



IAC-BH-PMP-V1

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

Appeal Number: IA/51004/2014

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke  
On 12<sup>th</sup> October 2015**

**Decision & Reasons Promulgated  
On 30<sup>th</sup> October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GARRATT**

**Between**

**NIDA KANWAL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Aktar, Solicitor of Kenneth Jones Solicitors  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. On 24<sup>th</sup> August 2015 Designated Judge of the First-tier Tribunal Taylor gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Kirvan in which she dismissed the appeal against the decision of the respondent to refuse leave to remain as a spouse in accordance with the terms of paragraph 284 of the Immigration Rules. The appeal was considered on the papers.

2. In granting permission Designated Judge Taylor noted that the grounds contended that the transitional arrangements prevailing at the time of the appellant's application on 24<sup>th</sup> October 2014 meant that the appellant did not need to meet the English language test certificate requirement set out in sub-paragraph (ix)(a) of paragraph 284. He thought this point arguable.

### **Error on a Point of Law**

3. Mr Aktar confirmed that he relied upon the grounds. These point out that the appellant entered the United Kingdom as a student and was then granted an extension of stay from 31<sup>st</sup> October 2012 to 31<sup>st</sup> October 2014 as a spouse. In support of her application for leave as a spouse she had provided the requisite English language certificate at level A1. On 24<sup>th</sup> October 2014 she applied for variation of her leave to remain pointing out in her application, as provided for, that a fresh English language certificate was not required because it had already been sent in connection with her first, successful, application to remain as a spouse. In support of this contention the grounds refer to the unreported decision of the President of the Upper Tribunal in *Pinder* (IA/13236/2013) in which Mr McVeety, who also represented the respondent on that occasion, was said to have properly conceded that the applicant satisfied the requirement for an English language certificate set out in sub-paragraph (ix)(a) of paragraph 284 because of the certificate submitted in relation to a previous successful application. The grounds also make reference to key transitional arrangements covering applicants who had been granted entry clearance or leave to remain as spouses before the new Immigration Rules came into force before 9<sup>th</sup> July 2012. These specifically exempted the need to provide, amongst other things, the English language test certificate in a subsequent application.
4. In further submissions Mr Aktar accepted that the case of *Pinder* was not reported although Mr McVeety agreed that the point raised in that case was relevant here. Mr Aktar also produced to me a copy of the appellant's English language certificate issued by Trinity College London in May 2012 submitted with the earlier application for leave.
5. Mr McVeety suggested that the reason the appellant's application had, actually, been refused was because she had submitted a certificate in mathematics to which reference is made in the reasons for refusal letter of 11<sup>th</sup> December 2014 and this had prompted the decision-maker to suggest that the appellant had failed to provide the required English language certificate. However, he conceded that the principle referred to in the unreported case of *Pinder* was right in that the appellant's English language certificate of 2012 was valid and so a fresh one was not needed. Thus, he agreed that, despite the response of the Home Secretary dated 27<sup>th</sup> August 2015, the judge had erred because she had failed to refer to the English language certificate which was before her which was adequate, under the transitional arrangements, to show that she met the English language certificate requirement of the Immigration Rules and thus should have been allowed an extension to her stay.
6. In view of the concession made by Mr McVeety I announced that I was satisfied that the decision of the First-tier Tribunal showed an error on a point of law and should be set aside. It was also agreed that, as the only basis for refusal under the Immigration

Rules was the erroneous requirement for an English language certificate, I could go on to re-make the decision by allowing the appeal. This I now do.

**Decision**

The decision of the First-tier Tribunal shows an error on a point of law. I set aside the decision and re-make it to allow the appeal on immigration grounds.

**Anonymity**

Anonymity was not requested before the First-tier Tribunal or before me and I do not consider it appropriate in this appeal.

Signed

Date

Deputy Upper Tribunal Judge Garratt

**TO THE RESPONDENT**  
**FEE AWARD**

As it appears to me that the appellant's application should have been allowed when submitted because of the transitional provisions of which the respondent ought to have been aware, I make a full fees award noting that the sum paid for the paper consideration of the appeal was £80.

Signed

Date

Deputy Upper Tribunal Judge Garratt