



IAC-AH-SAR-V1

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

Appeal Number: OA/06584/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19<sup>th</sup> November 2015**

**Decision & Reasons Promulgated  
On 21<sup>st</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

**Between**

**M M U  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: No-one

For the Respondent: Mr Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Bangladesh born on 25<sup>th</sup> March 1991. He appealed against the decision of the Respondent dated 22<sup>nd</sup> April 2014 refusing to grant him entry clearance to the United Kingdom as the partner of [RB] under Appendix FM of the Immigration Rules. The application was considered under paragraph EC-P.1.1 of Appendix FM of the United Kingdom Immigration Rules. His appeal was heard by Judge of the First-tier Tribunal David C Clapham on 29<sup>th</sup> April 2015. The appeal was dismissed under the Immigration Rules in a determination promulgated on 18<sup>th</sup> May 2015.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Parkes on 14<sup>th</sup> August 2015. The Appellant's application to enter the UK was refused over concerns raised about his English language test. The appeal was dismissed, because although the Appellant had re-sat the test and passed it, the facts had to be determined at the date of the decision and the evidence showed that at that time the requirements of the Rules had not been met. The English language test certificate which was submitted with the application was not acceptable to the Home Office and the results of the second test sat by the Appellant were not submitted with the application. The grounds state that there is no evidence to show why the original certificates were not acceptable so it is arguable that the judge erred in finding that the Appellant had not met the requirements relating to the English language test.
3. There is a Rule 24 response from the Respondent. This states that the thrust of the grounds appears to be that there was no evidence that the original test results produced by the Appellant were not reliable. This was not in dispute at the hearing. The evidence strongly suggests that the Appellant accepted that the first test results were not reliable, which is presumably why he retook the test. The response states that it seems unlikely that City & Guilds would have offered free re-sits unless they, as the issuers of the test certificates, were satisfied that the procedures of the previous college, where the first test was sat, were unsatisfactory.

### **The Hearing**

4. The Appellant did not attend this error of law hearing. Neither did a representative on his behalf.
5. The Presenting Officer submitted that he is relying on the Rule 24 response. He submitted that based on the evidence on file it is not clear whether the point raised in the grounds was raised at the hearing. He submitted that the Appellant received a letter asking him to take a new English test because of the inconsistencies in the testing relating to his original certificate, as there were problems with the previous college. The Appellant accepted that that was the case and took the test. The Presenting Officer submitted that at the First-tier hearing there was nothing to indicate that the first test taken by the Appellant was satisfactory. He submitted that the grounds of application for permission to appeal state that the judge did not consider the evidence that was before the Entry Clearance Officer properly and the original certificates may have been wrongly rejected. They state that the judge failed to give adequate reasons for the original certificates not being accepted, however the Presenting Officer submitted that if it was not in dispute that these original test certificates were not acceptable, the judge made no error of law. He submitted that the case was dealt with solely on the basis of the new test sat by the Appellant.

6. I was asked to find that there is no material error of law in the First-tier Judge's determination.

### **Decision**

7. At paragraph 3 of the First-tier Tribunal Judge's decision, the judge states that the certificates which the Appellant provided in respect of his English language proficiency were not satisfactory to the Respondent and did not reliably demonstrate that the Appellant had achieved the necessary qualification. This was accepted and it was on this basis that the First-tier hearing went ahead. At paragraph 4 the First-tier Judge refers to the Presenting Officer explaining that the documents that had been provided with the application were not acceptable. The Appellant re-sat the test and received new certificates and the Respondent stated that had these certificates been provided with the application it would have been considered to be satisfactory.
8. Nothing was raised to suggest that the original test certificates might be acceptable. From the evidence it is clear that there were problems with the previous college where the English testing was carried out and that is why the original certificates were not satisfactory and it is also clear that the Appellant accepted the situation and retook the test and that City & Guilds, who issued the new and the original test certificates, asked the Appellant to re-sit the test at no cost. City & Guilds were satisfied that the procedures at the previous college were not satisfactory.
9. The matter raised in the grounds of application was not in dispute when the case was dealt with by the First-tier Judge. There is therefore no error of law in the First-tier Judge's decision. The claim was dealt with based on the new test sat by the appellant.

### **Notice of Decision**

10. There is no error of law in the decision of the First-tier Tribunal and the decision must stand.
11. This appeal is dismissed.
12. Anonymity has been directed.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray