



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

Appeal Number: OA/00733/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 31st March 2014

Determination

Promulgated

On 23rd April 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SHUMILA PERVEZ

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Mr Janjua of Janjua & Associates

For the Respondent: Mr M Diwncyz

DETERMINATION AND REASONS

1. This is the Appellant's appeal against the decision of Judge Saffer made following a hearing at Bradford on 23rd January 2014.

Background

2. The Appellant is a citizen of Pakistan. She applied for entry clearance to come to the UK as the spouse of a British citizen but was refused on the grounds that it was not accepted that she had established that she had passed a relevant English language test as SLS College was not an authorised test provider. She appealed to an immigration judge.
3. The judge set out the law, including a self-direction that he had to consider the application as at the date of decision.
4. He then wrote as follows:-

“No challenge has been made to the assertion that SLS College was not an authorised provider. The Appellant had not passed a relevant English language test when she submitted her application on 5th July 2012 as she did not pass the subsequent test until 8th July 2012. That application could not have succeeded. It is not a matter of evidential flexibility as she was not, for example, missing a document in a series or had a document in the wrong format. It was not a near miss. She did not have with her application a document showing that she spoke English.”

5. On that basis he dismissed the appeal.
6. The Appellant sought permission to appeal on the grounds that the judge had made an error in law in not taking evidence into account which was in existence before the date of decision.
7. Permission to appeal was granted on that basis by Judge McDade on 18th February 2014.
8. The Respondent served a reply and said that she was in difficulties in reconciling the contradictory findings of the judge, and accepted that the possibility that there was an arguable error in law if the judge, despite making the correct self-direction that he had to consider the application as at the date of decision, still considered only matters as at the date of application. Having said that, she could not concede without benefit of access to the file, because it was difficult to verify conclusively whether the second certificate was from an approved provider. Without access to that certificate, the Respondent was not in a position to comment on whether the judge had erred. Bearing in mind the ambiguities in the determination she requested that the matter be referred back to the FTT Judge to comment on and where appropriate clarify and resolve in the first instance.

Submissions

9. Mr Janjua said that the Entry Clearance Officer had made a mistake in considering SLS as the provider of the certificate. SLS provided the tuition but the certificate was provided by TOEIC. He provided evidence which showed that TOEIC is approved for visa use by the UK Border Agency.

10. The minimum requirements for a spouse are a listening score of 60 and a speaking score of 50. He provided both the original certificates to the Tribunal and to Mr Diwncyz for inspection which show that the Appellant scored well above that level.
11. Mr Diwncyz having inspected the documents said that he was content that the decision be reversed.

Conclusion

12. The judge erred in law in not taking into account the test certificate which was sent to the Entry Clearance Officer well before the date of decision and should have been considered by him since it establishes that, as at the date of decision, the Appellant met the requirements of the Rules.

Decision

13. The judge erred in law. His decision is set aside and remade as follows. The Appellant's appeal is allowed.

Signed

Date

Upper Tribunal Judge Taylor