



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/50771/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 23 December 2014**

**Promulgated**

**Decisions and Reasons  
On: 7 January 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAILER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Appellant**

**and**

**MR JOHN MWANGI KIBAARA  
(NO ANONYMITY DIRECTION MADE)**

**Respondent**

**Representation**

**For the Appellant: Ms L Kenny, Senior Home Office Presenting Officer  
For the Respondent: In person**

**DECISION AND REASONS**

1. For the sake of convenience I shall refer to the appellant as “the secretary of state” and the respondent as “the claimant.”
2. The claimant is a citizen of Kenya, born on 10 October 1972. He appealed against the decision of the secretary of state dated 13 November 2013 refusing his application for leave to remain in the UK as a Tier 4 (General) Student Migrant. His application was refused on the basis that he had failed to provide access to the Pearson website so that the UKBA could view his English test scores. Accordingly, the secretary of state was not satisfied that he had provided the specified documents required pursuant to Appendix A and Appendix O of the Immigration Rules.

3. His appeal to the First-tier Tribunal was heard by First-tier Tribunal Judge Wellesley-Cole on 10 July 2014. In her determination dated 22 July 2014 she noted that the rules are mandatory. She allowed the appeal “in relation to the CAS, that he has 30 points for that, and also 10 points for maintenance.” However, with regard to the remaining issue relating to the score report card she found that the rules are mandatory. She explained to the claimant “that it might be difficult to allow the appeal on all the grounds.” She went on to allow it “to the limited extent” in relation to the CAS. She did not however allow it “in relation to the score report card [8].”
4. On 14 November 2014, First-tier Tribunal Judge Simpson granted the Secretary of State permission to appeal. It was clear that the claimant had not, and indeed could not provide the UKBA with the Pearson website access to verify his English test scores, as required under the rules. In those circumstances, the appeal had to be dismissed. The grounds thus identified an arguable material error of law.
5. At the hearing on the 23 December 2014 Ms Kenny submitted that although the claimant provided an English test certificate from an approved English language test provider, he had not provided the Pearson website access to the UKBA, which he was required to do online. The Judge erroneously found that the appeal was to be allowed to a limited extent, but dismissed it in relation to the score report card. Either the requirements of the rules are met in their totality, or the appeal should have been dismissed. There was no basis to allow the appeal “to a limited extent.”
6. Mr Kibaara attended the hearing. I confirmed that he was able to understand the reasons for the refusal. He referred to his application form. Mr Kibaara accepted that he had not sent the Pearson scores to the Home Office online.
7. At page 11 of the form it is stated that he must provide all the documents ‘listed below’. Those included evidence of identity, passport or travel documents, as well as biometric residence permit documents. Those are mandatory. He submitted that there is no reference that the remaining documents required, including evidence of online scores of the English language test awarded by Pearson, had to be submitted.
8. However, the mandatory documents relating to evidence of identity had to be required in order to render the application itself valid. If they are not provided, the application will be rejected as invalid. It does not follow that the remaining documents did not have to be produced.
9. I have had regard to Appendix O to the Immigration Rules, in force at the date of the application and the decision. At page 8, it is stipulated that a printout of the online score report is required. The scores relating to the

Pearson test of academic English must also be sent to the Home Office online. It is stated that Pearson does not issue paper certificates.

10. Appendix O sets out a list of English language tests that have been approved by the Home Office for English language requirements for limited leave to remain under the Immigration Rules. It is provided that the specified evidence submitted by the applicant must show that he achieved the required scores in all the relevant components during a single sitting of that examination unless exempted.
11. It is not contended that the claimant is exempted. The documents required with the application are set out, including the Pearson test of academic English. There is provision for a printout of the online score report to be sent. Furthermore, scores may also be sent to the Home Office online. Pearson does not issue paper certificates and accordingly must be sent online.
12. The claimant was expressly informed in the application form he submitted that he had to provide all the documents 'listed below'. He had not provided the Pearson website access to the UKBA to verify his English test scores.
13. As the First-tier Tribunal Judge found, the appellant had not met the relevant requirements under the rules. She stated however that she was allowing the appeal to the limited extent in relation to the CAS that he had 30 points for that. However, that was simply a finding in respect of the CAS. The appellant however failed to meet a relevant requirement under the Immigration Rules. In the circumstances, the Judge should have dismissed his appeal under the Immigration Rules.
14. I accordingly find that there has been a material error of law. I accordingly set aside the decision of the First-tier Tribunal and re-make it, dismissing the claimant's appeal under the Immigration Rules.

### **Notice of Decision**

The claimant's appeal is dismissed under the immigration rules

No anonymity direction is made.

Signed

Date: 6/1/2015

Deputy upper Tribunal Judge Mailer