



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

Appeal number: IA/50470/2014

THE IMMIGRATION ACTS

**Heard at Field House
On August 24, 2015**

**Decision & Reasons Promulgated
On August 26, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS NISACHON TURNEY
(NO ANONYMITY DIRECTION)**

Respondent

Representation:

Appellant

Ms Brocklesby-Weller (Home Office Presenting Officer)

Respondent

Mr Wilford, Counsel, instructed by Premier Solicitors

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The appellant is a national of Thailand. The background to this case is that the appellant came to the United Kingdom with valid entry clearance as a spouse. On October 1, 2014 she applied to vary her leave but this application was refused by the respondent on November 26, 2014 and at

the same time a decision was taken to remove her by way of directions under section 47 of the immigration, Asylum and Nationality Act 2006. The respondent refused the application because the appellant had not met the required English language level.

3. The appellant appealed this refusal under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The matter came before Judge of the First-tier Tribunal Bell on March 27, 2015 and in a decision promulgated on April 11, 2015 the Tribunal allowed her appeal.
5. The respondent applied for permission to appeal on April 20, 2015 submitting the Tribunal had erred. Permission to appeal was granted by Judge of the First-tier Tribunal Osborne on June 10, 2015.
6. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

PRELIMINARY ISSUE

7. I raised with Ms Brocklesby-Weller whether the requirements of the English test had to have been met when the application was submitted and she confirmed that the relevant date would be the date of hearing.
8. I referred Ms Brocklesby-Weller to paragraph [14] of the Tribunal decision of Akhtar (CEFR; UKBA Guidance and IELTS) [2013] UKUT 306 (IAC) in which the Tribunal made clear that an appellant making this type of application merely had to demonstrate the required pass rate on “speaking” and listening”.
9. Ms Brocklesby-Weller accepted the appellant’s second test score result showed she obtained level 4 in listening and level 5.5 in speaking. She accepted in those circumstances that the appellant met the Rules and there was no merit in this appeal. In the circumstances I found there was no error in law and dismissed the appeal.

COSTS ISSUE

10. Mr Wilford applied for costs arguing the respondent had acted unreasonably in appealing as demonstrated by the respondent’s acceptance today that there was no merit to the appeal.
11. Ms Brocklesby-Weller submitted the grounds of appeal were based on the Tribunal’s decision. The Tribunal had allowed the appeal on the basis the overall band score met the required level and this approach was incorrect. There was also an issue over the actual level being applied by the Tribunal because at paragraph [19] of its decision the Tribunal referred to level 3.5 whereas the case of Akhtar made clear that IELTS scores had to reach level 4.

12. Permission to appeal had been granted on the basis the Tribunal had approached the appeal incorrectly. Whilst I have found no merit to this appeal I am satisfied that based on the Tribunal's approach the respondent did not act unreasonably in appealing. Permission had been granted as Judge of the First-tier Tribunal Osborne felt the point was arguable.
13. I therefore make no costs order against the respondent. I do however uphold the original fee award made in this appeal.

DECISION

14. There was no material error. I uphold the original decision and dismiss the appeal

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

I uphold the original fee award.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis