Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/31391/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
on 10 July 2017	**on 20 September 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MUHAMMAD AMJAD ISLAM
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Professor S Juss instructed by Farani Taylor Solicitors
For the Respondent: Mr P Singh Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge I Ross promulgated on 28 October 2016 in which the Judge dismissed the appellant's appeal.

Background

2. The appellant, a citizen of Pakistan born on 15 August 1978, entered the United Kingdom lawfully on 12 June 2005 as a student. Such leave as extended to expire on 19 January 2015. On 16 January 2015, the appellant applied for leave to remain on the basis of family and private life in the United Kingdom which was varied on 18 March 2016 to an application for indefinite leave to remain on the grounds of 10 years continuous lawful residence.
3. On 9 December 2015, the application was refused. The respondent asserts that in a previous application for leave to remain as a student dated 23 May 2012 the appellant submitted a TOEIC certificate from Educational Testing Service (ETS) in relation to which it was concluded the certificate was fraudulently obtained by the use of a proxy test taker. The appellants scores from the test taken on 18 April 2012 at Elizabeth College were cancelled by ETS. The respondent was satisfied the appellant's certificate was fraudulently obtained and that he had used deception in the application of 23 May 2012. The respondent concluded the appellant's presence in the United Kingdom was not conducive to the public good because his conduct made it undesirable for him to remain in the UK leading to the refusal pursuant to paragraph 322(2) the Immigration Rules.
4. The Judge considered the evidence before setting out findings of fact from [13–26] of the decision under challenge which can be summarised in the following terms:

    a. The main issue in the appeal was whether the appellant used a proxy to undertake the test taken on 18 April 2012 [13].
    b. The respondent provided standard generic process evidence commonly seen in ETS cases, evidence pertinent to the appellant in a statement from Hilary Rackstraw, a report from Professor French, and evidence specific to Elizabeth College produced as part of the "Project Facade" criminal enquiry into abuse of TOEIC [14 – 20].
    c. Whilst the evidence in relation to Elizabeth College does not directly prove the appellant's test was taken by proxy taker it shows that organised and widespread use of the TOEIC was taking place at Elizabeth College at the relevant time which amounted to clear *prima facie* evidence of TOEIC corruption at the college around the time the appellant took his test there [21].
    d. The Judge was satisfied the Secretary of State had discharged the evidential burden of establishing that the appellant procured his TOEIC certificate by deception [22].
    e. The Judge found the appellant's evidence unsatisfactory in several respects including the witness statement being silent as to the earlier tests taken by him on 28 March 2012

which were “questionable”, the failure to provide a credible explanation as to why he resat tests at a different college from the first college, or why the appellant chose Elizabeth College situated across London from where he lives. Nor was there any explanation as to why the appellant maintained an identical score for speaking over the two tests nor how his writing score was able to jump from 140 to 160 after only 21 days [23].

f. The Judge found the appellant’s evidence in relation to the use of his Master’s degree as evidence of his English ability to be vague and confusing. The appellants claim he did not need to place any reliance upon the TOEIC certificate was not consistent with his oral evidence. The Judge found as a question of fact that the appellant did place reliance on the TOEIC certificate by submitting it with his application. The fact the appellant may be proficient in English does not assist in determining whether he or a proxy took his test. The Judge did not find it was necessary to determine what the appellant’s motive, or lack of, may have been [24].
g. The Judge was satisfied that the appellant has manifestly failed to raise an innocent explanation for any element of the *prima facie* case of deception established against him and the Secretary of State has discharged the burden of proving on a balance of probabilities the ETS TOEIC test results submitted by the appellant in May 2012 amounted to false information or false representations. The decision to refuse the application pursuant to paragraph 322(2) was therefore correct [25].
h. The Judge concludes that the appellant’s application for further leave to remain made in May 2012 ought not to have been granted and accordingly that the appellant has not been lawfully resident in the United Kingdom for 10 years. The decision to refuse his application for indefinite leave to remain was also correct and is not in breach of his human rights [26].

5. The appellant sought permission to appeal which was granted by another judge the First-tier Tribunal. The matter is opposed by the Secretary of State.

