



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/07533/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 19 May 2017

Promulgated

On 31 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

**MRS MANDEEP KAUR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rashid Ahmed of Counsel

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of India who was born on 17 April 1986. She appeals against the respondent's decision of 17 September 2015 refusing to grant her leave to remain in the United Kingdom on the basis of her family and private life.
2. The respondent considered that Appendix FM R-LTRP was not met because the appellant had not provided an original English language certificate from an approved provider. The appellant had submitted a City and Guilds

language certificate at level B2 which the respondent considered was no longer acceptable.

3. The respondent also considered the appellant's private and family life under Appendix FM, paragraph 276ADE and Article 8 outside the Immigration Rules. The respondent considered that the appellant did not meet the requirements of the Rules and that there were no exceptional circumstances warranting grant of leave to remain outside the Rules.
4. The appellant appealed against that decision to the First-tier Tribunal. In a decision promulgated on 20 October 2016 First-tier Tribunal Judge Mace dismissed the appellant's appeal.
5. With regard to the English language requirement (on what appears to have been an acceptance by the appellant's representative at the hearing that the appellant could not meet the requirements of the Rules in relation to her application as a partner because she was unable to meet the English language requirement) the judge considered a number of issues based on the appellant's submissions that the respondent's decision had produced unfairness. The appellant had sought to undertake another English test but had been unable to do so because the Home Office were in possession of her original passport. The judge did not accept that there had been any unfairness and found that the application was fairly considered by the respondent. The judge then considered the claim under the partner route considering EX.1(b) of the Immigration Rules and also considered Article 8 outside of the Immigration Rules. The judge found that the appellant did not meet the requirements of the Immigration Rules and that there would not be a disproportionate interference with the appellant's Article 8 rights if she were to be removed.
6. The appellant applied for permission to appeal against the First-tier Tribunal's decision and on 17 March 2017 First-tier Tribunal Judge Osborne granted the appellant permission to appeal.

The hearing before the Upper Tribunal

7. The grounds of appeal set out two bases of appeal, the first is that the First-tier Tribunal erred in law in its consideration of the English language requirements. It is submitted that the appellant met the requirements of the Rules because the certificate that she had submitted fell within the transitional arrangements which stated that applicants who took the language tests on or before 5 April 2015 would be able to use their certificates until 5 November 2015. City and Guilds was one of the approved test providers at the time that the appellant took the test. She took her test before 5 April 2015 and therefore it was still valid at the date of the respondent's decision because she was entitled to use it until 5 November 2015. The grounds of appeal with regard to Article 8 submit that the judge set too high a threshold for determining when Article 8 was engaged.
8. In the Rule 24 response the Secretary of State submitted that the First-tier Tribunal had directed itself appropriately. It was however accepted that

the appellant's certificate was on the transitional list of approved providers at the time of the application and decision but it is submitted that the error is not material. The Secretary of State argues that the appellant was applying for leave as a spouse of a settled person and therefore the certificate needed to be at the level of A1.

9. At the commencement of the hearing Mr Clarke addressed me, having discussed the matter with Mr Ahmed. The respondent accepted that the appellant was entitled to rely, under the transitional arrangements, on the certificate that had been provided. Mr Clarke also conceded that the certificate at B2 was of a higher level than the A1 level required. It was conceded that the appellant met the requirements of the Rules as this was the only issue upon which the respondent had refused leave to remain.
10. On the basis of the respondent's concession and my own consideration of the transitional arrangements I find that the First-tier Tribunal materially erred in law in making the finding that the appellant did not meet the requirements of the Rules.
11. I find that there is a material error of law in the First-tier Tribunal decision. I set that decision aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA').
12. I remake the decision allowing the appellant's appeal against the respondent's decision.

Notice of decision

The appellant's appeal against the respondent's decision is allowed.

No anonymity direction is made.

Signed P M Ramshaw

Date 28 May 2017

Deputy Upper Tribunal Judge Ramshaw