgated  
On 21<sup>st</sup> March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

HARJINDER KAUR  
DAVID KUMAR  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr J Gulshan (Legal Representative, Maalik & Co)  
For the Respondent: Ms A Everett (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The case turns on the position of the First Appellant as the Second Appellant is dependent on her. There is a complex procedural history in this matter which was considered by First-tier Tribunal Judge Keane and which appears to have been dealt with erroneously which did not undermine the findings made in the decision itself but affects the final outcome as discussed below.

2. The First Appellant had applied for leave to remain as a Tier 2 migrant. There had been an application made before the expiry of previous leave in February 2014 which was later varied to become the Tier 2 application. That was rejected by the Secretary of State on the basis that the First Appellant had not provided biometric information as had been required. judicial review proceedings followed in which it was conceded that the First Appellant had provided the required biometric information and accordingly the application made was valid.
3. Although the Judge decided that the application giving rise to the appeal had been made on the 1<sup>st</sup> of December 2015 it was common ground at the hearing before the me that the Judge was actually dealing with a continuation of the February 2014 application. It is not clear why the Judge took that issue as it appears to have been common ground between the parties following the Judicial Review proceedings and the concession made by the Secretary of State once the matter had been reconsidered. Had the Judge been considering only a December 2015 the Appellants would have had a right of administrative review and not a substantive appeal and the case could not have been listed as it was.
4. The practical effect of the appeal being based on an application made in February 2014 is that the previous version of section 84 of the 2002 Act applies in terms of the grounds of appeal available to an Appellant. By section 84(1)(a) of the 2002 Act it was a ground of appeal "that the decision is not in accordance with the Immigration Rules". That rule was abolished in October 2014 but transitional provisions apply to these proceedings and so that remains a ground of appeal available to the First Appellant.
5. The First Appellant's application had been refused for the reasons given in the Refusal Letter of the 5<sup>th</sup> of September 2016. In that letter the Appellant was awarded the required points for the Tier 2 application that she had made. However, the application was refused under paragraph 322(2) of the Immigration Rules on the basis that the First Appellant had used deception in a previous application.
6. It is not necessary to examine the nature of the allegation of deception made because Judge Keane rejected the Home Office's case on that issue and found that refusal under paragraph 322(2) was not justified on the evidence. That finding has not been challenged by the Secretary of State. The position now is that the Secretary of State as stated in the Refusal Letter accepts that the Appellant meets the requirements of the Immigration Rules and there is no basis for a discretionary refusal of the Appellant's case.
7. On the basis of paragraph 6 it is clear that the Refusal Letter stands to the extent that the First Appellant meets the requirements of the Immigration Rules. There being no justification for refusing the First Appellant's appeal and given the grounds of appeal open to the Appellant under the applicable provisions of section 84(1)(a) as it applies to these proceedings the First Appellant's appeal has to be allowed and the Second Appellant's appeal has to be allowed in line with that of his wife.

## CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal to the extent that it was found that the Appellants removal would be proportionate. I remake the decision and allow the Appellants' appeals on the basis that they meet the provisions of the Immigration Rules and that that was a ground of appeal available to them on the law that applied to these appeals.

### **Anonymity**

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.



Deputy Upper Tribunal Judge Parkes

18<sup>th</sup> March 2019

### **Fee Award**

In allowing this appeal I make a fee award in the sum of £280

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 18<sup>th</sup> March 2019