



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/14081/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at: Field House  
Reasons Promulgated  
On: 12<sup>th</sup> April 2018  
2018**

**Decision &  
On: 16<sup>th</sup> April**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**NABEEL SALIT  
(NO ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Secretary of State: Mr Walker, Senior Home Office Presenting Officer  
For Mr Salit: Mr Turner, Counsel instructed by Burney Legal Solicitors

**DETERMINATION AND REASONS**

1. The Respondent is a national of Pakistan born in 1991. On the 24<sup>th</sup> October 2017 the First-tier Tribunal (Judge Quinn) allowed his appeal on human rights grounds. The Tribunal found that although Mr Salit had failed to rebut allegations of his involvement in the 'ETS fraud', and had attempted to rely on false payslips in the course of the present appeal, the refusal to grant him leave to remain was nevertheless disproportionate, having regard to the significant impact

that this would have on his British wife and son. On the 21<sup>st</sup> February 2018 Upper Tribunal Judge Rintoul granted the Secretary of State for the Home Department permission to appeal that decision, on the grounds that in reaching its decision the First-tier Tribunal had failed to have adequate regard to the public interest.

### **The Secretary of State for the Home Department's Appeal**

2. The Secretary of State submits that in its assessment of proportionality the First-tier Tribunal failed to have regard to its own findings on poor conduct of Mr Salit.
3. In respect of the 'ETS' fraud the Secretary of State had discharged the evidential burden in that the test results Mr Salit had relied upon had been shown to be 'questionable'. Mr Salit had given evidence to the Tribunal about his attendance and participation in the test that had been found to be "vague" to the point that he had failed to provide an innocent explanation. The Tribunal's conclusion about his evidence on this point had given rise to "doubts about his credibility", the result of which was that the Tribunal could not be satisfied that the suitability requirements in Appendix FM were met. The Tribunal went on to assess the evidence in respect of funds, and found that the payslips produced by Mr Salit as evidence of his employment were not genuine, and that Mr Salit was lying when he had said in evidence that he worked in a kebab shop as claimed.
4. It is not apparent that any of those negative matters are weighed in the balance when the Tribunal turns to assess proportionality, and in particular in its application of s117B(1) (maintenance of immigration control) and s117B(2) (financial independence). In respect of the latter the determination simply notes "I took into account the fact that both the appellant and his wife were working".
5. The Secretary of State submits that the failure to weigh in these significant public interest factors renders the determination flawed. I am invited to set the decision aside and remit it to the First-tier Tribunal for remaking.

### **The Response**

6. On behalf of Mr Salit Mr Turner urged me to read the determination as a whole, and to find that the Judge must have had her own negative findings in mind when she came to make her final decision, given that she had only just made them. Whilst he agreed that it was difficult to discern where the Judge had applied the framework in s117B, in particular in respect of the assessment of 'reasonableness', the ultimate conclusion was one open to the Tribunal to make.

## Discussion and Findings

7. I do not doubt that it was rationally open to a Judge to allow this appeal. Mr Salit now has two British children and their best interests must be carefully assessed; in accordance with the guidance in MA (Pakistan) [2016] EWCA Civ 705 'strong reasons' must be shown as to why it would be 'reasonable' to expect these children to leave the country. The question at the heart of the appeal was whether the conduct of Mr Salit provided those 'strong reasons'. It is not apparent from the determination before me that this was the approach taken by the Judge.
8. I am unable to accept that the adverse findings made were weighed in the balance in the final reckoning, since reference to them is strikingly absent in the scant reasoning on the public interest. Nor can I be satisfied that it was open to the Judge to find that Mr Salit's wife and child would be "badly" affected by his removal, since there appeared to be no evidence or findings on the point. I am also concerned that in its assessment of the 'ETS' matter the Tribunal appears to have assumed that the Secretary of State had discharged the evidential burden, thus 'pushing' the burden onto Mr Salit as the determination found it was at paragraph 23. I cannot see that the Secretary of State had produced *prima facie* evidence that Mr Salit had used a proxy test taker. At its highest the evidence summarised at paragraph 16 of the determination showed that TOIEC had withdrawn his test result on the grounds that it was 'questionable' since it had occurred at a centre where fraud had been found to be widespread. As far as I am aware there was for instance no 'look up tool' evidence before the Tribunal directly linking Mr Salit to any fraud.
9. Having considered all of those matters I find, with the consent of both parties, that the decision of the First-tier Tribunal must be set aside for errors of law: in particular failing to make clear findings and failing to take material matters into account.

## Decisions

10. The decision of the First-tier Tribunal is set aside for error of law.
11. The decision is remitted for rehearing de novo in the First-tier Tribunal.
12. I was not asked to make an order for anonymity and on the facts I see no reason to do so.

Upper Tribunal Judge Bruce  
12<sup>th</sup> April 2018