



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: IA/08642/2014**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at : Field House  
on 14<sup>th</sup> May 2015**

**Decision and  
Promulgated  
On 14<sup>th</sup> July 2015**

**Reasons**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY**

**Between**

**MISS NELDON SABANGAN  
(NO ANONYMITY DIRECTION MADE)**

**Appellant**

**And**

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

**Respondent**

**Representation:**

For the Appellant: Mr Sheraz Khalid of Lords Solicitors

For the Respondent: Ms Julie Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. Although the respondent is appealing in these proceedings I will continue to refer to the parties as they were in the First-tier Tribunal.
2. The appellant is a national of the Philippines, born on the 11 December 1975. She applied for leave to remain as a Tier 4

(General Student) on 21 January 2014. The respondent refused her application on 3 February 2014 and decided to make Removal Directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

3. Her application was refused on the basis she had not met the requirements of paragraph 245ZX(c) of the immigration rules and Appendix A paragraph 118(b)(i) 4. She was required to show she was competent in the English language at the minimum of CEFR level B2. She had submitted an IELTS-B2 certificate which stated that she had scored 5 in reading. The respondent concluded this did not meet the minimum standards required.
4. Her appeal was heard by First-tier Judge Adio on 25 September 2014 who, in a determination promulgated on 1 October 2014, allowed the appeal. The judge concluded a score of 5 met the requirements.
5. The respondent sought permission to appeal on the basis the immigration judge was incorrect in this conclusion. It was contended the relevant equivalent to level B2 of CEFR under the IELTS system was 5.5. Permission was granted on this basis.

### **Consideration**

6. The decision of Akhtar (CEFR;UKBA guidance and IELTS)[2013] UKUT 00306 (IAC) decided that where the immigration rules required an applicant to achieve a certain level of English by reference to the CEFR testing system and they relied upon IELTS results then they must rely on the relevant UKBA Guidance. This was because the rules do not state equivalents. The necessary score must be achieved in the individual modules. Paragraph 10 of the decision quotes from the UKBA guidance schedule that B2 = 5.5.
7. Akhtar concerned an application for entry clearance as a wife. Such applicants were required to demonstrate they met the lower level A of the CEFR. The appellant relied upon test results under the IELTS system. In 'speaking' she scored 3.5 and achieved higher scores in other areas. In the UKBA schedule there was no equivalent to level A. The lowest category was B1, which required an equivalent score of 4. Consequently, the Upper Tribunal held the score of 3.5 did not meet the requirements. Paragraph 16 of the decision states:

... The rules require level A1. A person who takes the test marked on a different scale needs to rely on the guidance to show that the mark obtained is equivalent to (at least) level A1. The guidance has to be read as a whole. It says that IELTS 4 is equivalent to level B1. But, apparently deliberately, it does not attribute any mark less than level B1 to any IELTS score....
8. In the present appellant's case B-2 does have an equivalent in the UKBA schedule, namely 5.5. This would clearly indicate that the appellant does not meet B-2 because one of her scores is 5.

9. Judge Adio was referred to documentation indicating a score of 5 in IELTS system met the requirements of B-2. There is a letter from the appellant's College, dated 31 March 2014 stating that a score of between 5 to 6.5 is equivalent to B2, with 5 being borderline between B1 and B2. There is an extract from Wikipedia containing equivalences: it states that a score of 5 is borderline between B1 and B-2. There is a document from IELTS marked P 17 in the appellant's appeal bundle which has a table indicating 5 in IELTS is the equivalent of B2. There is a similar statement from the British Council at p.18. Judge Adio relied on these documents and also referred to a document from CEFR as supporting the view a score of 5 was sufficient.

### **Conclusions**

10. Judge Adio erred in relying on these comparators from third parties rather than focusing upon the UKBA guidance as he was required under Akhtar. I have not been provided with a copy of the Guidance but based upon the extract at paragraph 10 of Akhtar it is clear that B-2 equals 5.5 and not 5.
11. In the papers I have I cannot find any original document from CEFR. In Akhtar, as here, materials obtained from the Internet were submitted. At paragraph 14 the Upper Tribunal referred to the doubtful provenance of some of the documentation. Typically, internet material adopts logos giving the appearance it is emanating from an official body when this is not in fact the case.
12. The conclusion at paragraph 5 of the Judge Adio's decision that B-2 can be lower than 5.5 is not sound. The judge referred to paragraph 14 of Akhtar as authority for this. Paragraph 14 does not say this. In Akhtar the appellant was trying to show that her IELTS scores reached level A1. The Upper Tribunal said that the Guide did not attribute any mark less than level B1. Whilst that appellant scored 5.5 in respect of listening, which would convert to the higher B2, she had only scored 3.5 in speaking. As she had not achieved the relevant score in all areas her appeal failed.

### **Decision**

13. There is a material error of law in Judge Adio's conclusion that a score of 5 in the IELTS met the minimum English requirements of B-2 under the CEFR. This is because a score of 5.5 was required. I remake the decision dismissing the appeal of Ms Sabangan.

Signed

Deputy Upper Tribunal Judge Farrelly

**Fee award**

The First-tier Judge made a full free award. This no longer applies because the appeal has not been allowed

Signed

Date

Deputy Upper Tribunal Judge Farrelly