Error of law

6. The appellant relied upon five grounds of appeal. These are (1) that the Judge erred in law in failing to consider and determine the Article 8 claim in any reasoned matter, (2) the Judge’s conclusion that the Secretary of State discharged the evidential burden in relation to the TOEIC/ETS test certificate is wrong in law and inconsistent with the Court Appeals judgement in Shezad v Secretary State for the Home Department [2016] EWCA Civ 615, (3) that the Judge’s approach to

the evidential burden that was on the appellant and the subsequent legal burden on the Secretary of State is wrong in law and inconsistent with SM and Qadir, (4) that the Judge misread paragraph 322(2) of the Immigration Rules, (5) the Judge's conclusion that the appellant had not lived in the United Kingdom lawfully for 10 years is wrong in law.

7. Re Ground 2 - the appellant asserts that in *Shezad* guidance was given in relation to the evidential burden upon the Secretary of State in ETS cases after consideration of the Upper Tribunal's decision in *SM and Qadir [2016] UKUT 229*. The ground specifically refers to the judgement of Beatson LJ at [30] where it was said..." *The tribunal might be open to criticism in its treatment of the Millington/Collings evidence at the initial stage. In circumstances where the generic evidence is not accompanied by evidence showing that the individual under considerations test was categorised as "invalid", I consider that the Secretary of State faces a difficulty in respect of the evidential burden at the initial stage".*

8. The appellant asserts that the generic evidence alone is insufficient to discharge the evidential burden and that must be something showing that the particular test of the individual in question was deemed invalid. The appellant asserts the finding at [21] in which the Judge refers to clear evidence of *prima facie* corruption at Elizabeth College is inconsistent with *Shezad* as the fact there was corruption at Elizabeth College in itself was insufficient to discharge the evidential burden upon the Secretary of State without there being further evidence showing that the TOEIC certificate of the appellant was invalid.

9. It is accepted that in *SM and Qadir (ETS - Evidence - Burden of Proof) [2016] UKUT 229 (IAC)* it was held that the Secretary of State's generic evidence, combined with her evidence particular to the two appellants in that case was sufficient to discharge the evidential burden of proving that their TOEIC certificates had been procured by dishonesty. What the Tribunal in that case also found was that "every case belonging to the ETS/TOEIC stable will invariably be fact sensitive. To this we add that every appeal will be determined on the basis of the evidence adduced by the parties".

10. The evidence in this case included not only the generic evidence but also the additional witness statement from Hilary Rackstraw. This was disclosed by fax on the 19 September 2016. Appendix a of that statement contains the ETS Source Data entry relating to the appellant showing the results of the two tests taken by the appellant at Elizabeth College have been declared "invalid". Although the Judge refers to corruption at Elizabeth College there is also reference to Mrs Rackstraw's statement. That evidence was arguably sufficient to discharge the evidential burden upon the Secretary of State. In *Shehzad and Chowdhury [2016] EWCA Civ 615* it was held that a decision under paragraph 322(1A) of the Rules required material justifying a conclusion that the individual under consideration had lied or submitted false documents. The initial evidential burden of furnishing proof of deception was on the Secretary of State. Where the

Secretary of State provided prima facie evidence of deception, the burden shifted onto the individual to provide a plausible innocent explanation, and if the individual did so the burden shifted back to the Secretary of State. In effect, it was held that a screenshot of the results which stated that that was the position and included the "ETS Lookup Tool" which showed the tests that were categorised as "invalid" sufficed to discharge the initial burden.

11. The Judge had available to him arguably sufficient evidence to show that the particular tests of this appellant were deemed invalid. No arguable legal error is made out in relation to this ground.

12. Re Ground 3 - It was found in *SM and Qadir* that if it is concluded the Secretary of State had discharged the evidential burden of showing the TOEIC test certificates were invalid the evidential burden shifted to the appellant to raise an innocent explanation. The appellant asserts the Judge misunderstood this passage as all the appellant was required to do was provide an innocent explanation with no burden of proof on the appellant at all and that he or she was merely required to put forward an explanation and that once that was done the legal burden passed to the Secretary of State to prove on the balance of probabilities that the TOEIC certificate was fraudulent. The appellant asserts the Judge wrongly assumed the appellant was required to prove that his explanation was well-founded. The appellant also asserts the Judge failed to reason how the Secretary of State discharge the ultimate legal burden.

