



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

Appeal Number: OA/00697/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 26 February 2015**

**Decision & Reasons Promulgated
On 4 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

ENTRY CLEARANCE OFFICER, ACCRA, GHANA

Appellant

and

**MARIE THERESE YAIKOUA MALINGA EPSE BAHOKEN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr C Avery, Home Office Presenting Officer

For the Respondent: Ms R Yko, Solicitor, of Joseph Mynah & Co Solicitors

DECISION AND REASONS

1. This is an entry clearance appeal, by the wife of a British citizen, that was allowed by First-tier Tribunal Judge Griffith, in a decision promulgated on 5 November 2014. The appellant before the Upper Tribunal is therefore the Entry Clearance Officer, but for clarity and convenience I will refer to the parties as they were at the First-tier.
2. The refusal of entry clearance, dated 4 April 2013, had concerned three main grounds, but there is only one aspect of the judge's decision that has

been challenged, and that concerns whether the appellant should have been exempted from the English language requirement.

3. The grounds seeking permission to appeal to the Upper Tribunal argued that the medical certificate from Cameroon, about the appellant's dyslexia, was not a sufficient evidential basis to conclude that the appellant had a disability which prevented her from meeting the language requirement. Permission to appeal was granted by First-tier Tribunal Judge Shimmin, on 12 January 2015, on the basis that it was arguable that the judge had erred in law in relation to the interpretation of the relevant Immigration Rule.

4. The relevant Rule is as follows:

E-ECP.4.2. The applicant is exempt from the English language requirement if at the date of application -

- (a) the applicant is aged 65 or over;
- (b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirements; or
- (c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement prior to entry to the UK.

5. At paragraph 23 of her determination the judge noted that there was no definition of physical or mental condition in the Immigration Rules. She then referred to a medical certificate certifying that the appellant suffered from dyslexia and would have difficulty with language studies. She then concluded, having noted that there was no challenge to the authenticity of the certificate, as follows:

"I am prepared to accept on the face of this certificate that the condition the appellant suffers from is sufficient to bring her within the exemption in E-ECP.4.2."

6. Mr Avery, for the Entry Clearance Officer, submitted that the judge had erred in not applying the Immigration Rule properly, and that she could not have come to the conclusion that she did on the basis of the evidence before her. The certificate had not been specific as to the severity of the appellant's dyslexia and was insufficient evidence to establish that the appellant was prevented from meeting the requirement.

7. Ms Yko, for the appellant, produced a copy of the November 2014 Immigration Directorate Instructions (IDIs) on the English language speaking and listening requirement for family members under part 8, and for Appendix FM. This had not been brought to the attention of the judge. She referred to paragraph 6, which concerned the disability exemption, and concluded that every application for an exemption had to be considered on its merits on a case by case basis, and that satisfactory medical evidence had to be submitted. Ms Yko submitted that the matter

only had to be shown on balance of probabilities, and that the conclusion was open to the judge on the evidence before her.

Error of Law

8. I have decided that it has not been shown that the judge erred in law in a manner material to the outcome.
9. It appears to me that this is properly characterised as a challenge to a factual matter that was within the judge's discretion as to what weight to attach to a piece of evidence. The challenge was partly framed in terms of her interpretation of the Rule, but this aspect of the challenge does not appear to me to have been made out. The grounds themselves suggest that the Rule could have been satisfied if the medical certificate had contained more detailed information. This gives an indication of the fact that the complaint is in reality one about the way that the evidence was assessed, rather than the way that the Rule was interpreted.
10. The other way in which the challenge was put, in oral submissions rather than in the grounds, was that the judge could not have properly come to the conclusion that she did on the evidence that was before her. That challenge appears to me to be closer to the mark, but nevertheless I have decided that this cannot be properly characterised as a situation in which the judge's finding was not open to her on the evidence. It may well be that different judges could have taken different views of the medical certificate and whether it was sufficient to establish that the appellant was exempt from the English language requirement, but that is not the test to be considered when assessing whether there has been a legal error. The judge considered a number of different issues, and a range of oral and documentary evidence. Her overall impression of the case as a whole may have played some part in her decision on this particular issue. Although the certificate is the central piece of evidence it is clear from her comments that she has not considered the issue in isolation, and took some account of the oral and other evidence relevant to the exemption issue.
11. There is nothing in the guidance in the IDIs that alters the position. If every exemption application has to be decided on its merits on a case by case basis, then it cannot be said that there is some specific requirement in the Immigration Rules, or in the IDIs, that renders the judge's approach to the issue legally erroneous. A complaint that the judge should not have accepted the adequacy of the certificate would perhaps have force if challenges were not limited to legal points, but in essence this appears to me to be a matter that fell within the factual arena. The challenge has not done enough to establish that this was not a finding open to the judge on the evidence before her, or that it amounted to a legal error through an incorrect interpretation of the Immigration Rule.

12. No anonymity direction was made and neither side suggested that there was any need for such a direction. The judge made a partial fee award, and neither side raised any issue about this.

Notice of Decision

The appeal to the Upper Tribunal by the Entry Clearance Officer is dismissed. No material error of law having been established in it, the judge's decision allowing the appeal under the Immigration Rules remains undisturbed.

Signed

Date **4 March 2015**

Deputy Upper Tribunal Judge Gibb