



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13244/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 23 August 2018

Determination issued
On 03 September 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

A I

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, instructed by Sky, Solicitors, Ilford
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision is to be read with:
 - (i) The respondent's decision dated 9 October 2017, refusing the appellant's application for leave to remain.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal, dated 24 October 2017.
 - (iii) The decision of FtT Judge Mackenzie, promulgated on 1 May 2018, dismissing his appeal.

- (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal dated 14 May 2018.
 - (v) The grant of permission by FtT Judge Landes, dated 31 May 2018.
 - (vi) The respondent's rule 24 response, dated 18 July 2018, to the grant of permission.
2. Page O of the respondent's bundle lists 3 English language tests taken by the appellant, on 19 June, 18 July and 18 September 2012. His application for leave on family life grounds was refused under paragraph S-LTR 4.2 of the rules because the certificate obtained on 19 June 2012 was fraudulent.
 3. The appellant denied that he took any English language test on 19 June 2012. The judge found that the respondent had discharged her burden of proof about the certificate, and that the appellant failed to discharge the burden which then fell on him. The grounds, in so far as they dispute that finding, do not rise above disagreement.
 4. The appellant had another argument, however, which did not depend on resolving that issue and which stood independent of any dispute on the facts. Any certificate obtained on 19 June 2012 was not used to support any application to the respondent. The appellant contended that paragraph S-LTR 4.2 therefore did not apply.
 5. The FtT did not deal with that submission. To that extent, its decision must be set aside and remade.
 6. The ground on which an application may be refused for suitability under paragraph S-LTR 4.2 is that:

'The applicant has made false representations or failed to disclose any material fact in a previous application for entry clearance, leave to enter, leave to remain or a variation of leave, or in a previous human rights claim; or did so in order to obtain from the Secretary of State or a third party a document required to support such an application or claim (whether or not the application or claim was successful).'
 7. Mr Govan argued that the circumstances of this case might fall within the alternative after the semicolon, but I do not see how that can fit. As Mr Winter observed, the alternative still requires there to be some application or claim.
 8. I also considered whether the facts might fall within "failure to disclose", but that would be a far-fetched requirement.
 9. Mr Govan argued further that even if S-LTR 4.2 did not apply, the case might have failed under another provision, such as S-LTR 1.6.
 10. I agree with the submission by Mr Winter that the point comes much too late. It is not to be found as an alternative in the original decision, was not argued in the FtT, and is not in the rule 24 response.
 11. In any event, a refusal based on failure to mention a certificate which was never produced or relied upon again seems far-fetched, as observed in relation to S-LTR 4.2.

12. It was common ground that apart from any refusal associated with S-LTR 4.2 the appellant's application would have met the terms of the immigration rules for leave to be granted. The statutory appeal lies on human rights grounds only, but the rules in this respect are designed to comply with article 8. It follows that the appeal succeeds on human rights grounds.
13. The decision of the First-tier Tribunal is set aside, and the appeal, as originally brought to the FtT, is allowed.
14. The FtT made an anonymity direction, which has been maintained herein.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

23 August 2018
Upper Tribunal Judge Macleman