13. The Judge was arguably aware of the three-stage process identified in the case law for having found that the Secretary State had discharged the evidential burden the Judge then moved on to consider the appellant's position. The Judge clearly considered the evidence relied upon by the appellant and the explanation advanced which was not found to be satisfactory. This is clearly a finding by the Judge that the appellant had not discharge the evidential burden. There is no arguable misunderstanding for in [25] the Judge clearly finds that the appellant had manifestly failed to raise an innocent explanation. The inference in the grounds that all an appellant has to do is provide an innocent explanation without more, and particularly with no suggestion that there should be any relationship between the explanation and the evidence considered by the Judge in assessing the first stage process, has no arguable merit. The test is not for the appellant to provide an explanation. The particular emphasis in the case law is upon the word "innocent". This must be taken to mean that the explanation established that the evidence relied upon by the Secretary of State to discharge the initial evidential burden should be given less weight, be distinguished, or shown to be wrong or that the appellant was not responsible for or directly involved in an event yet suffering its consequences. The Judge gives adequate reasons for why it was concluded the appellant's explanation was not sufficient to discharge this evidential burden.

14. At the hearing Professor Juss sought to rely upon additional documents including a witness statement from the appellant dated 5

July 2017. This had not been produced to the Tribunal or respondent's representative at the date of the hearing although was subsequently brought to the attention of the Tribunal. This is an error of law hearing based upon the evidence considered by the Judge which will not include explanations provided in witness statements written some nine months later. That statement is, in effect, no more than disagreement with the findings reached by the Judge. There is for example reference to questions asked by the Judge and answers given in which the appellant then criticises the findings in the determination. The Judge in [23] does not state that the appellant gave no explanation for why he reset the tests at a different college but rather that he gave no credible explanation. This is an assessment by the judge of the weight he was willing to give to the appellant's evidence not a statement that such evidence was not given. There is no obligation upon a Judge to give reasons for each and every aspect of an appeal. No arguable legal error is made out in relation to Judges understanding of the evidence made available.

15. The Judge was clearly aware of the evidential burden upon the appellant. The finding the appellant had failed to raise an innocent explanation, which is a fact sensitive assessment, is within the range of findings reasonably open to the Judge on the evidence in this appeal.

16. The assertion the Judge failed to give any reasons for how the Secretary of State had discharged the ultimate legal burden has no arguable merit. It is asserted at [12] of the grounds that if the Judge found inconsistencies and gaps in the evidence the Judge was obliged to give an opportunity to the appellant to address them and there is no account of any material cross examination in the determination. As stated above, the Judges are not required to set out details in relation to each and every aspect of the evidence. Although the author of the grounds was not the representative before the First-tier Tribunal the appellant was represented by his solicitors. The assertion the Judge should have put further matters such as inconsistencies to the appellant and that a failure to do so amounts to legal error has no arguable merit. Proceedings before the First-tier Tribunal are adversarial. The appellant was represented. He was given ample opportunity to present his case by way of written evidence, evidence in chief and re-examination to clarify issues that may have arisen in cross examination, and by his advocate making final submissions. That procedure entitles and enables an appellant to present to a judge the evidence they are seeking to rely upon. If a judge when assessing that evidence identifies deficiencies or problems there is no legal obligation upon the judge to call the parties back or seek further submissions unless such arise as a result of matters that the parties may not have been aware of. In this case the issues identified by the Judge in the decision were clearly known to the parties. There is no assertion the Judge relied on matters of which the parties had no knowledge or of any procedural irregularity in the decision-making process sufficient to amount to an arguable error of law.

17. The appellant fails to make out any arguable legal error material to the decision to dismiss the appeal relevant to the finding the appellant did use deception when taking the English language test as asserted by the respondent.
18. Re Ground 4 - the appellant asserts the Judge misread paragraph 322(2) of the Immigration Rules as it is stated this is a discretionary ground which leave to remain should normally be refused. The rule provides:

> Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom should normally be refused
>
> .....
>
> (2) the making of false representations or the failure to disclose any material fact for the purpose of obtaining leave to enter or a previous variation of these or in order to obtain documents from the Secretary of State or third-party required in support of the application for leave to enter or a previous variation of leave.

19. The grounds assert the Judge ignored the fact this is a discretionary provision applying paragraph 322(2) as it would a mandatory provision such as 322(1A) of the Rules.
20. In *Ukus (discretion: when reviewable) [2012] UKUT 00307(IAC)* the Tribunal held that (i) If a decision maker in the purported exercise of a discretion vested in him noted his function and what was required to be done when fulfilling it and then proceeded to reach a decision on that basis, the decision is a lawful one and the Tribunal cannot intervene in the absence of a statutory power to decide that the discretion should have been exercised differently (see s 86(3)(b) of the Nationality, Immigration and Asylum Act 2002); (ii) Where the decision maker has failed to exercise a discretion vested in him, the Tribunal's jurisdiction on appeal is limited to a decision that the failure renders the decision 'not in accordance with the law' (s 86(3)(a)). Because the discretion is vested in the Executive, the appropriate course will be for the Tribunal to require the decision maker to complete his task by reaching a lawful decision on the outstanding application, along the lines set out in SSHD v Abdi [1996] Imm AR 148. In such a case, it makes no difference whether there is such a statutory power as is mentioned in paragraph 1 above; and (ii) If the decision maker has lawfully exercised his discretion and the Tribunal has such a statutory power, the Tribunal must either (a) uphold the decision maker's decision (if the Tribunal is unpersuaded that the decision maker's discretion should have been exercised differently); or (b) reach a different decision in the exercise of its own discretion.
21. *Ukus* was decided under the previous appeal regime in relation to which there was a 'not in accordance with the law' ground of appeal which no longer exists, although that is not a point that needs to be discussed at any length at this stage in these proceedings. In *Ukus* it was found "The expression 'normally be refused' connotes a discretion

to be exercised by the decision maker which, in this case, is the Entry Clearance Officer".

22. It is important to consider the circumstances in which a decision-maker may contemplate whether to dismiss an appeal by reference to paragraph 322(2) of the Rules. The Modernised Guidance to caseworkers in relation to paragraph 322(2) states the decision-maker should normally refuse leave when the applicant has made false representations or submitted false documents in a previous application or in order to obtain documents from the Secretary of State or a third party required in support of the application for leave to enter or a previous variation of leave. In this case the findings of the Judge show that the primary requirement is satisfied by the use of a fraudulently obtained certificate by the use of a proxy tester. The guidance, in relation to whether a decision-maker needs to refer to a senior caseworker before refusal states "No, but you must check the harm matrix before consideration". It is not made out the decision-maker, being aware of the guidance, then promptly ignored it and there is evidence of the exercise of discretion by reference to the finding that is not conducive to the public good, because the appellant's conduct makes it undesirable, to allow him to remain in the United Kingdom which imports a balancing exercise giving consideration to factors relied upon by the appellant against the question of whether, notwithstanding the use of fraud, the appellant should not be entitled to remain in the United Kingdom. No arguable legal error material to this ground is made out the appellant's behalf.

23. Re Ground 5 – the appellant asserts the Judge erred in concluding that the appellant had not lived in the United Kingdom lawfully for 10 years. The appellant refers to paragraph 276A of the Rules and argues the fact the Judge's view was that leave to remain ought not to have been granted does not negate the reality that the leave to remain was actually granted, has not been revoked, cancelled or curtailed at any point, and that a plain reading of paragraph 276A (b) means the appellant's residence in the United Kingdom has been lawful and that he has lived continuously in the UK for 10 years.

24. Paragraph 276A contains a definition of terms relevant for assessing an application pursuant to paragraphs 276B to 276D and 276ADE(1). Within that paragraph at 276A(b) it is written:

> (b) "lawful residence" means residence which is continuous residence pursuant to:
>
> i. (i) existing leave to enter or remain; or
> ii. (ii) temporary admission within section 11 of the 1971 Act where leave to enter or remain is subsequently granted; or
> iii. (iii) an exemption from immigration control, including where an exemption ceases to apply if it is immediately followed by a grant of leave to enter or remain.
>
> (c) 'lived continuously' and 'living continuously' mean 'continuous residence', except that paragraph 276A(a)(iv) shall not apply.

