



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

Appeal Number: HU/19431/2018

**THE IMMIGRATION ACTS**

**Heard at Birmingham Civil Justice Centre  
On 5<sup>th</sup> November 2019**

**Decision & Reasons  
Promulgated  
On 21<sup>st</sup> November 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE KING TD**

**Between**

**RANBIR [G]**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Z Raza of Counsel, instructed by Charles Simmons  
Immigration Solicitors

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

**DECISION AND REASONS**

1. The appellant is a citizen India. The appellant came to the United Kingdom lawfully on 21<sup>st</sup> June 2010 but an application for leave to remain as a student was refused on 29<sup>th</sup> September 2011. He made no application to regularise his status until the Home Office attended his address in 2018.

2. On 6<sup>th</sup> September 2018 he made an application for leave to remain on the basis of family and private life, which was refused by the respondent in a decision of 6<sup>th</sup> September 2018.
3. The appellant failed to meet the Immigration Rules on the basis of suitability.
4. It was noted in particular that on 16<sup>th</sup> November 2011 the appellant had purported to take a TOEIC speaking test with Educational Testing Services. Evidence was presented that such was not taken by him and that therefore the certificate was fraudulently obtained. It was considered that the appellant's presence in the United Kingdom was not conducive to the public good. In any event, the appellant was a long-term overstayer.
5. It was not considered that there were any very significant or insurmountable obstacles to his integration into India. It was noted that the appellant's partner also had no status in the United Kingdom and had overstayed her leave to remain since 2011. There was a child of the relationship born on 20<sup>th</sup> April 2016.
6. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Nixon on 16<sup>th</sup> April 2019. Essentially the Judge upheld the matters raised by the Secretary of State and dismissed the appeal in all respects.
7. Challenge has been made to that decision, and leave to appeal to the Upper Tribunal was granted, on the basis that the Judge had erred in finding the appellant had fraudulently obtained a TOEIC certificate and failed to consider the obligations under Section 55 of the Borders, Citizenship and Immigration Act 2009 in relation to the child born in the United Kingdom. The matter comes before me to determine the issues.
8. In terms of the TOEIC certificate it was the case, as advanced on the appellant, that he tried to book a test but all places were full so he paid a friend double the cost to book a test for him. When he realised that what he had done was wrong he asked for his money back. He received a certificate a few weeks later in his name as having passed the test. He said that he threw the certificate away and made no further use of it but agreed that he had not notified the respondent that he had received this unwanted or unrequested certificate.
9. It was argued on his behalf at the hearing before the First-tier Tribunal, and indeed before me, that his motive was always one of honesty and that in considering the explanation which he gave, it was important to note that he had made no use of that certificate. It was said that the First-tier Tribunal Judge had failed to balance those factors sufficiently in the determination as to whether his presence in the United Kingdom was not conducive to the public good because of such conduct in regard to paragraph S-LTR.1.6 of Appendix FM of the Immigration Rules.

10. The Judge, however, considered that matter particularly in paragraphs 19 and 20 of the determination. The Judge did not accept the explanation which the appellant had given. The Judge gave clear reasons to support the finding that the appellant had been a knowing party to the process to obtain the false certificate and was, in those circumstances, acting dishonestly. The Judge noted that the appellant had made no effort to use the certificate but such did not negate the fact that he had obtained it dishonestly. The reasons given by the Judge are in my estimation adequate.
11. Had that been the only matter which stood in the way of consideration of suitability under the Rules, then possibly there could have been an argument mounted as to whether there should have been a more wider contextual consideration as to whether what was done should make it undesirable for the appellant to remain. However, in the practicalities of this matter, the context is that the appellant nevertheless remained unlawfully for a number of years until he was discovered. Neither he nor his partner had made any application to regularise their stay in the United Kingdom prior to their being discovered. Thus, even a contextual consideration of the act of dishonesty, even absent of the use of the certificate, does little to advance the cause of the appellant.
12. Further and in any event, the act of overstaying is in itself an independent and separate consideration which has been applied rendering the appellant unsuitable to meet the requisite Immigration Rules.
13. The Judge focused also upon whether there were insurmountable obstacles to the appellant and his family returning to India. It was noted that both the appellant and his wife had lived together in India and he had worked prior to coming to the United Kingdom. It was considered that the fact that his property in India was sold was not a feature which rendered return significantly difficult or indeed presented any insurmountable obstacles to return. I can find no basis upon which the appellant could reasonably succeed in any argument as to insurmountable obstacles on return.
14. The Judge did not find there to be any exceptional circumstances and there is nothing presented to give any foundation to the contention that there were.
15. Although criticism may be made of the Judge that there was little overt reference to Section 55 of the Borders, Citizenship and Immigration Act 2009, the interests of the child were considered particularly in paragraph 22 of the determination. The child is but 3 and as was entirely dependent upon her parents for support. No reasons were found which would prevent her return. Clearly her best interests at that age was to be with the parents. She, like them, had no settled status.

16. Having considered the arguments as were most helpfully presented on behalf of the appellant by Mr Raza, I do not find there to be any material error of law in the determination of the First-tier Tribunal Judge. The appellant and his wife were long-term overstayers and gave birth to their child in circumstances where their right to residence was precarious. They are both from India and I can find no basis to support the argument that there would be any insurmountable obstacles or exceptional circumstances which would prevent their enjoying family life in India.

**Notice of Decision**

17. In the circumstances, the appellant's appeal before the Upper Tribunal is dismissed. The decision of the First-tier Tribunal shall stand.

No anonymity direction is made.



Signed

Date 14 Nov 2019

Deputy Upper Tribunal Judge King TD