



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

Appeal Number: IA/02609/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 November 2017**

**Decision & Reasons  
Promulgated  
On 13 December 2017**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**MR CHINTAN PRAMODCHANDRA SHAH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Sharma, Counsel instructed by Hiren Patel Solicitors  
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision dated 2 August 2017 of First-tier Tribunal Judge Powell which refused the appellant's application for leave to remain as a Tier 4 Student.

Background

2. The background to this matter is as follows. The appellant was born in India on 24 September 1991. He came to the UK on 10 December 2009 with leave as a Tier 4 Student. His leave was valid until 6 May 2011.
3. On 24 April 2011 he was granted further leave to remain as a Tier 4 Student until 12 July 2014.
4. On 7 July 2011 the college at which he was studying was taken off the register and the appellant's leave to remain curtailed to expire on 27 May 2012.
5. On 10 August 2012 the appellant was granted further leave to remain as a Tier 4 Student until 29 September 2014.
6. On 5 October 2012 the college at which the appellant was studying was again taken off the register and the appellant's leave to remain curtailed to expire on 9 February 2013.
7. On 22 March 2013 the appellant's application for further leave to remain was refused. The appellant appealed and was successful in that appeal. This resulted in a grant on 18 September 2013 for further leave to remain as a Tier 4 Student until 6 July 2015.
8. On 30 October 2013, the appellant's college was again taken off the register and his leave to remain curtailed to expire on 16 February 2014.
9. On 29 January 2014 the appellant applied for further leave to remain as a Tier 4 (General) Student. At that time, he applied with a CAS from Williams College. His application was refused on 29 March 2015.
10. He appealed again but before the hearing took place the respondent withdrew her decision on 18 January 2016.
11. The respondent reconsidered the appellant's application of 29 January 2014. She refused it again in a decision dated 2 December 2016. It is against that decision that the appellant lodged the appeal that led to the proceedings here.

#### The Respondent's Decision of 2 December 2016

12. The application came to be refused for a second time on 2 December 2016 for the following reasons. As above, the appellant made an application on 29 January 2014 and included a CAS issued by Williams College.
13. On 3 July 2014 the respondent revoked the Tier 4 sponsor licence for Williams College. On 5 January 2015 the respondent gave the appellant 60 days to obtain a new sponsor. He did not do so and the application was refused on 30 March 2015.

14. The appellant appealed the refusal on 29 March 2015. The respondent then withdrew the decision, informing the appellant of this on 18 January 2016.
15. On 20 September 2016 the respondent gave the appellant another period of 60 days' leave to submit documentary evidence confirming that he had been accepted onto a course of study with a different college. This gave the appellant until 19 November 2016 to obtain a new CAS.
16. By this time, in order to obtain a valid CAS, the appellant also had to undertake a fresh English language test because the test provider who had issued him with the relevant test certificate had been removed from the Home Office list of approved English language test providers.
17. The appellant was unable to find an approved English language test provider who was prepared to register him for an English language test. This was because the documents provided to him by the respondent with the 60 day letter were not acceptable to the colleges approved to administer the English language test. They required his original passport. The Home Office had provided the appellant only with a certified copy of that passport. As he could not take the language test he could not find a sponsor to issue him with a CAS. Thus, the respondent again refused the application on 2 December 2016.

#### Decision of the First-tier Tribunal

18. The appellant appealed and the appeal came before First-tier Tribunal Judge Powell on the papers on 2 August 2017. The appellant accepts that the judge was correct at [32] in finding that, whatever the reason for being unable to provide a valid CAS by 19 November 2016 in line with the 60 day letter, he did not do so and that this meant that the Immigration Rules could not be met.
19. The appellant objects, however, to the judge's finding on the situation that he faced in being unable to register for a test with an approved English language test provider.
20. The relevant sections of the decision of First-tier Tribunal Judge Powell are as follows:
  - "34. The appellant points to a gap in Home Office policy because he could not satisfy the relevant English language test providers as to his identity because they were unwilling to accept the evidence he had to confirm his identity, namely the certified copy of his passport, still held by the Home Office.
  35. The appellant may be correct in his assertion that there is a gap in the guidance that governs the arrangements for the taking of English language tests but I have not heard sufficient argument to begin to say that the difficulties faced by the appellant were so great and therefore unfair that the respondent's decision under the Immigration Rules is demonstrably unfair and therefore not in accordance with the general

rules of procedural fairness. Nor has it been shown that the respondent ought to have exercised discretion under the Rules differently. In this, I remind myself that the 60 day period allowed by the respondent is in line with established case law and represents an allowance that accords with the rules of procedural fairness.

36. As far as the decision under challenge, I am satisfied that the respondent's decision was in accordance with the law.
37. This is a significant finding because the fact that the requirements of the Immigration Rules are not met is a relevant factor in my assessment of the proportionality of the respondent's decision under Article 8."

21. The judge went on at [38] to [47] to find that the difficulties the appellant faced in registering with an approved English language test provider were not sufficient to show that the decision was disproportionate.

