

**Upper Tribunal
(Immigration and Asylum
Chamber)**
IA/18165/2014



Appeal Number:

IA/18170/2014
IA/18177/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 22nd October 2014**

**Determination Promulgated
On 10th November 2014**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MRS FARZANA BI - FIRST APPELLANT
MISS FAIZA ALI - SECOND APPELLANT
MASTER UZAIN ALI - THIRD APPELLANT
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Khan, of Counsel

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Pakistan born 20th January 1982, 10th May 2009 and 27th March 2010 respectively. Farzana Bi the first Appellant is the mother of the second and third Appellants. The first Appellant is the spouse of Shoqut Ali a British citizen. The second and third Appellants are the minor dependent children of Farzana Bi and Shoqut Ali. The second and third Appellants, however, are not British citizens. Their appeals stand or fall with that of their mother.

2. The Appellants entered the United Kingdom on 28th September 2011. The first Appellant had been issued with a spouse visa valid until 5th December 2013. On 22nd November 2013 she made application for further leave to remain. The Respondent refused that application on 25th March 2014 and it is against that refusal that the Appellant appealed, together with her two children as dependents, to the First Tier Tribunal.
3. The Respondent refused the first Appellant's application under paragraph 284 of HC 395 - the Immigration Rules in force at the time the decision was made. The basis for the refusal is found in paragraph 284(ix)(a) - the English Language Test requirement was not met.
4. The Appellants' appeals came before FtT Judge Grimshaw. In a determination promulgated on 13th August 2014 the Judge took evidence from the first Appellant and from her husband Mr Shoqut Ali. The Judge also had before her documentary evidence which included a copy of a certificate awarded to the Appellant by City and Guilds on 30th January 2014. It was claimed that this certificate was proof that the first Appellant met the English language test requirement. Having considered the evidence the Judge found that the first Appellant could not meet the English Language Test requirement and therefore her application, and those of her children, failed under that part of the Immigration Rules. The Judge then went on to consider whether the Appellants' applications could meet the requirements of Appendix FM of the Immigration Rules. Having found that the Appellant could not meet the requirements of Appendix FM, the Judge dismissed the Appellants' appeals under the Immigration Rules.
5. The Appellants sought and were granted permission to appeal. The grant of permission is set out here:

“By a determination promulgated on 13 August 2014, First-tier Tribunal Judge Grimshaw dismissed the appellants' appeals against decisions of the respondent. Having assessed the evidence, the judge concluded that the appeals did not succeed pursuant to the immigration rules, HC395 (primarily paragraph 284 was in issue); or through the application of article 8 of the European Convention on Human Rights (paragraphs 19 to 22 of the determination).

The grounds on which the appellants seek permission to appeal complain, in summary, that the judge was wrong when she said that the English-language certificate provided by the first appellant had not been issued by a Home Office approved test centre; failed to assess whether it would be reasonable for the sponsor to relocate to Pakistan with the appellants; and wrongly took into account the possibility that the appellant might be able to successfully apply for entry clearance as a spouse from Pakistan (reference is made to **Chikwamba [2008] UKHL 40, 25 June 2008**).

The grounds are arguable.”

6. Thus the matter comes before the Upper Tribunal to decide in the first instance whether the determination of FtT Grimshaw discloses an error of law requiring it to be set aside and the decision remade.

UT Hearing

7. Miss Khan on behalf of the Appellants made brief submissions which essentially amounted to her relying on the grounds seeking permission. She did expand her submissions a little saying that the FtT Judge had failed to fully consider the Appellants' private and family life under Article 8 ECHR.
8. Mr Diwnycz equally briefly defended the determination. He referred to the Rule 24 response and in particular to paragraph 3 set out below.

"It is clear that the main appellant cannot meet the English Language requirement of the Rules. The judge applied the ratio of Gulshan and ad (sic) arrived at conclusion which were open to him (sic) as there were no exceptional circumstances in this case. It is further submitted that the principle set out Chikwamba (sic) cannot survive the change in Immigration Rules on 9 July 2012."

