



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

Appeal Number: IA/46824/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 21 October 2014**

**Decision and Reasons Promulgated
On 12 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

ABDULLAH DABBECK

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Dawes, Counsel instructed by Kabir Ahmed & Co Solicitors

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

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Tunisia born on 22 September 1980 and arrived in the UK on 25 April 2010 with entry clearance as the spouse of a British citizen, that is Mrs Helen Ann Johnson Powell-Bevan. He had leave to remain until 25 June 2012 and would have been eligible for indefinite leave to remain in the UK subject to completing his probationary period. On 11 June 2012 however he applied for an extension of stay because he did not meet the English language requirement essential for qualifying for indefinite leave to remain. His application was refused on 18

December 2012 because he did not have the requisite A1 level English certificate. He appealed against the refusal. When the hearing was next listed at Bradford Tribunal on 27 March 2013 he did not have possession of the A1 certificate but stated that he had passed the test. However that appeal was dismissed on 16 April 2013. The appellant made a further application for an extension of leave to remain which was refused on 24 October 2013. The appellant did not have the requisite English language test and a hearing on 30 April 2014 was adjourned.

2. When the appeal was re-listed on 2 July 2014 before First-tier Tribunal Judge Kelly the appeal was dismissed in a determination dated 15 July 2014.
3. It was claimed that the representative had misadvised the appellant.
4. An application for permission to appeal was made on the basis that the First-tier Tribunal Judge had mistakenly confused the appellant as being a Pakistani national when in fact he was Tunisian. It appeared that the judge proceeded on the basis that the appellant had "chosen" to apply for an extension of stay but in fact he had no option because of his English language difficulties. The appellant maintained that they had been let down by legal advice.
5. It was also claimed that the Home Office Presenting Officer at the hearing on 30 April 2014 conceded that if he produced a B1 certificate which exceeded the CEFR qualification the case would be conceded. This had not been taken into account. There had been some confusion over the certificates.
6. The appellant had gone out of his way to fulfil the requirement, he sat the Life in the UK Test on three occasions and obtained the A1 CEFR qualification.
7. It was submitted that the judge had failed to conduct an adequate Article 8 assessment.

Conclusion

8. It is clear from the determination of Judge Kelly that there is a reference in paragraph 1 to the appellant being a citizen of Pakistan. He is not. He is a citizen of Tunisia. Unfortunately, the reference to the appellant being from Pakistan is not a simple slip or typographical error because the judge proceeds in a foot note once again to refer to the appellant's nationality but with reference to a previous determination where Judge Kelly states that Judge Bagral had referred to "curiously, his nationality, which Judge Bagral described as "Tunisian"." There is a further reference to the appellant's nationality as being Pakistan only when the Article 8 assessment is undertaken.
9. I conclude that the judge has failed to assess the evidence or engage with the evidence carefully and that there has been an error of fact. These are errors of law. Bearing in mind that this case hinges on the Article 8 assessment I conclude that the matter should be returned to the First-tier Tribunal bearing in mind the nature and extent of the findings to be made.

10. The decision contains an error of law and is set aside in its entirety and should be remitted to the First-tier Tribunal in accordance with Practice Statement 7.2.

Directions

1. This matter is to be set down in the First-tier Tribunal with no interpreter set down for a time estimate of 1½ hours.
2. All further evidence is to be submitted by the parties at least 14 days prior to the forthcoming substantive hearing.

Signed

Date **12 December 2014**

Deputy Upper Tribunal Judge Rimington