



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

Appeal Numbers: OA/18309/2012  
OA/18310/2012

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 24<sup>th</sup> February 2014**

**Determination**

**Promulgated**

**On 04<sup>th</sup> April 2014**

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**HAJAH TOWER  
WAGEDA TOWER**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr A Williams of Andrew Williams Solicitors

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

**DETERMINATION AND REASONS**

1. This is the Appellants' appeal against the decision of Judge Hindson made following a hearing at Bradford on 25<sup>th</sup> October 2013.

**Background**

2. The first Appellant was born on 21<sup>st</sup> March 1967 and the second, her daughter, was born 16<sup>th</sup> October 1992. They are citizens of the Sudan. Both applied to come to the UK to join the Sponsor, Mr Musa Tower, who is present and settled here. They were refused on the grounds that, so far as the first Appellant is concerned, it was not accepted that she and the Sponsor were in a genuine and subsisting relationship nor that she could be adequately maintained and accommodated. Furthermore she had failed to provide the required evidence of her competence in English and is not exempt from the English language requirement.
3. The second Appellant was refused on the grounds that she was not living alone outside the UK in the most exceptional compassionate circumstances.
4. There is no challenge to the decision of the judge in respect of the second Appellant whose appeal was also dismissed.
5. So far as the first Appellant is concerned, the judge found that she was in a subsisting relationship with her husband and that she could be adequately maintained and accommodated here.
6. He dismissed the appeal on the grounds that she had not achieved the necessary competence in the English language. She said that she was exempt from the test on the basis that she had

“A physical or mental condition which prevents her from meeting the requirement”

or in the alternative

“that there are exceptional compassionate circumstances which would prevent her from meeting the requirement”.

7. She relied on the medical report provided by a senior clinical psychologist at Gazera University dated 7<sup>th</sup> February 2013.
8. The judge wrote as follows:

“I have given careful consideration to that document and find that it is of little help. It is very short and the relevant part is the second paragraph which I here recite in full.

‘Miss Hajah was known as illiterate person originating from war-torn area and as war trauma survivor. Several sessions were conducted to determine the best course of action for fostering her educational abilities. Miss Hajah was subjected to Social Maturity Test (SMT) where clearly showed, evidence points in her concentration skills. I can certify that her chances for success in achieving that aim currently non-existent.’”

9. The judge recorded that he had also been provided with an email from the author of the report but it did not clarify the report in any way. He had also been shown a print out of the “Vineland Social Maturity Skills” which did not assist either. It describes the format of the test as consisting of eight subscales which measure a list of skills. “Only one, communication skills, is remotely relevant and the report which had been provided does not show how the Appellant performed on this or any of the other scales.”
10. The judge did not find the report sufficient to bring the Appellant within the exemption to the need to provide an English language certificate and on that basis dismissed the appeal.
11. He considered whether the appeal ought to be allowed on Article 8 grounds, addressed himself to the relevant case law and dismissed the appeal on human rights grounds.

### **The Grounds of Application**

12. The Appellant sought permission to appeal on the grounds that although the judge had made a number of positive findings he had erred in law in assessing the evidence of the psychologist and failed to attach proper weight to his findings. He did not find that the report was fabricated and as he is not an expert psychologist even if the results were before him it is difficult to see how he could interpret or understand them. Moreover the judge had failed to properly consider the matter of proportionality given that he accepted that the Appellants had a genuine relationship to the first Appellant which commenced before he fled Sudan to claim asylum.
13. Permission to appeal was granted by Judge Bird in respect of ground 1 only. She specifically stated that there was no arguable error of law in the judge’s consideration of Article 8. However, she said that the judge’s failure to give reasons as to why the psychologist’s opinion should be disregarded gave rise to an arguable error of law.
14. On 6<sup>th</sup> January 2014 the Respondent served a reply defining the determination.

### **Submissions**

15. Mr Williams relied on his grounds and on the case of JL (Medical reports – credibility) China [2013] UKUT 145 which held that “a judge’s decision not to accept expert evidence does not involve an error of law on his part provided he approaches that evidence with appropriate care and gives good reasons for his decision.”
16. Mr Williams submitted that the judge had not given proper reasons in this case. The psychologist stated in his report that he had conducted a rigorous psychological assessment. The Appellant was an illiterate person who was a war trauma survivor. It was clear from his email that the psychologist was presently working with victims of war trauma and therefore had some expertise in this area. He was therefore in the best

position to assess the Appellant's abilities. It was his view that she suffered from difficulties which could not be overcome and therefore she ought to be exempt from the English language requirement.

17. Mr Diwnycz submitted that there was no clear correlation between the Appellant's condition and her inability to pass the test which had three different elements, speaking, understanding and writing, and whilst her illiteracy would be a bar to her being able to properly complete the written requirement of the test there was no reason why the other elements could not be satisfactorily completed. She did not suffer from any physical disability such as deafness, for example, which would prevent her meeting the requirement.

### **Findings and Conclusions**

18. The sole issue here is whether the judge erred in his assessment of the expert evidence and as a consequence should have found that the Appellant was exempt from the English language requirement.
19. I consider that he did not. He did the best that he could with the material which was before him. He was right to state that the document was short and did not address the issue as to whether she could be in a position to pass some of the elements of the test if not all. Illiteracy would not be a bar to her being able to speak or to understand English.
20. The psychologist clarified his report with an email dated 17<sup>th</sup> October 2013 but it was considered by the judge, who was entitled to point out the shortcomings of the report so far its relevance to a possible exemption from meeting the English language requirement is concerned.
21. The judge reached a decision which was open to him, supported by adequate reasons. The grounds disclose no arguable error of law.

### **Decision**

22. Appeal dismissed.

Signed

Date

Upper Tribunal Judge Taylor