



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/33957/2013

**THE IMMIGRATION ACTS**

Heard at Newport  
On 20<sup>th</sup> August 2014

Determination Promulgated  
On 22<sup>nd</sup> August 2014

Before

UPPER TRIBUNAL JUDGE POOLE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DANIELA DE LA MERCED CASTILLO TOMAS  
(NO ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr Erwin Richards, Home Office Presenting Officer  
For the Respondent: Ms S Dipnarain, Duncan Lewis & Co (Solicitors)

**DETERMINATION AND REASONS**

1. In this matter I will refer to the parties by the style in which they appeared before the First-Tier Tribunal.

2. The appellant is a female citizen of Cuba born 6 July 1994. She appealed against the decision by the respondent dated 26 June 2013 refusing to grant her leave to remain in the United Kingdom as a partner. Reference was made to Appendix FM and Section 276ADE of the Immigration Rules. The appellant also appealed under ECHR.
3. The appellant's appeal came before Judge of the First-Tier Tribunal Trevaskis sitting at Newport on 3 April 2014. Both parties were represented (the appellant by Ms Dipnarain).
4. In a decision promulgated on 10 April 2014, Judge Trevaskis allowed the appeal "under the Immigration Rules".
5. The respondent sought leave to appeal that decision alleging one ground of failure to give adequate reasons for findings on material matters. This is amplified by four specific paragraphs. Error is alleged in the judge finding that the sponsor demonstrated his overall income exceeding the level set out in Appendix FM, but failed to give adequate reasons for that finding. Reference is also made to an allegation that the judge failed to properly take into account the date of an English Language Certificate.
6. The application was considered by another judge of the First-Tier Tribunal and permission to appeal was granted for the following reasons:

"1. The respondent seeks permission to appeal, in time, against a decision of First-Tier Tribunal Judge Trevaskis who in a determination promulgated on 10 April 2014 allowed the appellant's appeal against the respondent's decision to refuse to grant leave to remain as a partner.

2. The application has been made timeously - taking into account Saturdays, Sundays and public holidays.

3. The basis of the application was that the appellant had not provided specified evidence from sources listed paragraph E-LTRP.3.2 of specified gross annual income of at least £18,600. It was stated that the judge of the First-Tier Tribunal had failed to demonstrate on what basis the appellant met the maintenance requirements - and whether specified evidence from the sources listed in paragraph E-LTRP.3.2 had been provided. It was pointed out that such evidential requirements were mandatory. A further grounds was that the appellant's English language test had been carried out in June 2013 with the application having been submitted on 27 April 2013.

4. The Immigration Judge in a brief determination does not provide reasons for reaching any of the conclusions in regard to the income requirement and the English language requirement. An arguable error of law is accordingly established.

5. Permission to appeal is allowed”.
7. Thus the matter came before me sitting in the Upper Tribunal.
8. Ms Dipnarain confirmed that the appellant was not present.
9. Mr Richards relied upon the grounds seeking leave. There was a failure by the judge to identify evidence and the English language requirements had not been satisfied or met at the time of the application or at the time of the respondent’s decision.
10. Ms Dipnarian indicated that the judge had before him a complete bundle including a table of calculations showing the amount available to the sponsor. The judge had taken this into account in finding that the income met the threshold. There was sufficient evidence before him and the judge had come to the correct conclusion. The judge had properly accepted the language test certificate that was available at the hearing and there was no material error of law.
11. Following submissions I announced that I considered there was a material error of law and that the decision of the First-Tier Tribunal Judge could not stand and must be set aside. No findings of fact had been made so none could be preserved. The appellant was not present and in all the circumstances I considered it appropriate (bearing in mind the Senior President’s direction) to remit the appeal back to the First-Tier Tribunal to a judge other than Judge Trevaskis.
12. My reasons for reaching this conclusion are as follows.
13. The judge granting leave refers to the determination of Judge Trevaskis as being “a brief determination”. In the circumstances that is rather an understatement. The determination runs to approximately 2½ pages. Approximately 1½ pages set out the application, the respondent’s case and an adjudication regarding an application for an adjournment. The representatives submissions are then set out in three short paragraphs each before three equally short paragraphs under the heading “My Findings”.
14. Paragraphs 20 and 21 refer to the main issues before the judge. It is appropriate that I set them out as follows.

“20. The present application for leave to remain was made on 27 April 2014. It falls to be considered under the new Rules. I am satisfied that the appellant has satisfied the English language requirement because she has passed with distinction the ESOL test which she sat in June 2013.

21. I find that the sponsor has demonstrated total income from his four sources of income amounting to £19,732.13, and therefore exceeding the required amount under the Rules”.

15. As can be seen from above, paragraph 20 deals with the English language requirements. The date and relevance of the certificate were at issue, but these have not been dealt with in paragraph 20.
16. Paragraph 21 deals with the sponsor's income, but there is no explanation whatsoever as to how the judge reached his conclusions as to why he accepted that figure and what the evidence was.
17. It is often said that a determination should be written to the losing party as an explanation as to why the decision was made. There is no explanation whatsoever on the keys issues that were before the judge. This amounts to an error of law which must be material to the outcome. The decision of Judge Trevaskis can therefore not stand and must be set aside, and be remade by the First-Tier Tribunal for the reasons set out above.

Signed

Date 22/8/14

Upper Tribunal Judge Poole