



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA274242015
IA274322015

THE IMMIGRATION ACTS

Heard at Field House
On 20 June 2017

Decision & Reasons Promulgated
On 14 July 2017

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

JASPREET KAUR
JARMANJIT SINGH KANG
(anonymity direction not made)

First Appellant
Second Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr S Ballara, counsel instructed by Legend Solicitors
For the Respondent: Mr P Armstrong, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I see no need for, and do not make, any order restricting publicity about these appeals.
2. The appellants are married to each other. The first appellant appeals against the decision of the First-tier Tribunal (First-tier Tribunal Judge Geraint Jones QC) dismissing her appeal against decisions of the respondent on 16 July 2015 to refuse to vary her leave to remain and to remove her by way of directions from the United Kingdom.
3. On 4 May 2011 the first appellant entered the United Kingdom as a Tier 4 (General) Student Migrant in possession of a visa conferring leave to enter until 28 July 2012. On 27 July 2012 she applied for leave to remain in the same capacity and the application was refused on 16 July 2015 because the first appellant had supported her application with a TOEIC certificate of competence in the English language which had been declared invalid.

4. The first appellants said that she was given the certificate as a result of her passing a test that she sat at the London College of Media & Technology on 21 August 2012. However the TOEIC test result had been declared invalid by the testing organisation.
5. The second appellant appeals a similar decision on the same day refusing him leave to remain as the dependant of a Tier 4 Migrant.
6. It has always been the second appellant's case that he is dependent on the first appellant and therefore if the decision in her case was correct the decision in his case is correct too.
7. Although the First-tier Tribunal Judge at paragraph 8 of his decision referred to the respondent having "cancelled the appellant's visa and leave to remain" a better description of the decision of 16 July 2015 is that the respondent had refused to vary her leave and decided to remove the appellant for the reasons given.
8. Upper Tribunal Judge Rintoul gave permission because he found it reasonably arguable that the First-tier Tribunal Judge had erred because, for the reasons identified at paragraphs 7, 8 and 9b of the renewed grounds, the First-tier Tribunal Judge had misunderstood or failed to take into account relevant evidence.
9. Paragraphs 7 and 8 criticised the judge for finding that the appellants' representatives were unaware of the fact that she had previously failed a language test even though it was clear to the judge from the respondent's bundle that the first appellant was shown to have failed and then later passed such a test. Paragraph 8 of the grounds refines the point by pointing out that the judge said the fact that the appellant had sat two different tests "only became clear once she was cross-examined" when it was, according to the judge, clear from the bundle that two tests were involved.
10. Paragraph 9b criticises the judge for misunderstanding the appellant's evidence that she had taken a test in Nottingham even though she lives in Feltham. The grounds aver that, contrary to the finding of the judge, the appellant did give an explanation for having taken the first test in Nottingham and the explanation was that the test centre at Nottingham offered her an early date and that suited her intended application.
11. It is clear that the First-tier Tribunal Judge found it necessary to express his surprise at the way the case was presented. It is often best if judges refrain from observations of the kind that have occurred here. They were not necessary for the proper consideration of the case and have set up the suspicion that the case was not determined correctly.
12. It is a feature of this case that the Secretary of State was represented at the First-tier Tribunal by Ms P Ellis. I do not think it at all controversial to say that Ms Ellis is a very experienced and respected Presenting Officer who could be expected to cross-examine a witness calmly and professionally but with considerable rigour. Mr Ballara said that his case depended on the first appellant being believed when she said that she had taken the second test and, in his professional judgment, it was best not to ask questions in evidence-in-chief that could be expect to rehearse answers to questions which Ms Ellis could be expected to ask. If the answers were satisfactory they might be thought to be more impressive because they had been elicited in cross-examination, rather than evidence-in-chief. This may or may not be an ideal approach but, in my judgment, is an entirely realistic one when Counsel knew that the witness statement that should have stood as evidence-in-chief was not particularly illuminating and that the Presenting Officer could

be expected to ask all the questions that needed to be asked. I have had the benefit of hearing Ms Ellis on many occasions when I sat in what is now the First-tier Tribunal and I am happy to record that I understand Mr Ballara's approach.

