Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/03464/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 23 July 2014	**On 28 July 2014**

Before

THE HONOURABLE MR JUSTICE LEWIS
UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR AFJAL RAHMAN RANA

Respondent

Representation:

For the Appellant: Mr K Jack, Home Office Presenting Officer
For the Respondent: Mr J Waitte, Counsel

DETERMINATION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against a decision of the First-tier Tribunal promulgated on 24 March 2014. By that decision the First-tier Tribunal allowed an appeal against the decision of an Entry Clearance Officer dated 25 November 2012 refusing Mr Rana an entry clearance to join his spouse in the United Kingdom.

2. The facts can be stated briefly. The respondent is a national of Bangladesh. His wife is a British citizen working in the United Kingdom. The respondent applied for an entry clearance under paragraph 281 of the Immigration Rules to enable him to join his wife in the United Kingdom.

3. There are a number of requirements set out in that Rule. The applicant satisfied the Entry Clearance Officer on that occasion that he met all bar one of the relevant requirements. By way of example, he satisfied the Entry Clearance Officer that Mr Rana and his wife would be able to maintain themselves without recourse to public funds. He was satisfied of course that they were indeed married.

4. The one area where Entry Clearance Officer on that occasion was not satisfied concerned paragraph 281(iv) which is in the following terms:

> "There will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively."

5. The Entry Clearance Officer was not satisfied that the respondent's wife had the written agreement of her landlord that her husband could live at her accommodation and he was not satisfied that the accommodation was large enough, and he therefore considered that 281(iv) was not satisfied.

6. As it happened the First-tier Tribunal considered that matter. It was satisfied that the accommodation was in fact large enough to accommodate the respondent and a verbal agreement had been given for the respondent to live there. In fact, when you look at the written tenancy agreement, that itself says that up to seven people may live in the property and even with the respondent present it seemed there would only be six people. The First-tier Tribunal therefore did not consider that this was a proper basis for refusal of an entry clearance. No permission has been granted to appeal against that conclusion.

7. The difficulty that has arisen today is this. As well as appealing, as he was entitled to, to the First-tier Tribunal there was an internal review by an Entry Clearance Manager. He considered that there had been problems with the English language certificates that had been issued prior to a particular date in Bangladesh that Mr Rana was relying upon. We make it clear that there is no suggestion in the evidence before us that Mr Rana was in any way himself at fault or had in some way been involved with those deficiencies. It appeared to … deficiencies in relation to the way in which testing was being carried out in Bangladesh. In any event, the Entry Clearance Manager wrote to Mr Rana on 3 February and he said amongst other things this:

> "In reviewing your case it is noted that you provided City & Guilds certificates as evidence that you satisfy the requirements of paragraph 281(i)(a)(ii). Although no concerns were raised by the Entry Clearance Officer at the time of decision with regard to these qualifications, subsequent investigations conducted by City & Guilds and UK visas and immigration Dhaka have revealed inconsistencies in

testing in Bangladesh. As a result of these investigations I am not satisfied that the documents that you have provided satisfactorily demonstrate you have obtained the qualifications mentioned on the certificates.

The inconsistencies in testing have now been addressed by City & Guilds in Bangladesh who have agreed to offer free retesting to all affecting visa applicants. I have included a letter from City & Guilds which explains retesting arrangements which have been implemented. Should you wish to arrange a retest please contact City & Guilds using the information provided in the letter."

8. The First-tier Tribunal did consider the question of the English language certificate notwithstanding the fact that this had not been a matter before the Entry Clearance Officer which caused him concern. At paragraph 20 of his determination the First-tier Tribunal Judge said this:

> "20. I then turn to the issue of the language certificates and it is clear from the letter issued by City & Guilds dated 20 May 2013 and the Entry Clearance Manager's review that false certificates relating to examinations conducted in Bangladesh with an issue date prior to 1 October 2012 will not be accepted as evidence of a pass in English language proficiency for the purpose of a visa applications.
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> 21. Therefore I find that the decision of the respondent appealed against is not in accordance with the law and the applicable Immigration Rules but whilst I am satisfied on the aspects of accommodation and maintenance, and to that extent the appeal is allowed, nevertheless before any entry clearance visa is issued it will be necessary for the appellant to provide a new English language certificate."

9. In the light of that finding the decision of the First-tier Tribunal was that the appeal was allowed under the Immigration Rules to the extent that prior to the issue of the visa the appellant provide a new English language certificate to the respondent.

10. The first question is whether or not the First-tier Tribunal has erred in law in making the decision that it did.

11. Firstly we state that the First-tier Tribunal was entitled to consider the matters relating to the inadequacies of the certificates on which Mr Rana relied. Section 85 of the Nationality, Immigration and Asylum Act 2002 subSection 4 said:

> "On an appeal under Section 82(1) or 83A(2) against a decision the Tribunal may consider evidence about any matter which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision."

That is then qualified by Section 85A, and in relation to the decision that we are dealing with the Tribunal may consider only the circumstances appertaining at the time of the decision.

12. We are satisfied that this matter concerning the English language certificates does appertain to the circumstances at the time of the decision. True it is that the investigation that revealed the inconsistencies in testing may have been carried out later and the inconsistencies may have been detected later but the inconsistencies and the fact that certificates cannot be relied upon as evidence of the necessary skills is a matter that appertains to the decision. Consequently the FtT was entitled to consider the question of whether or not the language certificates were ones that satisfied paragraph 281 of the Rules.

13. The difficulty in our judgment is the way in which the First-tier Tribunal then dealt with the matter. Both Mr Jack and Mr Waitte for the respondent Mr Rana have accepted very realistically that the First-tier Tribunal has erred there. The First-tier Tribunal had no power on the one hand to allow the appeal on the grounds that the certificates were not adequate and then to say that the appellant could not get a visa prior to obtaining a new English language certificate. It was illogical and it was also irrational for a public law matter to take that course of action.

14. What should have happened is that the appeal should have been allowed and then Mr Rana would have had to make a fresh application and obtain a fresh certificate. We were told this morning that in fact Mr Rana has now taken the relevant tests and we were told that he has obtained the necessary scores.

15. In all those circumstances we are satisfied first that the First-tier Tribunal erred in law. Its decision will therefore be set aside. Secondly, we will remake the decision. In the light of the position in relation to the original certificates upon which the original decision was relied the respondent is not able to demonstrate that those certificates satisfied the requirements of paragraph 281(ii) of the Immigration Rules.

16. We therefore dismiss the appeal against the decision of the Entry Clearance Officer. That means Mr Rana will in fact have to make a fresh application to the Entry Clearance Officer satisfying all of the Rules including the relevant Rules governing English language certificates.

Signed Date

Mr Justice Lewis