



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

Appeal Number: IA/05306/2014

THE IMMIGRATION ACTS

Heard at Field House, London

Determination

On 25 September 2014

Promulgated

On 13 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

RIZWAN ASHRAF

Respondent

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer

For the Respondent: Mr R Skynner, instructed by St Laws Solicitors

DETERMINATION AND REASONS

1. Whilst this is an appeal by the Secretary of State for the Home Department, for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal
2. The appellant, a national of Pakistan, appealed to the First-tier Tribunal against the decision of the Secretary of State to refuse his application for leave to remain as a Tier 4 (General) Student Migrant under the Points Based System and to remove him from the UK. First-tier Tribunal Judge Samimi

allowed the appeal and the Secretary of State now appeals with permission to this Tribunal.

3. The issue in dispute in this appeal is the failure of the appellant to provide a valid English language certificate with his application. On 23 August 2011 the appellant was granted leave to enter the UK as a Tier 4 general student until 4 April 2013. He applied for further leave to remain in that category on 4 April 2013; he included an IELTS English certificate with that application. He said in the letter which accompanied his application that he was awaiting the results of a further English language test. The Judge accepted, and it is not challenged, that the appellant submitted the TOEIC certificates to the Secretary of State on 17 April 2013. It is not disputed by the Secretary of State that the TOEIC documents submitted meet the relevant English language requirements. The Secretary of State decided to revoke the licence of the appellant's college and on 1 November 2013 notified the appellant that the decision was suspended for 60 days to enable him to submit a fresh application which he duly did. The respondent refused this application on 13 January 2014 because the IELTS certificate submitted did not meet the English language requirements. The Reasons for Refusal letter makes no reference to the TOEIC documents. The Judge allowed the appeal deciding that the Secretary of State's decision was not in accordance with the law as she did not consider the TOEIC certificates.
4. The Secretary of State's grounds of appeal to the Upper Tribunal contend that the Judge erred in considering documents submitted after the date of the application in accordance with the decisions in Rodriguez [2014] EWCA Civ 2 and Raju & Others [2013] EWCA Civ 754. Mr Whitwell submitted that the application was made on 4 April 2013 and the certificate was not submitted then.
5. Mr Skynner submitted that, although the appellant made an application on 4 April 2013, the Secretary of State invited him to submit an application to vary the grounds of appeal of his original application. The appellant obtained a new CAS dated 27 December 2013 and his application was varied on 31 December 2013. He submitted that a wholly new application form was submitted and dated and submitted with the new CAS. He submitted that this is in effect a new application and that the date of this application is the relevant one. He submitted that this meant that all of the evidence was before the Secretary of State when making the decision.
6. On 17 April 2013 the appellant submitted two TOEIC certificates. The Speaking and Writing score report states that the test date was 20/3/2013 and the Listening and Reading score report gives a test date of 22/3/2013. There is no date of award on the certificates. It must therefore be the case that the reports confirm that the appellant had reached the required standard on the test dates. These were before the date of the first application made on 4 April 2013. The decision in Raju relates to the achievement of a required qualification at the date of the application. It therefore seems that the TOEIC documents submitted show that the appellant did meet the requirements at the date of the application and that the Secretary of State should have considered the TOEIC evidence.

7. In the alternative I accept Mr Skynner's submission that the new CAS and application form made in December 2013 amounted to a fresh application and the relevant date is 31 December 2013. In these circumstances the TOEIC documents again pre-date the application and should have been considered by the respondent.
8. It is not clear why the Judge allowed the appeal on the basis that the decision is not in accordance with the law. Although I note that she did not remit it to the Secretary of State to make the decision. I am satisfied on the basis of what I have said above that the decision is not in accordance with the Immigration Rules and can be allowed outright.
9. In these circumstances I am satisfied that the Judge made no material error of law in allowing the appeal.

Conclusion:

The making of the decision of the First-tier Tribunal did not involve the making of an error on point of law.

Signed
November 2014

Date: 12

A Grimes

Deputy Judge of the Upper Tribunal