



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

Appeal Number: HU/06091/2018

THE IMMIGRATION ACTS

Heard at Liverpool

Decision & Reasons

On 8 November 2018

Promulgated

On 7 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**SANAZ FARAHBOD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Holmes, Counsel instructed by WTB Solicitors LLP

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of First-tier Tribunal Judge Alis, which was promulgated on 14 May 2018, dismissing her appeal against the decision of the respondent to refuse to grant her further leave to remain as a spouse under the 5-year route. The Judge found that the appellant did not qualify for further leave to remain under the Rules, as she had not provided specified evidence to show that she had passed an English Language test in speaking and listening at a minimum of level A2 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State. Although a letter from the

approved provider showed that the appellant had taken the test and passed it, the result was provisional (subject to confirmation), and the Judge considered that it was proportionate for the appellant to leave the United Kingdom to lodge a fresh application if she felt unable to lodge one here.

The Reasons of the Grant for Permission to Appeal

2. Permission to appeal was refused by the First-tier Tribunal, but was granted on a new application to the Upper Tribunal. On 30 August 2018 Upper Tribunal Judge King granted permission to appeal for the following reasons:

The only issue was the requirement that the appellant pass a language test to level A2. By the time of the hearing, she had done so and the Judge was so notified.

Technically, she did not meet the Immigration Rules as she had not had that qualification when the application was made. The actual certificate was forwarded to the Judge on 10 May 2018 when the determination was completed, but in any event there was evidence at the time of the hearing that she had passed indeed with level 3.

It is arguable whether in those circumstances it was disproportionate for the appellant to return to Iran to make a fresh application.

Discussion

3. The hearing before Judge Alis took place at Manchester on 8 May 2018. The Judge was shown a report dated 5 May 2018 from the approved provider stating that the appellant had passed the test, but that *“the result on this exam report form is provisional and is confirmed by the issue of a certificate (or otherwise)”*.
4. Mr Holmes produced documentary evidence that at 14:15 on 10 May 2018 his instructing solicitors had faxed to the Tribunal in Manchester, for the attention of Judge Alis, a covering letter together with a copy of an email sent to the appellant on 9 May 2018 from the approved provider (Trinity College). They confirmed that she had passed her graded examination in spoken English and they gave her a Unique Electronic Reference number to pass on to the Home Office so that they could carry out an online check to verify her result.
5. The actual certificate confirming that the appellant had achieved grade 3 in spoken English, and thus had achieved CEFR level A2 with merit, was forwarded to the Tribunal on 10 May 2018.
6. Although the Judge signed off his decision on 10 May 2018, the decision was not promulgated until 14 May 2018.
7. The error of law challenge is primarily a reasons challenge. Mr Holmes presented a number of arguments, and he referred me to a number of authorities, in support of the proposition that the Judge misdirected

himself in law in holding that it was proportionate to expect the appellant to return to Iran to make a fresh application.

8. However, a key consideration which I consider has been overlooked is that the Judge did not hold that returning to Iran was the only option available to the appellant in her particular circumstances. He indicated that it was open to the appellant to make a fresh application from within the UK, once she had obtained her language certificate. In such circumstances, the threatened interference with family and private life, even on a temporary basis, would not arise, and Article 8(1) would not be engaged.
9. However, it is unnecessary for me to rule on the reasons challenge, as Mr Tan graciously conceded (a) that the permission application contains a procedural unfairness ground and (b) that he had difficulties in opposing such a ground.
10. The certificate probably did not reach Judge Alis before he signed off his decision. But he was not *functus officio* until his decision was promulgated, and on the balance of probabilities the certificate reached the Tribunal in Manchester before 14 May 2018. Through no fault of the Judge, there was procedural unfairness in that the Judge disposed of the appeal on the mistaken factual basis that the appellant had not provided the specified evidence to show that she qualified for further leave to remain under Appendix FM, when in fact she had done. In the circumstances, the decision is vitiated by a material error of law, such that it must be set aside and remade.

The Remaking of the Decision

11. I have been shown a copy of the certificate issued to the appellant by Trinity College on 9 May 2018. The certificate confirms that the appellant obtained CEFR level A2 with merit in her speaking and listening test. This corresponds to Grade 3 in the ESOL International Scale, which was the grade assigned to the appellant in the exam report of 5 May 2018 which was placed before the First-tier Tribunal.
12. As the only issue in the appeal is the appellant's compliance with the English Language requirement, the appellant has shown that the decision to refuse her human rights claim is unlawful under section 6 of the Human Rights Act 1998.

Notice of Decision

The decision of the First-tier Tribunal is vitiated by a material error of law on account of procedural unfairness which arose through no fault of the First-tier Tribunal Judge. Accordingly the decision is set aside, and the following decision is substituted: this appeal is allowed on the ground that the decision appealed against is unlawful under section 6 of the Human Rights Act 1998.

I make no anonymity direction.

Signed

Date 14 November 2018

Deputy Upper Tribunal Judge Monson

TO THE RESPONDENT
FEE AWARD

As I have allowed this appeal on remaking, I have given consideration as to whether to make a fee award in respect of any fee which has been paid or is payable, and I have decided to make no fee award, as the appellant needed to bring forward further evidence by way of appeal in order to succeed in her appeal.

Signed

Date 14 November 2018

Deputy Upper Tribunal Judge Monson