



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

Appeal Numbers: IA/02164/2016
IA/02165/2016
IA/02166/2016
IA/02167/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 8 May 2018**

**Decision & Reasons Promulgated
On 10 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TAHMINA [H]
MUJIBUR [R]
SAFWAN [R]
[T R]**

(NO ANONYMITY DIRECTION MADE)

Respondents

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

For the Respondent: Mr M M Hossein, Counsel

DECISION AND REASONS ON ERROR OF LAW

1. The appellant in this appeal is the Secretary of State for the Home Department

and the respondents are Mrs [H], her husband and children. However, it is more convenient to refer to the parties as they were before the First-tier Tribunal and therefore I shall refer from now on to Mrs [H] as “the appellant” and to the Secretary of State as “the respondent”. Mrs [H]’s husband and children are dependents on her appeal.

2. The appellant had leave as a Tier 4 (General) Student from October 2010 until April 2012. She made two unsuccessful applications for further leave as a Tier 2 (General) Migrant. On 1 October 2012 she applied for further leave as a Tier 4 (General) Student Migrant. This application was also refused with a right of appeal. The Home Office Presenting Officer withdrew the decision on 17 July 2013 and the appellant’s case was remitted for reconsideration. Eventually, after a pre-action protocol letter was sent, the respondent undertook a reconsideration of the appellant’s Tier 4 application. The decision was made on 4 May 2016. The notice of decision stated that the respondent had considered whether the appellant was a genuine student, as required by paragraph 245ZX(o) of the Immigration Rules. The appellant was interviewed on 18 April 2016 and asked a series of questions surrounding the TOEIC English test which she undertook in February 2012 to obtain educational sponsorship. The assessment of this interview by the interviewer was that the appellant was not credible. It was considered she had been unable to give details as to where the test was undertaken, and, she had been unable to give any information regarding the separate elements of the tests, including the writing element, the listening element or the reading element. The only information the appellant could offer regarding the speaking element to the test was that she had to speak about a topic, no further elaboration being provided.
3. The appeal was heard by Judge of the First-tier Tribunal C H Bennett at the Taylor House hearing centre on 6 October 2017. In a thorough and detailed decision, the judge came to the conclusion that, although he did not consider the appellant’s evidence relating to the English language test satisfactory, he was satisfied she took the tests and that she was a genuine student. He therefore allowed the appeal.
4. Permission to appeal was sought on the basis that the judge had failed to give adequate reasons for accepting the appellant’s evidence that she was a genuine student notwithstanding his concerns. The ground submitted that the judge’s conclusion was “extraordinary” given the appellant clearly had a history of relying on the work of others in order to achieve her aims, be those academic qualifications or obtaining leave to remain. By committing plagiarism, which the judge had found she had, the appellant demonstrated a propensity for laziness and disregard for academic standards, which did nothing to add to her credibility in respect of the TOIEC certificate. The rest of the grounds argued the judge had failed to correctly apply the burden of proof in line with the case of *SM and Qadir (ETS - Evidence - Burden of Proof)* [2016] UKUT 229 (IAC).
5. Permission to appeal was granted by the First-tier Tribunal because it was considered arguable the judge had failed to apply the correct test when

considering deception in relation to an English test.

6. The appellant did not file a rule 24 response opposing the appeal. I pause to note that this might be considered surprising given the decision under appeal in this case did not contain any allegation of deception such that the approach explained in *SM and Qadir* needed to be applied.
7. Mr Bramble acknowledged there was no material error in the judge's decision. The judge had considered all the arguments and made a finding which was not perverse. ETS had not invalidated the appellant's test result and the issue of deception had not been raised against the appellant. There was no error in his failing to apply *SM and Qadir*.
8. The appeal is dismissed and Judge Bennett's decision allowing the appeals shall stand.

NOTICE OF DECISION

The Judge of the First-tier Tribunal did not make a material error of law and his decision allowing the appeals shall stand.

An anonymity direction has not been made.

Signed

Date 8 May 2018

**Deputy Judge of the Upper Tribunal
Froom**