



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/41840/2014

THE IMMIGRATION ACTS

Heard at: Field House
On: 7th September 2015

Decision & Reasons Promulgated
On: 28th September 2015

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Ayesha Iqbal

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Richardson, Counsel instructed by Farooq Bajwa & Co
For the Respondent: Ms Savage, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan date of birth 18th January 1992. She appeals with permission against the decision of the First-tier Tribunal (Judge O'Rourke) to dismiss her appeal against a decision to refuse to grant her further leave to remain as a spouse and to remove her from the UK pursuant to s47 of the Immigration Asylum and Nationality Act 2006.
2. There were two matters in issue before the First-tier Tribunal. The first was whether the Appellant could meet the maintenance requirements relating to partners. The notice of decision, dated 29th October 2014, lists the specified evidence required under Appendix FM to establish that she and her partner had an income of at least £18,600. Since some of these documents had not been

submitted with the application, it had been refused. The second matter related to her English language ability, the Respondent finding that she had failed to supply the certificate issued by the University of London in respect of her LLB, such evidence being an acceptable alternative to an English language test certificate.

3. On appeal the Appellant had supplied further documentary evidence: this is recorded at paragraph 5 of the determination. At paragraph 3 the following concession by the Presenting Officer is recorded: “the Respondent, in turn, accepted that documentation meeting the financial and language requirement had now been supplied”. The appeal was nevertheless dismissed on the ground that the relevant documentary evidence had not been submitted at the date of application. Reference is made to s85A of the Nationality, Immigration and Asylum Act 2002 (as amended) and Alam and Ors v SSHD [2012] EWCA Civ 960.

Error of Law

4. As Ms Savage for the Secretary of State realistically accepts the First-tier Tribunal erred in its approach to the new evidence that was submitted. Section 85A precludes the admission of further evidence post-application but it only applies to cases determined under the “Points Based System”. It does not apply to applications concerning leave to remain as a partner. The post-application evidence was, in this case, admissible as it pertained to matters in existence at the date of decision: s85(4).
5. The refusal to consider the new material was an error of law and the decision must therefore be set aside.

The Re-Making

6. There was a clear concession of fact made before the First-tier Tribunal. The Home Office Presenting Officer on the day had accepted that the evidence established, on a balance of probabilities, that the Appellant met all of the requirements of the Rules. That is apparent from paragraph 3 of the determination.
7. Ms Savage did not dispute that the concession had been made, but sought to withdraw it. She agreed that the Appellant had produced acceptable evidence relating to her ability to speak English, but the documents produced in respect of finances were not, she submitted, capable of meeting the requirements of Appendices FM or FM-SE. That was because the material produced related to the financial year 2012-2013 when it should have related to the last financial year prior to the application being lodged. The application was made on the 27th October 2014 so the relevant period was 2012-2013.

8. Mr Richardson protested that the Rule 24 response had not said anything about withdrawing the concession. The Appellant had not therefore been prepared to argue the point again; he did not have the original documents with him and indeed the Appellant herself was not at the hearing. His instructions were that original documentary evidence had been produced at the hearing which the Judge, and presumably the HOPO, had had regard to when the decision was made.
9. I find that the concession recorded at paragraph 3 is one of fact, and that the Secretary of State should only be permitted to withdraw it if there is good reason to do so. It can be presumed that the HOPO who appeared before the First-tier Tribunal was competent to the extent of being able to identify what documents were needed to establish that the couple had the requisite income. It is unfortunate that the original documents seen by that HOPO were not available for Ms Savage to inspect but as Mr Richardson notes, the Appellant can hardly be blamed for that since she was given no notice at all that the Secretary of State 's position was going to change. She prepared her appeal to the Upper Tribunal on the basis of the determination and the Rule 24 response. For those reasons I do not consider there to be a good reason to permit the Secretary of State to withdraw her concession of fact made before the First-tier Tribunal.
10. It follows that the appeal must be allowed, since the only issue raised in this appeal has been resolved in the Appellant's favour.

Decision

11. The determination of the First-tier Tribunal contains an error of law and it is set aside.
12. I re-make the decision in the appeal by allowing it.

Upper Tribunal Judge Bruce
7th September 2015