



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

Appeal Number: HU/10738/2018

THE IMMIGRATION ACTS

Heard at Field House

On 9th April 2019

**Decision & Reasons
Promulgated
On 18th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

**MR MOHAMMAD RAFIQ
(no anonymity direction)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Brooks, Counsel

For the Respondent: Ms S Jones, Home Office Presenting Officer

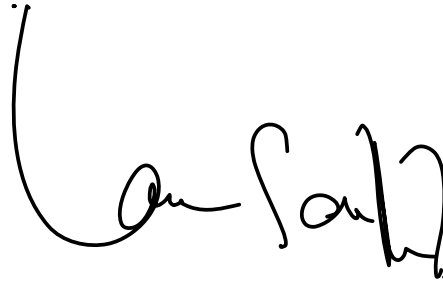
DECISION AND REASONS

1. The Respondent refused the Appellant's application for leave to remain. The appeal that came before Judge Malcolm at the First-tier Tribunal on 16 November 2018 was dismissed.
2. Permission to appeal was granted by Upper Tribunal Judge Chalkley on 13 March 2019. He stated "I believe that it is properly arguable that the First-tier Tribunal Judge has wrongly placed the burden on the Appellant to prove that he did not use deception. All the challenges may be argued."
3. I had the benefit of the presence of Mr Brooks and Ms Jones who have been helpful in focussing on the key issue. It is accepted by Ms Jones that the judge wrongly placed a burden of proof on the Appellant, whereas it fell on the Respondent where an allegation of deception was being made,

this was an error of law, and that given it went to the heart of the case it could not be anything other than material.

4. It was accepted by Mr Brooks that Grounds 2, 3, and 4 played no further part in this hearing. Both representatives agreed that the Appellant had not had a fair hearing in the first place because the wrong burden of proof had been applied.
5. Accordingly, the only proper course of action in this particular appeal would be to set the decision aside in its entirety and remit the matter to the First-tier Tribunal at Birmingham for a de novo hearing so that all matters can be properly ventilated and determined. The First-tier Tribunal will issue any consequential directions. The matter will not come before Judge Malcolm.
6. No anonymity direction is made.

Deputy Upper Tribunal Judge Saffer
17 April 2019



FEE/COSTS AWARD

I make no fee or costs award as the matter is ongoing.

Deputy Upper Tribunal Judge Saffer
17 April 2019

