



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

Appeal Number: IA/23065/2014

THE IMMIGRATION ACTS

**Determined without a hearing at Field
House
On 5 November 2014**

**Decision and Reasons
Promulgated
On 5 November 2014**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

DIANE MARY WALLACE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Breytenbachs Immigration Consultants Limited

DECISION AND REASONS

1. The appellant is a citizen of South Africa who appeals a decision of the respondent on 8 May 2014 refusing to vary her leave to remain in the United Kingdom and to remove her by way of directions.
2. The application was refused with reference to paragraph 192 of HC 395. The appellant had claimed, wrongly, that she came from an “English speaking country” as defined in the Rules and so had not produced evidence of her competence in the English language.
3. By the time the appeal came to be heard the appellant proved her competence by an appropriate Pearson English Language Test Certificate but the First-tier Tribunal Judge decided that it was not something that she could consider.
4. The Grounds of appeal challenged this decision and permission to appeal was given by First-tier Tribunal Judge Kimnell who said:

“The only issue is the admissibility of post-decision evidence under s.85(4) and 85(A)(iii) of the Nationality, Immigration and Asylum Act 2002. The Judge proceeded as if this is a points based case, which it is not.”

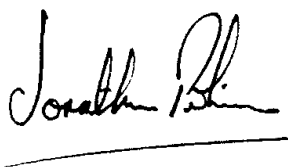
5. The Secretary of State produced a response under Rule 24 on 14 October 2014. It is written by Ms Lee Ong of the Specialist Appeals team and says at paragraphs 2 and 3:-

“2. The respondent does not oppose the appellant’s application for permission to appeal as the application for permission to appeal appears to have merit. The Judge was not constrained by the legislation to consider evidence appertaining to the date of decision. This was not a PBS case and therefore the judge should have considered the evidence relating to the appellant’s ability in English. Had she done so, it is clear that she would have gone on to allow the appeal.

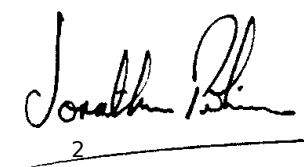
3. It is therefore considered that having made this concession, the appeal will fall to be allowed, and that as such there are no reasons to have a further appeal hearing in this matter, which should be resolved administratively.”

6. I have before me a letter from the appellant’s representatives saying “we would like to withdraw the Appellant’s appeal from the tribunal” but the rules do not permit an appeal to be withdrawn from the Tribunal and so I refuse the application. I could permit the appellant to withdraw her case but it seems to me that the better course is to allow the appeal.
7. If, as I strongly suspect is the case, the Secretary of State intends to give effect to Miss Ong’s reply then there is no disadvantage in the appeal being allowed. If, improbably, for some extraordinary reason there was a contrary intention then allowing the appeal should correct that.
8. The First-tier Tribunal erred in law. I set aside its decision and substitute a decision allowing the appeal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 5 November 2014



2