



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/21717/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 9th June 2014

Determination Promulgated
On 26th June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

MUHAMMAD NAVEED TARIQ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Malik of Azmirana Solicitors
For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction and Background

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal Davies promulgated on 13th November 2013.
2. The Appellant is a citizen of Pakistan born 23rd March 1990 who applied for leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant.

3. The application was refused on 21st May 2013, the Respondent making a combined decision to refuse to vary leave to remain, and to remove the Appellant from the United Kingdom.
4. The Respondent refused the application with reference to paragraph 245ZX(c) of the Immigration Rules, not accepting that the Appellant was entitled to be awarded 30 points for attributes under Appendix A. Refusal was based upon the fact that in accordance with paragraph 118(b)(ii)(1) to (4) the Appellant needed to provide an original English language test certificate from an English language test provider approved by the Secretary of State. The Appellant had provided three TOEIC certificates from the Educational Testing Service (ETS). The Respondent contended that the Appellant needed to show the required minimum scores for the reading and listening components on one certificate of the same date, as well as the speaking and writing components on one certificate of the same date, to show that the Appellant had achieved or exceeded CEFR level B2 in all four components. The Respondent would not accept the TOEIC certificate dated 16th January 2013 which only showed the speaking score and not the writing score. Therefore the Appellant had not proved that he had achieved CEFR level B2 in all four components of listening, reading, speaking, and writing.
5. The Appellant appealed contending that there was no justification given by the Respondent for rejecting the TOEIC certificate and had not referred to any Immigration Rule which prohibited submitting more than one certificate.
6. Judge Davies (the judge) determined the appeal on the papers as requested by the Appellant. The judge dismissed the appeal finding no evidence to show that the Appellant had obtained the minimum score for reading, listening, speaking and writing on the same date.
7. The Appellant appealed to the Upper Tribunal contending in summary that the Appellant had provided TOEIC certificates from an approved English language test provider, and that there was nothing in the Immigration Rules which required the Appellant to sit all of the examinations on the same date. The combination of the three certificates proved that the Appellant had achieved level B2 of the CEFR and his appeal should have been allowed.
8. Permission to appeal was granted by Judge of the First-tier Tribunal Grant-Hutchison in the following terms;

“It is an arguable error of law that the judge misdirected himself when he finds that the Appellant failed to provide certificates showing the same date as evidence of his English language requirement when he produced a certificate for speaking on a different date when there is arguably nothing specified in paragraph 118(b)(ii)(1-4) of Appendices A and O either at the date of application (1st March 2013) or in the particular circumstances of this appeal as at the date of decision (21st May 2013) for the scores to be achieved in all the relevant components during a single sitting. (The rules were changed on 1st October 2013). The date of the certificate for speaking is dated 16th January 2013.”

9. The Tribunal issued directions that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

The Tribunal Hearing

10. On behalf of the Respondent Mr Harrison conceded that the refusal was incorrect and that the determination of the First-tier Tribunal contained a material error of law. It was accepted that the decision should be set aside and either found to be not in accordance with the law, which would mean that the decision would be outstanding before the Secretary of State for a lawful decision to be made, or remade and allowed by the Upper Tribunal. Mr Malik submitted that the appropriate course of action was to set aside the decision of the First-tier Tribunal and for the Upper Tribunal to remake the decision and allow the appeal. Mr Harrison accepted that the appeal should be allowed.

My Conclusions and Reasons

11. I set aside the decision of the First-tier Tribunal. I conclude that the Respondent's refusal was incorrect. There was no prohibition when the refusal was made, on the Appellant submitting more than one certificate to prove his English language ability. The rules were subsequently changed on 1st October 2013.
12. The judge erred in finding that there was such a requirement and therefore the decision of the First-tier Tribunal is set aside.
13. It is conceded on behalf of the Respondent that the appeal should be allowed. I conclude that the Appellant provided evidence that he satisfied level B2 of the CEFR and the Respondent's decision refusing his application is not in accordance with the law and the Immigration Rules. The application should have been granted.

Decision

The determination of the First-tier Tribunal contained an error of law and was set aside.

I substitute a fresh decision.

The appeal is allowed under the Immigration Rules.

Anonymity

The First-tier Tribunal made no anonymity direction. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date 19th June 2014

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The appeal is allowed. I therefore make a fee award in the sum of £80. The Appellant provided evidence that he satisfied the English language requirement to the Respondent.

Signed

Date 19th June 2014

Deputy Upper Tribunal Judge M A Hall