25. The belief by the Judge that the appellant should not have been granted a period of leave which he was granted does not arguably have the effect of making such leave "unlawful". That does not, however, automatically admit arguable legal error. The finding by the Judge at [26], even if impacted by legal error in which the Judge finds the appellant has not been lawfully resident in the United Kingdom for a period of 10 years, needs to be considered by reference to the actual finding in relation to the relevant aspect of the rule which is that the respondent's decision to refuse the application for indefinite leave to remain was correct.
26. The appellant applied for indefinite leave to remain in the United Kingdom on the basis of long residence. He was therefore required to show he can satisfy the requirements of paragraph 276B which state:

276B. The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:

(i) (a) he has had at least 10 years continuous lawful residence in the United Kingdom.

(ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:

(a) age; and

(b) strength of connections in the United Kingdom; and

(c) personal history, including character, conduct, associations and employment record; and

(d) domestic circumstances; and

(e) compassionate circumstances; and

(f) any representations received on the person's behalf; and

(iii) the applicant does not fall for refusal under the general grounds for refusal.

(iv) the applicant has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL.

(v) the applicant must not be in the UK in breach of immigration laws, except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded. Any previous period of overstaying between periods of leave will also be disregarded where –

(a) the previous application was made before 24 November 2016 and within 28 days of the expiry of leave; or

(b) the further application was made on or after 24 November 2016 and paragraph 39E of these Rules applied.

27. A reading of the refusal clearly shows that the decision-maker was aware of the correct provision of the rule but found the appellant could not satisfy 276B(ii) and (iii) which is an arguably sustainable finding in light of the conclusions by the Judge of the use of deception in relation to the English language test. The factors outlined in (ii) are those factors relevant to considering whether having regard to the public interest there is no reason why it would be undesirable for the appellant to be granted indefinite leave to remain on the ground of long residence, which entails consideration of the proportionality of the application and resultant decision. (iii) is more absolute in that if a person does fall for refusal under a general ground they cannot succeed the rule. Whilst the Judge may have erred in stating the appellant has not been lawfully resident in the United Kingdom such is not material as on the findings as a whole the appellant cannot satisfy the relevant rule to entitle him to succeed on this basis.
28. Re Ground 1 - article 8 ECHR – this ground has been left to this stage of the decision as it is relevant to have considered the application under the Rules first before moving on to the ground of appeal relating to a leave outside the Rules. The appellant asserts that he relied heavily on private life and relationships with family members settled in this country and that the Judge failed to determine this particular aspect by reference to paragraph 276ADE of the Immigration Rules in relation to whether there were very significant obstacles to the appellant's integration into Pakistan or other circumstances that meant his removal would be disproportionate.
29. Article 8 does not enable an individual to choose where they wish to live, its sole purpose being to prevent unwarranted interference with a protected right. The evidence before the Judge in relation to article 8 ECHR can be found in the appellant's first witness statement in which he confirmed he entered the United Kingdom on 12 June 2005 and that he has arguably remained lawfully since. The appellant speaks of his educational attainment in the United Kingdom [12] in the statement of 14 July 2016 and stated that since his arrival in the United Kingdom he has managed to establish an active social life with a number of close friends and that he has been in the United Kingdom for a large proportion of his adult life and finds himself woven into the very fabric of British life. The appellant also asserts he has a number of family members in the United Kingdom including his brother, sister-in-law, nieces and nephews. The appellant refers to contributing to the economy whilst working as a salesman at Next and asserts he should be given the opportunity to remain in the United Kingdom.
30. The appellant stated at [14] that he believes it is important to say how he is a genuine and honest applicant but this is clearly undermined by the findings of the use of deception to take an English language test. Although Mr Singh in his submissions accepted the Judge did not specifically deal with the question of integration in the determination it is important to revert to the decision as a whole and the reference to 276B in relation to which age, strength of connection to the United

Kingdom, personal history etc as outlined above are all taken into account. The proportionality of the decision to exclude a person from the United Kingdom under 276B arguably requires a similar assessment of a claimant's circumstances as that required under the fifth of the *Razgar* questions. It is not asserted the appellant has the required 20 years residence required to succeed under paragraph 276ADE on the basis of his private life.

