



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2024-004243

UI-2024-004244

UI-2024-004245

UI-2024-004246

First-tier Tribunal Nos: HU/58153/2023

HU/58154/2023

HU/58156/2023

HU/58157/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 15<sup>th</sup> of January 2025

**Before**

**UPPER TRIBUNAL JUDGE KHAN**  
**DEPUTY UPPER TRIBUNAL JUDGE BARTLETT**

**Between**

**HAFEEZA HAFEEZA**  
**BUSHRA AZIZ UR REHMAN**  
**MARYAM AZIZ UR REHMAN**  
**ZULEKHA AZIZ UR REHMAN**  
**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr H Broachwalla, Counsel, instructed by MCR Solicitors

For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

**Heard at Field House on 20 December 2024**

**DECISION AND REASONS**

Introduction

1. This oral decision was delivered following submissions heard in the appeal. The hearing was held remotely on the video cloud platform. We are satisfied that the parties were able to see and hear each other and fully participate in the proceedings.
2. The appellants, who are all nationals of Pakistan are the wife (lead appellant) and children respectively of the British sponsor of this appeal, Mr Aziz Ur Rehman Fazal Ur Rehman. The appellants' appeal is against the decision of First-tier Judge Cartin ('the judge') dismissing their appeals against the respondent's refusal to grant them entry clearance as the spouse and children of a British citizen who is present and settled in the United Kingdom.
3. On 1 March 2023, the appellants all applied for entry clearance which was refused on 15 June 2023. In respect of the lead appellant, her application was refused on the basis that she did not meet the English language requirement of Appendix FM of the Immigration Rules ('the rules'). The applications of all the children were refused because their mother's application was refused. The First-tier Tribunal dismissed the appellants' appeal on 20 June 2024. It is this decision that is the subject of the appeal hearing.
4. The lead appellant maintains that the requirements for entry clearance as a partner are met because she is exempt from the English language requirement owing to a disability (Dyslexia) and that being so, she meets the remaining rules and ought to have been granted entry clearance.

### The Relevant Immigration Rules

5. This case turns on whether the judge correctly applied the English language requirements of the rules. Given the significance of the provisions to the appeal, we set these out below:

#### **English Language requirement under Appendix FM:**

*E-ECP.4.1. The applicant must provide specified evidence that they -*

(a) .....

(b) *have passed an English language test in speaking and listening at a minimum level of A1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State*

#### **Rules relating to Exemptions under the Immigration Rules:**

*Paragraph E-ECP.4.2 states that:*

*The applicant is exempt from the English language requirement if at the date of the application -*

- (a) *the applicant is aged 65 or over;*
- (b) ***the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement; or***
- (c) *there are exceptional circumstances which prevent the applicant from being able to meet the requirement prior to entry to the UK.*

### Decision of the First-tier Tribunal

6. The sponsor gave evidence before the First-tier Tribunal. It was agreed [10] that the principal issue to be resolved was whether the lead appellant was exempt from the English language test requirement on account of her disability. If she met the rules, then her appeal should be allowed as should the children in line with that outcome. In the alternative, the judge was invited to consider their Article 8 rights outside the rules.
7. The judge's findings regarding the applicability of the disability exemption are to be found at [15] to [30] of the decision. In brief, the reasons given by the judge included that: (i) the lead appellant's condition was said to have been in existence since birth, but the government provided disability certificate was only issued in December 2022. In this context, it appeared that she did not possess such a certificate in the past to assist her in daily life in demonstrating her difficulties, if indeed they had been present all her life; (ii) the signatories to the disability certificate did not specify what was their expertise. Although one was described as a surgeon, another a specialist doctor, and others as deputy director and director-general respectively, there was no indication of their expertise. One would have expected a neurologist, psychiatrist, or psychologist to carry out the diagnosis. There was no evidence that suitably qualified people had done so; (iii) there was no detail of what assessment was carried out and how; and, (iv) in any event the medical opinion was that the lead appellant's condition was likely to improve sufficiently for the appellant to be able to study and take the test in the next two years.
8. Overall, the judge concluded at [30] that he was not satisfied the appellant could not complete the English language test on account of a disability.
9. In relation to the proportionality of the refusal decision, the judge found at [32] that the family life of all the family members would not be significantly interfered with by the respondent's decision. Family life would continue as it had done for the past twenty years because of the choices made by the family, namely, that it was considered entirely reasonable by the sponsor and the lead appellant to live apart and that the sponsor would not be present to parent the children. The balance therefore fell in favour of immigration control.