### The Grounds

22. Put simply, therefore, the appellant's challenge is that the First-tier Tribunal Judge erred in law in not finding the decision of the respondent not in accordance with the law or, alternatively, that the decision was disproportionate where he faced an impossible task in registering with an approved English language test provider.
23. An important aspect of this matter is, of course, the fact that the application for leave to remain was made on 29 January 2014, before 6 April 2015 when the changes to the Appellate regime made by the Immigration Act 2014 came into force. The appellant is therefore entitled to the not in accordance with the law jurisdiction provided for under the old Section 86(3) of the Nationality, Immigration and Asylum Act 2002 which reads:

“(3) The Tribunal must allow the appeal insofar as it thinks that -

- (a) the decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including Immigration Rules).”

### Discussion and Reasons

24. There is no dispute here that the respondent's guidance on how to register with an approved English language test provider requires the provider to accept only an original passport (or other specified document). The appellant includes this guidance at [56] - [57] of his bundle of materials. The respondent does not dispute that the appellant was unable to satisfy the guidance where the respondent returned only a certified copy of the appellant's passport. Mr Kotas submitted for the respondent that even where that was so, the First-tier Tribunal Judge acted lawfully in concluding at [35] that there was still insufficient evidence or argument before him on

the point. It was also suggested that the appellant's action lay against the English language test providers rather than against the respondent.

25. The First-tier Tribunal Judge had before him the documents at [25]-[31] comprising the 60 day decision and related documents. At [31], a letter to the appellant dated 20 September 2016 informed him that he needed to take a new English language test. The letter states:

"You can use the endorsed copy of your passport enclosed with this letter to prove your identity when taking the test."

26. As above, the respondent does not dispute here that this advice is not consistent with her published guidance on the need for an original document, set out at [56] - [57] of the appellant's bundle.

27. The First-tier Tribunal also had before it a number of documents obtained by the appellant indicating that approved English language test providers would not accept a certified copy of his passport. At [42] there is an email from the British Council which states:

"Because of the nature of IELTS, which is a high stakes test of English proficiency, other means of identification such as a driving licence, certified passport copy or student card will not be accepted."

28. At [45] he provided an email from International House, London dated 3 October 2016 which stated:

"According to IELTS Regulations we can only accept Original Passport, European ID or BRC (residence permit)."

29. At [49] the appellant provided an email dated 27 September 2016 from the IELTS team at Kings Education stating:

"No IELTS test centre can accept a Home Office letter as ID for the test.

Please do not apply for an IELTS test because you will not be accepted."

30. At [51] the appellant provided an email dated 26 September 2016 from IELTS Venues which states:

"On the day of the IELTS test you must present an original and current passport. We cannot accept photocopies, even if they are certified copies from a Solicitor or letters from the Home Office. You will not be able to sit your exam without a valid passport."

31. At [54] the appellant provided an email dated 26 September 2016 from Trinity College London which stated:

"Unfortunately we are unable to accept the document you have sent in a (sic) your identification."

The email goes on to state that only original documents could be accepted.

32. In his witness statement at [23] of his bundle, the appellant stated as follows, as written:

“(c) During my conversation with the test providers over the phone they were referring me to guidance for Secure English Language Testing Identification requirements of the Home Office (page 56 - 57) and unfortunately that guidance is very clear that I need to have original ID to book exam.

There is clear gap between the Home Office policy; their instruction to approve test provider and the caseworker who gave me 60 day letter and there is no solution as to how to book exam by me. The simple answer would have been to release my original passport but Home Office unfortunately do not release my passport and I know it is practise not to release passport. I still do not know a way out of this situation.

I believe there is need to amend the Home Office guidance and guidance for Secure English Language Testing Identification requirements of the Home Office should clearly provide that approved English test provider should accept the documents the one issued to me dated 20 September 2016 be accepted by them, but until policy is changed I do not see any way out.”

33. The appellant maintains that the First-tier Tribunal Judge erred at [35]. The error was in finding that there not “sufficient argument” on the difficulties faced by the appellant such as to show unfairness that could lead to conclusion that the respondent’s decision was not in accordance with the law.

34. On the basis of the materials set out above, I find that the First-tier Tribunal did err in finding that the appellant had not made out his case that the respondent’s decision was not in accordance with the law. The appellant’s witness statement and materials made his case crystal clear. He provided the documentation he had been given by the respondent showing he had only been given a certified copy of his passport. He provided the respondent’s guidance that showed the copy of the passport would not be acceptable. He provided evidence from four organisations who stated specifically that the certified copy of his passport provided to him by the respondent was not sufficient for him to be able to register to take an English language test. It was not rational or reasonable to conclude that there was insufficient material to make out the appellant’s case.

35. The error of law is material as without it the outcome of the appeal could have been different. I therefore set aside the decision of the First-tier Tribunal.

36. I can remake the appeal quite simply by indicating that in my judgment the materials the appellant has provided are sufficient to show that he was unable, despite significant efforts, to register for an English language test and so obtain a new CAS. That situation arose from the clear conflict

between the respondent's SELT guidance and the certified copy of the passport she provided with the 60 day letter.

37. In those circumstances, it is my view that the decision of 2 December 2016 was not in accordance with the law and the appeal is allowed to that extent.
38. It is not my view that the Article 8 claim can be set aside and allowed on the same basis where interference with studies is not shown to engage Article 8 sufficiently; Patel & Ors v SSHD [2013] UKSC 72 at [57] applied.

### **Notice of Decision**

39. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside on the limited basis set out above.
40. The appeal is remade as not in accordance with the law.

Signed



Date: 29 November 2017

Upper Tribunal Judge Pitt