31. The Judge in the decision found the refusal of the application for indefinite leave to remain was correct and not a breach of the appellant's human rights. The author of the grounds may have misunderstood what the Judge was saying when inferring that this was a shorthand and incomplete assessment of the proportionality of the decision whereas it is anything but. The Judge clearly found that the assessment relevant to 276B was lawful and that the finding the appellant should not be granted indefinite leave to remain in the United Kingdom and so would have to return to Pakistan, even in light of the issues he raised in support of his application for leave to remain under the long residence rule was of importance, as this equates to finding the appellant's removal would not amount to a disproportionate breach of any protected right. The appellant fails to make out any material difference in the test or to identify issues that were not considered by the decision-maker or Judge under the long residence rule. The evidence provided by the appellant does not suggest a degree of integration such that it would be disproportionate in the circumstances to remove the appellant from the United Kingdom.
32. It must be remembered that the core finding relating to the ETS aspect was the use of deception. In *Mumu (paragraph 320; Article 8; scope) [2012] UKUT 00143(IAC)* the Tribunal said, in the context of Article 8 and proportionality on an out of country spouse settlement appeal where 320(7A) was found to apply that "those who engage, or who might be tempted to engage, in dishonest attempts to deceive the United Kingdom authorities in relation to immigration control need to be aware that such actions will have disadvantageous consequences for those who are the intended beneficiaries of the dishonest conduct. In the present case, the appellant and the sponsor have chosen to marry against the backdrop that the appellant had no automatic entitlement to live in the United Kingdom. In all the circumstances, it is, we consider, not disproportionate for the respondent to refuse the application, on the basis of paragraph 320(7A)".
33. Although the refusal in this appeal was not a mandatory refusal a careful examination of the evidence and the appellants circumstances warranted to refusal of his application on the basis of deception and, arguably, his removal from the United Kingdom.
34. No arguable legal error material to the decision to dismiss the appeal is made out in relation to the key finding that there shall be no disproportionate interference with a protected right.

35. It was recognised by Professor Juss in [23] that the matters relied upon may or may not have fallen in the appellant's favour but that any error was material as they had not even been considered. Whilst there is an argument that if there is no self-contained article 8 assessment within the decision this comment may have arguable merit, it is important to read the decision as a whole. Reference to the decision of the Court of Appeal in *Kamara [2016] EWCA Civ 8113* was made by Professor Juss and the finding by that Court that the concept of integration is one which is abroad one because it is not confined to the mere ability to find a job or sustain life while living in the other country that is one which calls for broad evaluative judgement to be made as to whether an individual will be enough of an insider in terms of understanding how life in the society and that countries carried on and a capacity to participate in it, so to have reasonable opportunity be to be accepted there. As stated above, the compassionate circumstances and representations received are factors that were taken into account and it has not been made out that those representations or the evidence made available to the Judge was sufficient to establish that the appellant will not have a reasonable opportunity to be accepted in Pakistan or to be able to re-establish his life in that country. The appellant's evidence in his witness statement refers solely to time in the United Kingdom and presence of other family members with no evidence that he would not be able to re-establish himself in Pakistan. Whilst it is accepted that a period of readjustment may be required the appellant is an educated individual. Considering the evidence as a whole, notwithstanding Mr Singh's acceptance that integration does not appear to have been specifically considered in the decision under challenge, I do not find the appellant has established arguable legal error material to the decision to dismiss the appeal. Article 8 ECHR is raised as a specific ground of challenge in the original appeal to the First-tier Tribunal indicating the appellant was aware of the need to adduce all the evidence he seeks to rely upon which, as stated, is arguably limited to telling the Judge about life in the UK, without more.
36. The appellant entered the United Kingdom as a student. This is a temporary status which confers no legitimate expectation that he would be permitted to settle. The finding by the Judge responding to discharge the burden of proof upon her to the required standard to establish the proportionality of the decision is within the range of defined things reasonably open to the judge on the evidence. I do not find it established had the Judge approached the evidence in any other manner that the decision would have been anything other than that set out in the decision under challenge in light of the nature of the evidence and the use of deception.

Decision

37. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

38. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 19 September 2017