



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/05117/2013

**THE IMMIGRATION ACTS**

Heard at Bradford  
on 20<sup>th</sup> August 2013

Determination Promulgated  
On 20<sup>th</sup> August 2013

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DALJIT KAUR

Respondent

**Representation:**

For the Appellant: Mrs Pettersen – Senior Home Office Presenting Officer.  
For the Respondent: Mr Martin of BEAP Community Partnership

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Davies promulgated on 15<sup>th</sup> April 2013 following the merits of the appeal being determined on the papers at Manchester. The issue was whether the Secretary of State's refusal to vary Mrs Kaur's leave, so as to allow her to remain in the United Kingdom as the spouse of a person present and settled, based upon her inability to meet the requirements of paragraph 284 (ix) (a) of the Immigration Rules, is sustainable under either those Rules or Article 8 ECHR.

2. At paragraph 5 of the determination Judge Davies found he was satisfied from the evidence submitted, by reason of an International English Language Testing Certificate (IELTS) dated 7<sup>th</sup> July 2009, that she was able to meet the English-language requirements of the Rules.
3. This finding is challenged by the Secretary of State on the ground the Judge gave inadequate reasons to support his finding that the IELTS certificate dated 7<sup>th</sup> July 2009 met the requirements of the Rules.
4. I find this a sustainable challenge as the relevant guidance quite clearly states that a test certificate provided by this language provider has a validity period of two years. A certificate dated 2009 is outside period and therefore should not have been relied upon by the Judge as proof that Mrs Kaur was able to satisfy the requirements of paragraph 284 (ix)(a). I find that in doing so, and in failing to give adequate reasons in paragraph 5 of the determination for why this qualification was considered suitable, the Judge has made a material error of law such that the determination must be set aside.

## Discussion

5. It has been possible to proceed to re-make the decision.
6. Prior to the hearing Mr Martin submitted correspondence in which he accepted that IELTS certificates may have a two-year validity period as a result of which he forwarded a copy of the results of a further English-language test taken through Trinity College London awarding Mrs Kaur an entry-level certificate in ESOL International (speaking and listening) (Entry 1) said to be at level A1 of the CEFR.
7. In Akhtar (CEFR; UKBA Guidance and IELTS) [2013] UKUT 00306 (IAC) it was held that:
  - (i) Where, under Immigration Rules, it was required that, as an English language requirement, an individual must achieve a certain level by reference to the Common European Framework Reference (CEFR) (i.e. A1, B1, B2 etc) and the individual relies on an International English Language Test System (IELTS) test result awarded by Cambridge ESOL, that individual must necessarily rely on the relevant UKBA's Guidance to succeed because the Rules do not state an equivalence between the IELTS test results and the levels of the CEFR;
  - (ii) The UKBA's Guidance does not attribute any mark less than level B1 to any IELTS score and so, in practical terms, equivalence to at least B1 must be established even where the level to be achieved is A1;

- (iii) In order to achieve a particular CEFR level, it is not enough simply to look at the individual's overall score: the Guidance requires that at least each of the individual modules in "speaking" and "listening" has been assessed at the level required.
8. Mr Martin produce the original certificate but also a copy of an examination report from Trinity College London stating that for the graded examination in spoken English, conversation, Mrs Kaur received "A" which is stated to be a pass. There was however no examination report in respect of the listening element of the test and in light of the fact that the guidance requires each of the individual modules to be assessed at the required level, Mrs Kaur is unable to show that the new qualification meets the requirements of the Rules on the evidence. I accept that the certificate indicates a score of A1 and that this may be no more than a failure to produce the second examination report. Mrs Pettersen also submitted, in addition, that the requirement was for the certificate to be produced with the application and that as this is an after acquired certificate it would have to be the subject of fresh application at which point the additional evidence/examination report could be provided.
9. There is, however, an additional element to this appeal that was not considered by the Judge as he probably did not consider it necessary, namely the grounds of appeal relating to Article 8 ECHR. It is accepted by both advocates that Mrs Kaur has married and that she and her husband have a child. They clearly have family and private life in the United Kingdom. The child is a British national. It is accepted by both advocates that the issue in relation to the Article 8 question is one of proportionality.
10. No removal directions have been set although it was not disputed that Article 8 can be considered at this stage especially in light of the stated intention to remove Mrs Kaur to India in the refusal to vary leave. There was no challenge the Tribunal's jurisdiction to deal with this issue and having weighed the Secretary of State's right to have valid and workable immigration policies based upon the economic well-being of the United Kingdom, Mrs Kaur's immigration history, and the findings with regard to the English-language test on the one part, and the existence of a stable family unit including a young child, the fact the child is a British national, the potential loss of the child's primary-carer, the inability of the Secretary of State to show that it was necessary in all the circumstances for the family to be separated, and having considered the guidance provided by the cases of Chikwamba (FC) v SSHD 2008 UKHL 40 and Secretary of State for the Home Department v Hayat; Secretary of State for the Home Department v Treebhowan (Mauritius) [2012] EWCA Civ 1054, I find the Secretary of State has in the circumstances of this case failed to discharge the burden of proof upon her to the required standard to show that Mrs Kaur's removal is proportionate. The hearing was conducted in English and it is clear that Mrs Kaur understood what was being said. On balance it is clear that she

has the required standard of language ability even though evidentially she was not able to prove it in accordance with the requirements of the Rules/Guidance.

**Decision**

- 11. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remake the decision as follows. This appeal is allowed an Article 8 ECHR grounds only.**

Anonymity.

- 12. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order as there was no application for the same and no grounds for such a order have been established.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 20<sup>th</sup> August 2013