Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/31308/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 10th April 2014	**On 14th May 2014**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

RUNGRUANG BOONRIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr M Diwnycz

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Robson made following a hearing at Bradford on 11th December 2013.

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Background

2. The Appellant is a citizen of Thailand and the spouse of a British citizen. She arrived in the UK with entry clearance valid from 1st June 2010 to 1st September 2012, and applied for further leave to remain on 29th August 2012.

3. She was refused on the sole ground that she did not meet the requirement that she produce an English language test certificate in speaking and listening from an English language test provider approved by the Secretary of State.

4. The application form was lodged in August 2012. The Appellant had submitted her original passport with the form and, on 4th April 2013, requested the return of the passport in order to enable her to undertake the test. There was no response to that letter and the Sponsor wrote again on 21st July. The Respondent replied that

   > "Your passport was retained as it is normal procedure when an application for further leave to remain is refused".

   The Sponsor then contacted the Immigration Services at Humberside and was told that the only reason a passport could be returned was if it was with a view to the applicant leaving the UK.

   The refusal was not until 11 months after the application was submitted, in July 2013.

5. The judge wrote that there was no credible reason why the passport had not previously been returned and without the passport the Appellant could not have undertaken the test. However he concluded that the application had to fail under the Rules and it would not be disproportionate for the Appellant to be returned.

6. The Appellant sought permission to appeal, which was granted by Judge Page who stated that the judge had wrongly considered the evidence as at the date of decision rather than as at the date of hearing and had not given any weight to the fact that the Respondent had prevented the Appellant from sitting the English test. The facts of the case required an assessment as to whether there were any exceptional circumstances as set out in the case of Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640.

The Hearing

7. Mr Diwnycz helpfully provided the Respondent's policy in relation to requests for the return of documents. It states that the purpose of Section 17 of the 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 is to retain documents that may facilitate removal while a person is still liable to be removed from the UK, but does not allow for the retention of documents without limit of time.

8. Any request for documents from applicants for a specific purpose e.g. for opening a bank account or applying for a driving licence should be declined. However photocopies of the documents with the officer's name printed and signed at the end of each page should be sent to the claimant together with specified forms listing the documents, their issue numbers and the number of pages photocopied. It should also contain the following text

> "These documents are presently being held by the UK Border Agency, each of the photocopied document pages have been signed to confirm that they are held. If you wish to confirm that these documents are held by the UK Border Agency please phone the number listed at the top of this page and giving the Home Office reference number".

9. Mr Diwnycz said that in this case the UKBA did not follow their own policy in respect of providing proof of documentation and accordingly had prevented the Appellant from taking the English language test and meeting the requirements of the Rules. Accordingly he accepted that she had not acted in accordance with the law.

10. The Appellant said that she was happy with that outcome.

11. The judge erred in law in failing to consider whether the decision was a lawful one for the reasons set out in the grant of permission, namely that he did not consider the relevance of the Respondent's actions in reaching his decision on Article 8. His decision is set aside.

Decision

12. The original judge erred in law and his decision is set aside. It is remade as follows. The Respondent's decision is not in accordance with the law and accordingly the Appellant awaits a lawful decision from the Secretary of State.

Signed Date

Upper Tribunal Judge Taylor