### Grounds of Appeal

10. The appellants' appealed the decision of the First-tier Tribunal. In brief the grounds assert that: (i) the judge failed to appreciate the disability certificate was signed by four professionals who are required to give accurate information. The fact that it was also signed by the Director General of the 'Sindh Persons with Disabilities Protection Authority' added more weight to the document; (ii) the judge failed to properly assess the document completed by Dr Bilal who confirmed the dyslexia and its impact on the lead appellant; (iii) the judge failed to appreciate there is no requirement under the rules or the guidance as what medical evidence is required to show that an individual is unable to take the English language test due to a disability; and, (iv) the judge's proportionality assessment was flawed.
11. On 7 October 2024, Upper Tribunal Judge Hirst granted the appellants permission to appeal the First-tier Tribunal decision on the basis that it was arguable that the judge had imposed an elevated standard in evidential requirements in relation to the English language requirement.

As Judge Hirst noted:

"Neither paragraph E-ECP 4.2 of the Immigration Rules nor the Secretary of State's guidance prescribe any particular evidential requirements for the exemption from the English language requirement and it is arguable that the judge, in rejecting the evidence of the first appellant's disability, misapplied the Immigration Rules by imposing too restrictive a threshold and/or failed to consider the evidence as a whole."

Judge Hirst also went on to say it is arguable that the judge's decision under the Immigration Rules infected his approach to consideration of proportionality.

12. The respondent did not file a Rule 24 response. However, Ms Lecointe stated that she relied on the reasons set out in the respondent's refusal letter and on the judge's decision.
13. It is against this background that the appeal comes before us.

### Discussion and Analysis

14. We have not set out the submissions of Ms Lecointe and Mr Broachwalla. However, our analysis of the case reflects the submissions they made. We wish to express our gratitude for their submissions.
15. The respondent relies on the refusal letter dated 15 June 2023. This stated:

"You do not meet the eligibility English language requirement of paragraphs E-ECP.4.1. to 4.2. You are not exempt from the English language requirement under paragraph E-ECP.4.2. You state that you are unable to meet the English language requirements due to an intellectual disability. As evidence of this, you have provided a disability assessment certificate which states that you have

attention deficit hyperactivity disorder and an 'intellectual disability', which you state is Dyslexia. Firstly, I note that this document states you have held these difficulties since birth, however you have only obtained this certificate for the purposes of this application. Whilst I acknowledge this document states you have been diagnosed with these difficulties, I note that you have provided *no evidence to demonstrate how having ADHD prevents you from learning to speak and listen to the required A1 standard.*

"Furthermore, you have completed and submitted a waiver for the English Language Requirement. I note that this states you suffer with Dyslexia. Open-Source checks show that Dyslexia is a Neurodevelopmental disorder, which differs to an Intellectual disorder as it does not interfere with IQ."

16. It is evident from the rule itself at E-ECP.4.1. to 4.2 and from the available guidance that there is actually no prescribed evidential requirement as to how the exemption is to be demonstrated. The actual rule provides that an applicant is exempt from the English language requirement if at the date of application: (b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement. It would therefore appear that the Secretary of State has not deemed it necessary to prescribe the evidential requirements to satisfy the exemption.
17. Notwithstanding the absence of any prescription, the judge states at [16] in respect of the government issued disability certificate:

"The signatories do not specify what their expertise are. One is described as a surgeon, another as a specialist senior doctor but the specialism is not given, and the others are the deputy director and the director general with no indication of their expertise. In order to accurately diagnose cognitive impairments, one would expect a neurologist, psychiatrist, or psychologist to carry out such a diagnosis. I have no evidence that suitably qualified people have therefore done so. The mere fact that the certificate purports to come from a government department does not do away with the need for a diagnosis to be reached by a suitably qualified person."
18. Referring back to the actual rule, the Secretary of State has not deemed it necessary to stipulate the medical expertise or speciality that is required for a diagnosis. The judge however took it upon himself to stipulate that he would expect it to be a neurologist, a psychiatrist or psychologist to carry out the diagnosis and the fact that it was not one of those persons meant that he had no evidence that suitably qualified persons had done so. He makes this finding notwithstanding that the disability certificate was signed by a surgeon and a specialist doctor, amongst other senior persons from the Sindh Persons with Disabilities Protection Authority.
19. What is surprising about the judge's reasoning is that the qualifications and experience of the persons signing the disability certificate was not one of the reasons given by the respondent for refusing the appellant's entry clearance in the first place which is entirely consistent with the absence of any prescribed evidential requirements in the relevant immigration rule. It is therefore clear that

the judge in rejecting the evidence of the lead appellant has misapplied the rules and imposed an elevated standard in evidential requirements in relation to the English language requirement.

20. Turning to the refusal letter, it states:

“Whilst I acknowledge this document [the disability certificate] states you have been diagnosed with these difficulties, I note that you have provided no evidence to demonstrate how having ADHD prevents you from learning to speak and listen to the required A1 standard.”

