



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/32294/2013

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent
On 25th June 2014

Determination Promulgated
On 3rd July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

MRS MASEERA REHMAN KHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Ehsan

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan born on the 16th December 1975.
2. On the 13th January 2011 the Appellant was granted limited leave to remain in the United Kingdom until the 15th October 2012 as a Tier 4 Dependant Partner. On the 5th October 2012 she applied for leave to remain as the spouse of a person present

and settled in the United Kingdom. Her application was refused by the Respondent on the 13th July because she had been unable to provide an original English language test certificate in speaking and listening from an English Language test provider approved by the Secretary of State. The refusal was under Rule 284(ix) (a). An appeal against that refusal was dismissed by Judge of the First-tier Tribunal O R Williams on the 24th March 2014.

3. The Appellant relied upon a qualification from EMD (Qualifications) Limited. It is recorded that the Appellant's representative conceded at the appeal hearing that this organisation did not appear on the Respondent's approved list of providers. Therefore, the First-tier Judge concluded that the Appellant had failed to demonstrate that she met the requirements of Paragraph 284(ix) (a).
4. The Appellant's representative did not rely on Article 8 of the ECHR but, nevertheless, the First-tier Judge considered the appeal under Article 8 in accordance with the well-known five step approach advocated by the House of Lords in **Razgar**.
5. Permission to appeal was granted by Designated Judge Macdonald who stated as follows –

“The grounds of application are not particularly easy to follow but it may be that the Appellant is suggesting (See Paragraphs 12 and 13) that the Respondent's own policy accepted qualifications from OFQUAL which the Appellant had produced. Permission to appeal is granted on that basis”.

6. That is the background against which the matter came before me in the Upper Tribunal for an error of law hearing on the 25th June 2014. The Appellant was present. Representation was as mentioned above.
7. Mr Ehsan relied upon the Appellant's grounds submitted in support of the application for permission to appeal. The grounds submit that although EMD (Qualifications) Limited did not feature on the Respondent's approved list of English language testers, the Appellant has achieved an “OFQUAL” qualification. This stands for the Office of Qualifications and Examination Regulations. The grounds also submit that since the First-tier Tribunal hearing on the 18th March 2014 the Appellant has successfully taken a further English examination with Trinity College London, which is on the Respondent's list of approved providers. As I pointed out at the hearing, that is post decision evidence which I cannot take into account, although there is no reason why the Appellant should not rely upon it in the context of a fresh application.
8. Mr Ehsan stated that the Appellant's stance was the same as previously. It was accepted that EMD was not on the Respondent's approved list but an OFQUAL qualification had been obtained. He submitted that the Respondent's approved list is non-exhaustive. Reference was made to Border Agency Guidance for providers for English language courses and tests, a copy of which is at Appendix B in a supplementary bundle submitted by the Appellant's representatives on the 18th March 2014. This document is entitled “Information for Providers of English Language Courses and Tests”. This document, consisting of three pages, states that –

“If a migrant wants to enter or remain in the UK under the Points Based System, or as the partner of a settled person or British citizen, they may need to pass an English language test before they apply to us. This English language test must be provided by one of our approved test providers (my emphasis).

In early 2011 we revised our list of approved test providers. The new list replaces all previous lists. You can download the new list from the right side of this page”.

ESOL Test Providers for Settlement and Citizenship Applicants.

If a migrant wants to apply for settlement or naturalisation as a British citizen, they will need to show that they have a good knowledge of the English language and of life in the UK.

They can do this by obtaining:

An (ESOL) at or above entry level 3, that includes speaking and listening, and has been regulated by the Office of Qualifications and Examinations Regulation (OFQUAL) or, ESOL Scottish Level 4, 5 or 6 or specified English language test”.

9. Mr Ehsan relied upon the first of these three alternatives and submitted that an OFQUAL qualification is sufficient for the purposes of the Respondent’s guidance even if it has not been issued by an organisation on the approved list.
10. I think it should be noted that the three alternatives referred to apply to applicants for settlement or naturalisation as a British citizen. In this appeal, the Appellant applied for a variation of leave to remain.
11. For the Respondent, Mr McVeety submitted that the Immigration Rules are abundantly clear and refer to an approved provider. Paragraph 284 is as follows –

284. The requirements for an extension of stay as the spouse [or civil partner] of a person present and settled in the United Kingdom are that:

... The applicant provides an English language test certificate in speaking and listening from an English language test provider approved by the Secretary of State for these purposes which clearly shows the applicant’s name and the qualification obtained (which must meet or exceed level A1 of the common European framework of reference). A list of approved providers appears at Appendix O to the Immigration Rules.
12. Mr McVeety acknowledged that the guidance document relied on by the Appellant’s representative may be a little misleading but the guidance does not override or supersede the requirements of the Immigration Rules.
13. I am satisfied that the relevant Immigration Rule is perfectly clear. The applicant is required to provide an original English language test certificate from a test provider approved by the Secretary of State for these purposes. The certificate provider by the Appellant was not from an approved provider. Therefore the requirements of the Rules are not satisfied.

14. The making of the decision by the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the determination and dismiss the appeal.

No anonymity direction is made.

Signed

Date 1st July 2014

Deputy Upper Tribunal Judge Coates