



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/12839/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 29 August 2018

Decision & Reasons Promulgated  
On 13 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

MR NIRMALJIT SINGH  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Biggs, Counsel, instructed by Mayfair Solicitors

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of India who was born on 19 September 1986. He is appealing against the decision of Judge of the First-tier Tribunal Farrelly, promulgated on 8 November 2017, to dismiss his appeal against the decision of the respondent to refuse his application for leave to remain in the United Kingdom on the basis of his relationship with his wife who is a British citizen.
2. The reason the appellant's application for leave to remain was refused was that the respondent was informed by Educational Testing Services (ETS) that fraud through

the use of a proxy test taker had been used in respect of an English language test that the appellant claimed to have taken at Eden College International on 28 August 2013.

3. The appeal came before Judge Farrelly at Taylor House who found that the appellant had engaged in deception and that removal from the UK would not be disproportionate under Article 8 ECHR.
4. At paragraph 21 the judge stated:

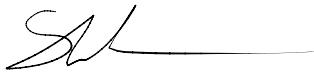
“I did not find [the appellant] to be a credible witness. When pressed he was incredibly vague and his explanations implausible. For instance he could not give details of the specifics of the test saying he had taken many tests in his life and he focused by blotting out past events. The fact he was able to describe the route to the test centre and the layout is of little probative value. A common technique is for the candidates to attend and then for a switch to occur to a proxy tester.”
5. In respect of the appellant’s Article 8 claim the judge accepted that he was in a genuine and subsisting relationship with his wife who is a doctor practising in the NHS. However, he found that the marriage was entered into when the appellant’s immigration status was precarious and that the appellant’s wife, who could speak Punjabi, would be able to move with him to India should she wish to do so.
6. A wide range of grounds of appeal were advanced by the appellant. However, it is not necessary for me to address these as Mr Bramble, on behalf of the Secretary of State, conceded that the judge made an error of law and joined Mr Biggs in arguing that the appeal should be remitted to the First-tier Tribunal to be heard afresh.
7. Mr Bramble accepted the argument of Mr Biggs that the judge failed to give adequate reasons to support his finding at paragraph 21 that the applicant “was incredibly vague and his explanations implausible.” The example given by the judge of an “implausible explanation” is the appellant’s claim that the reason he could not give details of the specifics of the test he took was that he had taken many tests in his life and focused by blotting out past events. The view of Mr Bramble was that this may or may not be true but it is not implausible and therefore the basis for the judge’s dismissal of the appeal cannot withstand scrutiny. Mr Bramble also conceded that the judge’s assessment of Article 8 was inadequate because it lacked reasons and appropriate analysis.
8. Both parties submitted that the appeal should be remitted to the First-tier Tribunal given that the factual circumstances would need to be considered afresh. Accordingly, in light of the position taken by Mr Bramble, I find that the decision of the First-tier Tribunal cannot stand and that the appeal should be remitted to the First-tier Tribunal.

### **Notice of Decision**

- a) The decision of the First-tier Tribunal contained a material error of law and is set aside.

- b) The appeal is remitted to the First-tier Tribunal to be heard afresh before a judge other than Judge Farrelly.
- c) No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 11 September 2018