21. The judge alludes to this aspect of the refusal letter at [24] when he states, ‘*It is incongruous that the next part of the form completed by Dr Bilal, which actually invites comments on how the condition affects the appellant’s daily life is instead used to add additional features of the condition which are specified to be difficulties in verbal memory and verbal processing speed. Most of the form is expressed in generalities about the condition. Whilst at section 5, she does declare the appellant to have a problem with verbal memory and verbal processing speed, the doctor does not detail how the diagnosis was made and what testing was carried out to assess this to be the case.*’

22. We were taken by Mr Broachwalla to the form dated 27 November 2022 that was completed by Dr Bilal, a GP Consultant (at page 161 of the composite bundle). The form states that it is required to be completed by a qualified doctor registered with the General Medical Council. No further specific expertise or specialism is required to complete the form even though the author of the form is expected to explain the nature of any condition/disability, how the disability impacts on daily life, and in particular how the disability prevents an individual from learning, studying of taking the English language test.

23. Specifically, in relation to how the disability impacts on daily life, the response on the form explains that characteristic features of dyslexia are difficulties in verbal memory and verbal processing speed and that dyslexia occurs across the range of intellectual abilities. Specifically, in relation to how the condition prevents an individual from learning English, the response states that dyslexia causes difficulties in verbal memory, verbal processing speed and in phonological awareness.

24. The evidence provided by the lead appellant comprised the disability certificate and the completed form, which together was submitted to support the disability exemption from taking the English language test. It is notable that the judge has not criticised the lack of any specialism or expertise on the part of Dr Bilal despite her having the important task of explaining the impact of the condition/disability on studying, learning, and taking the English language test. Instead, he is critical of her failure to detail how the diagnosis was made and what tests were made. Such criticism is made even though the form does not ask any of those questions. It would appear that, yet again subjective requirements are being imposed by the judge to create an artificial threshold which simply does not exist. It is also evident from the contents of the completed form that the respondent’s refusal letter was incorrect when it stated that the appellant had

*'provided no evidence to demonstrate how having ADHD prevents you from learning to speak and listen to the required A1 standard.'* The completed form clearly provides some evidence as opposed to no evidence, even if its sufficiency might be open to question.

25. For the reasons we have stated, we find in relation to ground one, that in rejecting the evidence of the lead appellant the judge has misapplied the rules by imposing too restrictive a threshold which are not part of the rules or guidance and/or failed to properly consider the evidence as whole. Accordingly, we find the judge's decision involved the making of a material error of law.
26. We now turn to question of whether the judge's decision under the rules infected his approach to consideration of proportionality.
27. In this regard Mr Broachwalla took us to paragraph [31(ii)] of the decision where the judge states, *'There is evidence that the first sponsor (we accept this is an error and meant appellant) cannot speak English. No evidence has been adduced either which suggests that the other appellants can do so. An ability to speak English reduces the likely interaction of the appellants into society which is contrary to the public interest.'*
28. It is not disputed that the judge references the children who at the time were minors. It is not a requirement under the rules that children must speak English and no requirement for them to take an English language test. This is yet another example of the judge seeking to impose a requirement which does not exist.
29. Under the balance sheet approach adopted by the judge, at [31] he seeks to set out the 'pros' for granting leave yet in reality he goes on to blame the family for taking certain decisions. He states, *'The family have therefore very much been used to living apart. This has been a consequence of decisions that the sponsor and the first appellant took for themselves. The family circumstances are therefore of their own making. This reduces the weight that can be given to the family life now.'*
30. When one looks at what is meant to be the 'pros' it is in fact the judge criticising the appellant and does not actually set out the 'pros' in any meaningful way.
31. For the reasons we have stated, we find the judge's proportionality assessment is flawed and has been infected by his decision on the Immigration rules. In the circumstances, we find the proportionality assessment involved the making of material errors of law.
32. We allow the appeal on all the permitted grounds. We set aside the decision of First-tier Tribunal Judge Cartin. Having heard submissions from the respective parties, we are satisfied that this case should be remitted to the First-tier Tribunal to be heard afresh. There are no preserved findings.

## **Notice of Decision**

Appeal Numbers: UI-2024-004243

UI-2024-004244

UI-2024-004245

UI-2024-004246

First-tier Tribunal Numbers: HU/58153/2023

HU/58154/2023

HU/58156/2023

HU/58157/2023

33. The decision of the First-tier Tribunal involved the making of several material errors of law and is set aside. The case is remitted to the First-tier Tribunal to be reheard afresh by a different judge with no preserved findings.

**K.A.Khan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**31 December 2025**