Consideration

9. In view of the submissions made I take my starting point by asking what is it the grounds seeking permission rely upon?
10. Ground 1 claims that the FtT erred in not accepting the English Language Certificate as satisfying the English Language requirement. I find no merit in this claim. Judge Grimshaw made a clear finding at [16] in her determination where she said,

"I have seen a copy of the certificate awarded to the Appellant by City & Guilds on 30 January 2014. I accept her evidence that her failure to submit it to the Respondent earlier was as a result of a simple misunderstanding on her part. The document produced is a Certificate of Unit Credit towards (my emphasis) an Entry Level Certificate in ESOL Skills for life (Entry 2). It shows that the Appellant was successful in the speaking and listening module Entry 2."
11. It is clear that Judge Grimshaw found that a Certificate of Unit Credit towards an Entry Level Certificate is not the end result and does not constitute sufficient evidence to show the first Appellant has met the requirements of paragraph 284 of the Immigration Rules which were in force.
12. There was nothing further put before me by Miss Khan, to show that Judge Grimshaw's conclusion was incorrect. The first ground itself simply asserts that the certificate was issued by City and Guilds which is listed on the Home Office website as one of the approved test centres. I have no doubt that it is correct to say that City and Guilds is one of the approved test centres. That was not the basis for Judge Grimshaw's finding against the first Appellant on this point.
13. It follows that since the second and third Appellants are dependent upon the appeal of their mother, they too cannot meet the Immigration Rules.

14. The second and third grounds can conveniently be dealt with together. It is asserted that the Judge failed to assess whether it would be reasonable for the Sponsor to relocate to Pakistan with the Appellants; and wrongly took into account the possibility that the first Appellant might be able to successfully apply for entry clearance as a spouse from Pakistan with reference made to *Chikwamba* [2008] UKHL 40.
15. I find no merit in either of those assertions. Judge Grimshaw said at [11],
- “As the Appellant had not shown that she could meet the requirements of paragraph 284 the Respondent went on to consider if the application met the requirements of Appendix FM of the Immigration Rules. It was noted that the Appellant’s children are not British citizen and do not have settled status. Although it was acknowledged that the Appellant’s partner has lived in the United Kingdom since 2003 and is in work it was considered that there were no insurmountable obstacles preventing family life from continuing in Pakistan.”
16. Following on from that at [19] goes on to say the following,
- “Where an applicant does not meet the requirements of the Immigration Rules a refusal will normally follow. However, if there are any exceptional circumstances consistent with the right to respect for private and family life contained in Article 8, consideration by the Respondent of a grant of leave to remain in the United Kingdom outside the requirements of the Immigration Rules may be warranted.”
17. It is clear that the Appellants have failed to meet the requirements of the Immigration Rules as set out. It is equally clear that there was nothing exceptional or out of the norm put before the Judge. Nothing further has been put before me to show that the Judge in some way mis-apprehended the evidence set before her.
18. It is of further note that the Judge was satisfied that the first Appellant had given discrepant evidence about her circumstances. In [21] the Judge said,
- “...There is no persuasive evidence before me to suggest that the Appellant has severed her social, cultural or family ties with Pakistan. Although the Appellant would have me believe from her witness statement that she has no family in Pakistan she told me at the hearing that her mother currently resides there. Although I accept that it may be her mother's intention to settle in Hong Kong permanently I consider it reasonable to suppose that those plans can be delayed should the Appellant require accommodation or other assistance from her mother on her return. I bear in mind that the application signed by the Appellant confirms that she has “*parents, brother and sisters*” in Pakistan (paragraph 10.12). Furthermore, I can find no good reason why the Appellant should not continue to be supported emotionally and practically by her husband if he decides to remain in the United Kingdom.”

Decision

19. For the foregoing reasons the determination of the First-tier Tribunal discloses no material error of law. The decision dismissing the Appellants' appeals stands.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated

10th November 2014

Fee Award

The appeals are dismissed and therefore there can be no fee award.

Signature

Judge of the Upper Tribunal

Dated

10th November 2014