



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: IA/34705/2015  
IA/34706/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 26 July 2018

Decision and Reasons Promulgated  
On 02<sup>nd</sup> August 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

(1) Mrs SEEMA RATHORE  
(2) Mr GURMEET RATHORE  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr S Bellara, Counsel (instructed by Legend Solicitors)  
For the Respondent: Ms A Everett, Home Office Presenting Officer

**DETERMINATION AND REASONS**

### *Introduction*

1. The Appellant appealed with permission granted by Upper Tribunal Judge Freeman on 8 June 2018 against the determination of First-tier Tribunal Judge Herlihy who had dismissed the appeal of the Appellants seeking further leave to remain as a Tier 4 (General) Student and her dependant. The decision and reasons was promulgated on 18 August 2017.
2. The Appellants are nationals of India, wife and dependant husband. The refusal to grant the further leave to remain was on the grounds that the First Appellant had employed deception by submitting a TOEIC certificate obtained through ETS by means of resort to a proxy test taker in a previous application. The judge found that the Respondent had discharged the legal burden of proof and that the Appellants had failed to discharge the evidential burden which had shifted to them, i.e., that deception was proved. Their linked appeals were accordingly dismissed.
3. Permission to appeal was initially refused in the First-tier Tribunal but granted on the renewed application because it was considered arguable that the judge had erred by overlooking some of the First Appellant's evidence. That at least was agreed to be the substance of the Upper Tribunal's grant, parts of which were agreed to be not entirely easy to follow. The Appellant's counsel was allowed latitude in consequence.

### *Submissions*

4. Mr Bellara for the Appellant had not been responsible for the preparation of the grounds of onwards appeal which (suffice it to say) left something to be desired. His submissions focussed on the judge's approach to the evidence at the First-tier Tribunal hearing, at which he had appeared. It was not clear that the judge had taken into account the fact that the First Appellant had obtained a BTECH Level 7 qualification not long before the date of the ETS TOEIC test. The judge had engaged in speculation as to the First Appellant's possible motives for cheating, again overlooking the existing qualification. The judge had not considered whether the First Appellant had given what was in substance a robust explanation,

which had involved details of the test and the centre where it was held. The fact was that the First Appellant had achieved an overall score of 5.5 not long before in an IELTS examination, which no one had suggested was fraudulent. She had given her evidence in English at the hearing. The judge's decision was not adequately reasoned. The determination should be set aside and remade.

5. Ms Everett for the Respondent submitted that there was plainly no material error of law. The judge had made sufficient findings, in particular that the First Appellant had not engaged in the studies to which she had committed herself. There were serious credibility issues, carefully identified. The onwards appeal should be dismissed.
6. In reply, Mr Bellara reiterated that the BTech Level 7 certificate had been before the tribunal but had not been taken sufficiently into account.

*No material error of law finding*

7. In the tribunal's view the grant of permission to appeal by the Upper Tribunal was generous, and failed to reflect the fact that the linked appeals were in reality weak. Mr Bellara made the best case he could in all the circumstances, and submitted the First-tier Tribunal Judge's decision and reasons to close and not always flattering scrutiny.
8. TOEIC/ETS appeals have generated much litigation, and the very experienced First-tier Tribunal Judge proceeded in accordance with the current authorities and applied the correct burden and standard of proof. At [5.2] of her decision that judge expressly noted the BTech level 7 qualification held by the First Appellant, so this was one of the factors weighed up when reaching her findings. It is plain that that qualification ultimately carried little weight, given the serious, multiple problems which the judge found with the First Appellant's evidence concerning subsequent developments.
9. The judge rightly gave the First Appellant credit for some competence in English as demonstrated in her oral evidence, but was right to be cautious about that because there was the significant evidence of the inadequate IELTS test result obtained shortly before the TOEIC test, and there had been a gap of some 5 years leaving

scope for improvement. It was open to the judge to examine motive, and here the tribunal finds that the judge stopped short of speculation. The judge gave secure reasons for finding that the First Appellant's evidence could not be treated as reliable, which included selective memory and the absence of freely available corroboration: see [6.8] and [6.9] of her decision and reasons.

10. Thus while the judge's decision might possibly have fallen short of the standard proposed by Mr Bellara, it must be remembered that First-tier Tribunal judges work under considerable pressure of time and their decisions should be no longer nor more detailed than necessary. The tribunal finds that the decision and reasons was sufficiently reasoned, addressed the vital issues in a careful, balanced way and avoided legal error. The tribunal finds that the onwards appeal has no substance and that there was no material error of law in the decision challenged.

### **DECISION**

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

**Signed**

**Dated 26 July 2018**

**Deputy Upper Tribunal Judge Manuell**