



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

Appeal Number: OA/07603/2012

THE IMMIGRATION ACTS

Field House

9 December 2013

Determination

Promulgated

16 December 2013

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**Before
UPPER TRIBUNAL JUDGE JORDAN**

Between

Kahina Sadek

Appellant

and

The Secretary Of State For The Home Department

Respondent

DETERMINATION AND REASONS

1. On 14 May 2013, in granting permission to appeal, I gave the following directions:
 1. The Entry Clearance Officer refused the application because he considered the language test provider, Active Training English Institute in Algeria was not on the United Kingdom authorities accredited list of providers. That allegation was otherwise unsupported. It was apparently wrong: the ESOL certificate was from Language Solutions in Algeria which was accredited. The Entry Clearance Officer did not otherwise challenge the certificate.
 2. The First-tier Tribunal Judge dismissed the appeal because the copy of the certificate he had did not contain a copy of its second page which was not the reason for refusing the application by the ECO. It was arguably procedurally unfair for the Judge to rely on a reason on which the appellant did not have notice.
 3. It is probable that this occurred because, in breach of directions, the Entry Clearance Officer did not supply a copy of it, see [8] of the determination. This has, arguably, resulted in a procedural unfairness of which (at the moment) only the Entry Clearance Officer knows the answer.

DIRECTIONS

1. The Entry Clearance Officer must respond to the appellant's grounds of appeal by 18 June 2013 and must assert (a) whether it is the respondent's case that the certificate submitted to it was defective in the way found by the Judge and (b) whether the respondent maintains the reason it advanced for refusing entry clearance, namely, the certificate was not from an accredited source and (c) any other reason why the appellant's appeal should not be allowed.
2. If the respondent fails to respond in accordance with (1) above, I intend to allow the appeal without a hearing in accordance with Rule 34. It is important that those not entitled to obtain entry clearance are not permitted to do so and I therefore highlight the need to comply with my directions or seek further time.
2. The directions were precise and have not been complied with. I therefore allow the appeal in accordance with the clear indication I gave in the directions that the appeal would be allowed if the Entry Clearance Officer had not complied with them.
3. The letter of Mr Parkinson of 11 June 2013 did not amount to compliance. In it, he said on behalf of the Entry Clearance Officer that the refusal decision had been revoked by the ECM and a visa had been issued. However, the decision of the ECM is not an appealable immigration decision. It is, nevertheless, a clear concession on the part of the respondent that the original decision on the Entry Clearance Officer was not in accordance with the law or the Immigration Rules.
4. All this would be academic if a visa had been granted as Mr Parkinson's letter suggests. Unfortunately, according to the letter of Mr Graham Smith dated 2 September 2013, when the sponsor travelled to Algeria to accompany the appellant on her journey to the United Kingdom, the Entry Clearance Officer appeared to know nothing of the contents of Mr Parkinson's letter and refused to grant the visa. No response to the allegations contained in the letter has been filed by the respondent who has had ample opportunity to dispute them. I assume them to be true.
5. I disagree with Mr Parkinson that there is no longer an appeal before the Tribunal because the Entry Clearance Officer's recent action in refusing the appellant the visa belies the suggestion that the Entry Clearance Officer's decision has been withdrawn.
6. I am, therefore, satisfied that the appeal should be allowed. I see no reason why a hearing would advance the just disposal of the appeal since the respondent has failed to put forward as he was required to do any other reason why the appellant's appeal should not be allowed.

DECISION

The Judge made an error on a point of law and I re-make the decision in the following terms:

The appeal is allowed under the Immigration Rules.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
9 December 2013