



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

Appeal Numbers: IA/14732/2013
IA/14745/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 18 December 2014**

**Determination Promulgated
On 31 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**VIJAYSINH KISHORSINH CHAUHAN
MAMTABEN VIJAYSINH CHAUHAN
(ANONYMITY ORDER NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: No appearance by Louis Kennedy, solicitors
For the Respondent: Mr C Avery of the Specialist Appeals Team

DECISION AND REASONS

The Appellants

1. The Appellants are husband and wife born on 5 January 1968 and 1 June 1972. They are both citizens of India. On 26 January 2010 they arrived in the United Kingdom,

the husband with leave as a Tier 4 (General) Student Migrant and the wife as his dependant.

2. On 27 February 2012, before expiry of their previous leave, they applied for further leave in the same capacities.
3. On 19 April 2013 the Respondent refused the husband's application because she found he did not meet the English language requirements of paragraph 245ZX(c) and paragraph 118(b)(ii) of Appendix A to the Immigration Rules. The wife's application as his dependant was refused in line with that of her husband. Additionally, the Respondent in decided to remove the Appellants to India by way directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

The First-tier Tribunal's Determination

4. By a determination promulgated on 24 January 2014 Judge of the First-tier Tribunal Graham found that the husband had not complied with the English language requirements of the Rules because he had failed to produce an acceptable English language test certificate showing he had obtained minimum scores for each of the reading, listening, speaking and writing components of the test on the same date. The wife's appeal as his dependant failed in line with that of her husband.
5. On 11 February 2014 Judge of the First-tier Tribunal Heynes refused permission to appeal. The Appellants renewed their application and on 7 April 2014 Upper Tribunal Judge Macleman found there was an arguable error of law in the First-tier Tribunal's determination because at the date of the decision the Immigration Rules had not been amended to provide that the certificate evidencing scores at or above the minimum levels in the English language test should all be obtained or issued on the same date. He noted that such a provision came into force on 1 October 2013.

Upper Tribunal Proceedings

6. On 28 April 2014 the Respondent wrote to the Upper Tribunal stating that the matter had been referred to "Tier 4 Operations" for reconsideration and that "it would seem likely that the matter could now be resolved in the Appellants' favour". The Tribunal file contains no evidence of any further development and on 22 October 2014 Upper Tribunal Judge Coker directed the appeal be listed for hearing. It came before me on 18 December 2014.
7. Neither of the Appellants were present nor any representative for them. No message had been left at the Field House reception desk and searches of the waiting areas did not disclose the Appellants or any representative for them. I was satisfied that notice of the time, date and place set for the hearing had been properly given to the Appellants and their solicitors and having read the papers in the Tribunal file and considered the likely issues that it was just to proceed in the absence of the Appellants or any representative for them. Subsequent to the hearing I was handed a letter from the Appellants' solicitors received on the day of the hearing mentioning to the Respondent's agreement to reconsider the application in the Appellants'

favour. The letter referred to the financial circumstances of the Appellants and requested the matter proceed in the absence of the Appellants and their solicitors.

8. For the Respondent Mr Avery submitted the issue was what were the requirements of the relevant Immigration Rules at the date of the Respondent's decision. If I found the Judge of the First-tier Tribunal had referred to the incorrect version of the Rules it would be open to me to remit the matter to the Respondent or for me to decide the issue with which the Respondent would be content. He drew my attention to the husband's application in which he had stated the course for which leave to remain was required ended on 12 December 2014.

Error of Law Consideration

9. I find that the relevant Immigration Rules did not require the certificates evidencing an applicant's facility in English language to have been issued on the same date. The Tribunal file contained certificates for speaking issued on 17 January 2012, for listening and reading issued on 15 November 2011 and for speaking and writing issued on 16 November 2011. All three certificates remained valid at the date of the application and indeed at the date of the hearing before me. The latter two certificates are the ones most relevant to this appeal. There was no challenge to them. I am satisfied that there is an error of law in the First-tier Tribunal's determination such that it should be set aside and that it was appropriate for me to proceed to a consideration of the substantive appeal.

Substantive Disposal

10. For the reasons given in the preceding paragraph the English language certificates supplied by the Appellant husband to the Respondent complied with the requirements of the Rules in force at the date of the decision. The husband's facility in English language was the sole reason for the refusal and therefore his appeal is allowed and that of his wife as his dependant.
11. The Respondent will need to take into account that the husband's course of study for which he had originally applied for leave had come to an end only a few days before the hearing in the Upper Tribunal. This may have an impact on any length of leave which might be granted to the Appellants.

Anonymity

12. There was no request for an anonymity order and having considered the papers in the Tribunal file and heard the appeal consider none is warranted.

DECISION

The determination of the First-tier Tribunal contained an error of law and is set aside. The following decision is substituted:-

The appeals of the husband and wife are allowed on immigration grounds.

Anonymity order not made.

Signed/Official Crest

Date 31. xii. 2014

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

These appeals have been allowed and having regard to the fact that the Respondent's decision to refuse the applications was made by reference to the wrong set of Immigration Rules, I make a whole fee award of £140 to each of the Appellants.

Signed/Official Crest

Date 31. xii. 2014

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal