



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/21095/2012

THE IMMIGRATION ACTS

Determined at Manchester
On 3rd October, 2013

Determination Promulgated
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Before

Upper Tribunal Judge Chalkley

Between

AHSAN JAVED

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Ms Angela J Stull an Assistant Solicitor with Lloyds, solicitors
For the Respondent: Mr McVeety a Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan born on 20th July, 1983 and he made application to the Entry Clearance Officer Islamabad for entry clearance with a view to settlement as the spouse of a person present and settled in the UK.

2. In a Notice of Refusal of entry clearance dated 2nd October, 2012 the Entry Clearance Officer refused the application stating

“You have failed to demonstrate that you have sufficient knowledge of the English language. You have failed to provide evidence that you have attained level 1A or above in speaking and listening. You have provided a certificate from TOEIC which shows you scored 40 for speaking, this is below the requirement for A1. I am not therefore satisfied that you meet the requirements of paragraph 281(i)(b)(ii) of HC 395.”

3. The appellant appealed to the First-tier Tribunal and in a determination promulgated on 27th June, 2013, First-tier Tribunal Judge McDade dismissed the appellant’s appeal. At paragraph 5 of his determination he said

“The Entry Clearance Officer refused the application on ground alone, namely that the appellant had failed to attain an A1 or above in speaking and listening showing a score of 40 out of 200 for speaking and no evidence being supplied in relation to listening. The pass mark is 50. Subsequently after the application but before the decision the appellant re-sat the speaking test and attained a mark of 50. However, as far as I am aware still no evidence has been adduced in relation to **listening**. An appellant has to attain a mark of 60 at level A1 or above and in the absence of any evidence that this has been attained this appeal must fail.”[My emphasis]

4. Unfortunately the judge failed to notice that the application had been refused by the respondent because the appellant had failed to provide evidence showing that he could score a sufficiently high level for **speaking**.
5. As the judge pointed out, after the date of the application but before the Entry Clearance Officer’s decision, the appellant re-sat the exam and scored 50 for speaking.
6. The Secretary of State responded to the appellant’s application for permission to appeal by suggesting that the appellant’s appeal should be **allowed**.
7. Mr McVeety confirmed that it was his view that the Entry Clearance Officer was satisfied as to the appellant’s ability to **listen** and was only concerned with the appellant’s ability to **speak**. As a result the judge materially erred in law and Mr McVeety indicated that he was happy for me to remake the decision as I had been invited by the Secretary of State Rule 24 response to do. I find that the judge’s determination does contain an error of law and I set aside the determination. I remake the decision myself and **I allow the appeal**.

Upper Tribunal Judge Chalkley