



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

Appeal Number: HU/15748/2018

THE IMMIGRATION ACTS

Heard at Field House

On 11th November 2019

**Decision & Reasons
Promulgated**

On 27th November 2019

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**PARVEEN KAUR GOSAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Reid, instructed by Maalik & Co

For the Respondent: Mr P Singh, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India born on 14 December 1986. She appeals against the decision of First-tier Tribunal Judge R Sullivan promulgated on 16 July 2019 dismissing her appeal against the refusal of indefinite leave to remain on human rights grounds.
2. Permission to appeal was granted by Upper Tribunal Judge Stephen Smith for the following reasons: "I consider it to be arguable that the judge

based her rejection of aspects of the Appellant's claimed innocent explanation on matters which were speculative or not founded in the evidence. For example, at paragraph 24(c) the judge considered it to be implausible that the TOEIC test centre would write to the Appellant using a letter as there was evidence that staff used SMS to communicate. Arguably that was irrational as the only evidence about SMS use concerned the communications between some staff and the proxy test takers. Similarly, the judge did not cite an evidential basis for her finding that the test centre would not have taken a deposit, making it an arguably irrational finding of fact, see 24(d).

Given the judge accepted many aspects of the Appellant's claimed innocent explanation to be plausible (see, e.g. [24(a)], [24(b)], [24(g)]), it is arguable that her overall rejection of the innocent explanation was irrational, given the judge's arguable reliance on non-evidential speculation as part of her operative reasoning."

Submissions

3. Ms Reid submitted the judge's findings at paragraph 24, in relation to the Appellant's journey to the test centre, the letter she received and the failure to pay a deposit, were irrational findings. She submitted the judge had erred in law in finding against the Appellant in areas which were not in evidence and where the Appellant had not been given an opportunity to explain. The Appellant did not have an opportunity to give an explanation for her journey to the test centre and the judge's findings in relation to the letter and the deposit were speculative.
4. Mr Singh agreed that there was a material error of law in the decision. He also conceded that if these three challenged findings were removed from the judge's assessment of the Appellant's innocent explanation that resulted in a finding that the Appellant's evidence was plausible and therefore the appeal should be allowed.

The Judge's Findings

5. There was no challenge to the judge's findings that the Appellant could not satisfy Appendix FM, paragraph 276B or Article 8. However, it was conceded by the Respondent that the Appellant had ten years' lawful residence. Her application under paragraph 276B was refused on suitability grounds because she had submitted a false ETS certificate dated 5 June 2013 in a previous application. It has been accepted that the judge's rejection of the innocent explanation was irrational in that it was based on findings that were not supported by evidence and about which the Appellant was not given the opportunity to explain.
6. I find that the judge has made a material error of law. If the judge's findings at paragraph 24(c), (d) and (e) are removed then, on the balance

of probabilities, the Appellant has given a plausible account. The judge accepted that the Appellant identified ETS as a test provider and contacted them to arrange the test. It was accepted she had given a plausible explanation of how she attended the test centre and took the test.

7. The judge's rejection of the Appellant's innocent explanation was irrational and the decision of 16 July 2019 is set aside. I remake the decision on the facts found by the judge and conclude that the Appellant has provided an innocent explanation and, therefore, the Respondent has failed to show that she has submitted a false English language certificate in a previous application. Accordingly, I allow the Appellant's appeal.

Notice of Decision

Appeal allowed

No anonymity direction is made.

J Frances

Signed

Date: 25 November 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of any fee which has been paid.

J Frances

Signed

Date: 25 November 2019

Upper Tribunal Judge Frances