



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

Appeal Number: IA/43604/2014

**THE IMMIGRATION ACTS**

**Heard at: Manchester**  
**On: 18<sup>th</sup> November 2015**

**Decision and Reasons Promulgated**  
**On: 20<sup>th</sup> November 2015**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**The Secretary of State for the Home Department**

Appellant

**and**

**Mr Muhammad Shoaib**  
(no anonymity direction)

Respondent

Representation:

For the Appellant: Mr Harrison, Senior Home Office Presenting Officer

For the Respondent: -

**DETERMINATION AND REASONS**

1. The Respondent Mr Shoaib is a national of Pakistan and his date of birth is 12<sup>th</sup> September 1986.

**Background**

2. It is common ground that Mr Shoaib has lived in the United Kingdom with valid leave since the 25<sup>th</sup> July 2012. He was given leave to enter under

paragraph 281 of the old rules. So it was that when he made an application to vary that leave so as to extend it on the 8<sup>th</sup> September 2014 it was considered under paragraph 284. It is also agreed that Mr Shoaib is in a genuine and subsisting relationship with his British wife and that they are supported by Mr Shoaib's work in a factory, which earns him above the amount required under the Rules for maintenance and accommodation. The only issue raised by the Secretary of State's refusal notice of 5<sup>th</sup> November 2014 was Mr Shoaib's failure to meet the requirements of paragraph 284(ix)(a) by submitting an English language test certificate from an approved provider. The certificate he submitted showed him to have higher than the required level in English proficiency, but it was not issued by a provider listed in Appendix O of the Rules. The certificate was issued by "Pearson Edexcel". Mr Shoaib might be forgiven for having thought that "Pearson Edexcel" was an approved provider, since Pearson do appear on the approved list and the certificate he was given bears the Pearson logo. That was not however sufficient to persuade the Secretary of State that leave should be granted, and his application was turned down.

3. When the matter came before the First-tier Tribunal (Judge Caswell) argument was made to the effect that Pearson Edexcel is a subsidiary company of Pearson and as such the decision was wrong. The First-tier Tribunal was not satisfied that this was the case. There is no challenge to that decision.
4. In the alternative it was argued on Mr Shoaib's behalf that the Secretary of State should have had regard to her own policy, as expressed in the Immigration Directorates' Instruction 'Chapter 8 - *Family Members*'. It was submitted that this published policy permitted a discretionary departure from the Rules. Reliance was placed on paragraph 3.7 *Granting Leave to Remain* which reads:

"If there is no reason to doubt the marriage is genuine then, provided the key points are satisfied, leave to remain should be granted for 2 years on Code 1"

It was submitted that "key points" should be read to mean the "key points" identified at paragraph 3.1 of the same document; those boiling down to it being a genuine marriage. Further reliance was placed on an unreported error of law decision by Deputy Upper Tribunal Judge Lever in which this argument was apparently accepted.

5. Judge Caswell agreed with the argument advanced for Mr Shoaib and on the 6<sup>th</sup> February 2015 the appeal was allowed under the Immigration Rules. The appeal on human rights grounds was dismissed.

## Error of Law

6. On the 15<sup>th</sup> July 2015 I found there to an error of law in the determination of the First-tier Tribunal, which was set aside. My reasons were as follows:

i) The argument advanced about the IDI, and accepted by the First-tier Tribunal in this case, is misconceived. The lines extracted from paragraph 3.7 are not to be read as an indication that decision-makers can ignore the substantive requirements of the Rules. That much is apparent from the document as a whole, for instance section 3.6, which refers to the English Language requirement, and the preface at section 3 which reads:

“the requirements to be met by a person seeking to remain in the United Kingdom as a spouse of a person settled here are set out in paragraph 284 of HC 395 as amended and MUST be referred to when reading the following advice”

ii) The Respondent’s representatives interpreted this to indicate that the requirements of paragraph 284 must be *referred* to, but not necessarily *met*. I do not agree. The clue is in the phrase “requirements to be met”. It cannot be the case that this policy document intends to dispense with the substantive requirements of the rules in any case where there is a genuine marriage.

iii) For this reason it was not open to Judge Caswell to allow the appeal under the Rules. Nor was it open to her, if she had been so minded, to allow this appeal as not in accordance with the law on the basis that the policy had not been applied. There is nothing in the IDI which justifies a departure from the Rule. All that the phrase at 3.7 is intended to convey is that the decision maker should be satisfied that the marriage is genuine and that the key points are met.

7. The determination was therefore set aside. In turning to the re-making I made the following observations:

“This is an unfortunate situation for Mr Shoaib to find himself in. He came to the United Kingdom in compliance with the Rules, has found a job, paid tax, lived with his wife and learned English. Having looked at his English language test certificate I can see why he might have thought it to come from an approved provider. The consequence of his failure to check is as follows. The Home Office have retained his passport with the result that he has been unable to take a test with an approved provider. If his appeal is dismissed by this Tribunal he will have 28 days before his leave runs out, and unless he decides to overstay he will have to return to Pakistan in order to start the process of settlement again. That will involve an application made under Appendix FM. At present he and his wife are supported by his income. In any application for entry clearance he

can no longer rely on those earnings. His wife will have to obtain a job, and one that pays at least £18,600. The couple's separation is therefore likely to be a long one. As it was put in the determination of Judge Caswell, it will be "expensive and inconvenient", "painful and distressing"; all because he did not check whether "Pearson Edexcel" was the same company as "Pearson".

It seems to me that in the very particular circumstances of this case it would be appropriate to adjourn the re-making of the appeal and give Mr Shoaib an opportunity to take a test with an approved provider. The parties agreed. I am told that he has to date been unable to do this because the Home Office has his passport. I therefore direct that his passport be returned to him, or if there is a good public policy reason why that cannot be done, the Home Office issue a letter or other document which will satisfy any approved English Language test provider that Mr Shoaib is entitled to take this test. This must be done within 28 days of this decision being received. Whether Mr Shoaib does so, or passes it, is a matter for him".

8. The matter was therefore adjourned.

#### **The Re-Made Decision**

9. At the hearing before me of today's date Mr Harrison informed me that Mr Shoaib has now been given leave to remain. The Secretary of State therefore wishes to withdraw her case. I consent to the Secretary of State withdrawing her case, and in the remaking, allow the appeal of Mr Shoaib with reference to the Immigration Rules.

#### **Decisions**

10. The decision of the First-tier Tribunal is set aside.
11. The decision in the appeal is re-made as follows: "the appeal is allowed under the Immigration Rules".
12. I make no direction as to anonymity.

Deputy Upper Tribunal Judge Bruce  
18<sup>th</sup> November 2015