13. I am not able to make any findings on the contention that the judge misunderstood the evidence about the reasons for taking the test in Nottingham. They do not appear to be in the witness statement or noted in the judge's notes. I do not find it necessary to resolved the point. It has not been doubted that the appellant did take a test in Nottingham and that the appellant failed that test. If, as might have been thought, she was travelling a long distance to attend a test centre where a result favourable to her could be obtained dishonestly, it clearly is not what occurred here. The unsuccessful "Nottingham" test was taken on 18 June 2014. The successful test was taken on 20 August 2014 so it was approximately two months later. In June the appellant scored 120 marks out of a possible 200 in part of the test and 180 marks in another part of the test. In August she passed with full marks. The "August" test was taken at the London College of Media and Technology and it was the result of that test that was cancelled by ETS.
14. The First-tier Tribunal Judge accepted the respondent's evidence that the test result had been invalidated and took that as evidence that the certificate had been obtained improperly. There can be no criticism of that. The judge gave two reasons for being satisfied that the test was obtained improperly beyond the simple identification of the result by the checking procedures. First, he did not believe it was credible that a person could, in two months, improve to the extent that the examination results indicate here. This is to some extent a subjective view on the part of the judge but the point he is making is an obvious and fair one and I see no basis for challenging the lawfulness of the decision. Second, the test was not merely regarded as invalid but it came from a test centre which was scoring a high number of invalid test results which suggested to the judge that it was a centre where corruption was rife and therefore it was inherently more likely that a certificate obtained from there was obtained improperly than would be the case at other centres. The judge also noted that it was the first appellant's own case that she had not been required to produce any identification when she presented herself to take the test and he said in paragraph 20(vi) "that, as it seems to me, is to invite fraud and proxy testing arrangements. I am satisfied that the appellant took advantage of same."
15. The judge is criticised for expressing the view that the appellant's spoken English as it demonstrated when she gave evidence was in his opinion "fair, but certainly not good or very good." Again this is a subjective judgment and it would have been helpful if the judge had said something to explain his decision. It may not have been practicable to explain why he used the word "fair", rather than some other descriptive word but he could have explained how the answers were deficient. For example, it is not clear if the deficiency was the result of poor grammar or poor pronunciation or what. I have reflected on this point but I am not persuaded that the judge was perverse and I would have to be persuaded that he was perverse before I could interfere with the decision for this reason. A main point in calling oral evidence was for the judge to form a view of the competence of the person who had taken the test. It would require very poor behaviour indeed on the part of the judge to take the view that the appellant's English was "fair, but uncertainly not good or very good" without there being good reason. Further it needs to be remembered that the judge was not particularly interested in the appellant's English

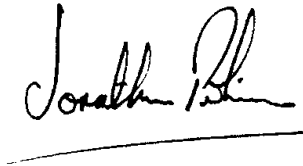
speaking abilities in 2016 but in her ability to improve in the two months in 2012. In this context the absence of explanation does not matter. All the judge was saying is that even three and a half years or so after the test was taken the appellant had not mastered the English language yet he was asked to believe there was a very marked improvement in just in two months in 2012. The judge clearly understood that this was the case and for the reasons he gave was not persuaded by it.

16. It follows that although the judge's analysis of the evidence has opened the door for a lot of circuitous criticism of his decision arising from unnecessary criticism of the presentation of the case. The judge has given lawful reasons for the parts that matter. I am alert to the possibility that the judge was in a negative frame of mind and improperly reached the decision but I am not persuaded that that is what happened here. I am satisfied that the reasons given for disbelieving the appellant's case are cogent and are sufficiently separable from the other points that they are not contaminated by any errors in them.
17. It follows therefore that I am satisfied the judge gave a proper reason for his decision and that he was right to dismiss both of these appeals.
18. It follows therefore that I dismiss the appeal before me.

Notice of Decision

These appeals are dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 14 July 2017