



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/20566/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 30th June 2016

Decision & Reasons Promulgated
On 14th July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

AYSHA BEGUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Khan of Anwar Law Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge S J Pacey of the First-tier Tribunal (the FtT) promulgated on 1st October 2015.

2. The Appellant is a female citizen of Bangladesh born 10th January 1977 so she is now 39 years of age. On 12th August 2014 the Appellant applied for an extension of stay as the spouse of a person present and settled in the United Kingdom.
3. The application was refused on 24th October 2014 with reference to paragraph 284(ix) of the Immigration Rules which requires that an applicant provides an English language test certificate in speaking and listening from an English language test provider approved by the Secretary of State, which must meet or exceed level A1 of the Common European Framework of Reference (CEFR).
4. The Respondent noted that the Appellant had provided an ESOL International (Entry 1) certificate awarded by EMD which is not a provider approved by the Secretary of State as specified in Appendix O. The Appellant was not from a majority English speaking country, did not have an academic qualification equivalent to a bachelors or masters degree or PhD in the UK, taught in English, and the Appellant did not fall within any of the exemptions listed in paragraph 284(ix)(a).
5. The Appellant appealed contending before the FtT that she had obtained certificates from Elizabeth College dated 28th March 2013, and EMD (Qualifications) Limited which also refers to a course at Elizabeth College. It was also contended that when the Appellant made her initial application to come to the United Kingdom in September 2010 there was no English language requirement, and therefore there could be no such English language requirement when the Appellant applied for an extension of stay.
6. The FtT noted that the initial application for entry clearance had been refused on 24th November 2010, but the Appellant's appeal was subsequently allowed by the Upper Tribunal in March 2012. However the only issues before the Upper Tribunal related to adequacy of accommodation and maintenance.
7. The FtT found that the English language certificates provided by the Appellant did not satisfy the requirements of paragraph 284(ix). The FtT was satisfied, having been provided by the Presenting Officer with a copy of the Immigration Rules last updated in July 2010, that when the Appellant made her application for entry clearance, paragraph 281(i)(b)(ii) stipulated that a person seeking leave to enter the United Kingdom needed to have;

"Sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom unless she is under the age of 18 or aged 65 or over at the time he makes his application;"
8. The FtT found that the Appellant was not exempt from the English language requirement, and because a certificate had not been produced from an approved provider, the appeal was dismissed with reference to paragraph 284(ix).
9. The FtT went on to consider Article 8 of the 1950 European Convention on Human Rights and found that the Appellant could not succeed by reliance upon Article 8, either within or outside the Immigration Rules.

10. The Appellant applied for permission to appeal to the Upper Tribunal. In summary it was contended that there was no requirement, when the Appellant made her application for entry clearance, to provide an English language certificate and the Appellant had not provided such a certificate when she came to the United Kingdom. It was contended that this requirement was introduced on 29th November 2010, which was after the Appellant's application for entry clearance was refused on 24th November 2010.
11. It was contended that because the Appellant had only applied for an extension of stay in the United Kingdom and not for indefinite leave to remain, there was no requirement for her to submit an English language test certificate.
12. It was also contended that the FtT had erred in its consideration of Article 8.
13. Permission to appeal was granted by Judge Davidge of the FtT and I set out below the grant of permission in part;

“Judge Pacey dismissed Mrs Aysha Begum’s appeal on Immigration Rules grounds on the basis that she required evidence of an English language certificate, rejecting the argument that having been granted leave to enter as a spouse with the benefit of such a certificate there was no additional requirement. It is arguable that in light of the case of R (on the application of Bhudia) v SSHD [2016] UKUT 25 that the grounds may be correct in arguing that this is an erroneous approach. The grounds also challenge the ‘in the alternative’ decision in respect of Article 8 on the basis that the judge failed to consider all the relevant evidence. That ground is not adequately particularised and I do not grant permission on it.”

14. Directions were issued making provision for there to be a hearing before the Upper Tribunal to decide whether the FtT decision contained an error of law such that it should be set aside.

Oral Submissions

15. Mr Khan adopted a different stance from that taken before the FtT, and contained within the grounds seeking permission to appeal. He stated that he now accepted that paragraph 281 of the Immigration Rules did contain a requirement that an applicant must have sufficient knowledge of the English language, and that this requirement was in force when the Appellant made her application for entry clearance in September 2010. Because entry clearance had not been refused with reference to the English language requirement, it followed that the Appellant must have produced an English language certificate, and therefore he relied upon Bhudia which meant that because a certificate had been produced for entry clearance, it need not be produced again and no new certificate was required.
16. Mr McVeety submitted that the FtT had not erred in law. I was asked to find that the FtT had properly found that paragraph 284(ix) required an English language test certificate, and the certificate produced by the Appellant was not from an approved provider and therefore the FtT had been correct to dismiss the appeal under the

Immigration Rules. Mr McVeety noted that permission to appeal had been refused with reference to Article 8.

17. By way of response Mr Khan accepted that there was no evidence to indicate that an English language test certificate had been produced when the application for entry clearance was made, but made the point that this did not mean that such certificate had not been produced. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

18. As a preliminary point, I note that the judge granting permission indicated that the application for permission to appeal was out of time and there needed to be an application to extend time. Both representatives indicated that they believed that the application was in time. Having considered rule 33(2) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 I conclude that the application was made in time, and therefore there is no need for an application to extend time.
19. Permission to appeal appears to have been granted on a ground not argued before the FtT. I set out below the third paragraph in the judicial head note of Bhudia:
 - (iii) The requirement previously enshrined in paragraph 284(ix)(a) of the Immigration Rules that an applicant provide an English language test certificate in specified terms is satisfied where the applicant has already provided a certificate of this kind to the Secretary of State which has been accepted as valid.
20. It was never the Appellant's case that such a certificate had been provided when she was granted entry clearance. The opposite was in fact the case, with the Appellant contending that no certificate had been provided when she made her application for entry clearance, because there was no requirement in the Immigration Rules that required such a certificate.
21. I find that the FtT did not err in law for the following reasons. The FtT appreciated that the Appellant was applying for an extension of stay, not for indefinite leave. It was noted that the Appellant had made her initial application for entry clearance in September 2010 which had been refused on 24th November 2010, and that the Appellant's appeal was allowed by the Upper Tribunal in March 2012.
22. In relation to the certificates provided by the Appellant in relation to the English language requirement, the FtT found that these were not from an approved provider and did not err in so finding. Those certificates did not satisfy the requirements of the Immigration Rules.
23. The FtT noted the Appellant's argument that she did not need to provide an English language certificate because there was no such requirement when she made her initial application for entry clearance. The Appellant's position has now changed on

that, as Mr Khan accepted in making submissions before the Upper Tribunal, that there was such a requirement.

24. The FtT noted that the Appellant had not provided any objective evidence to support her contention that she did not need to supply an English language test certificate when applying for an extension of stay. The FtT found in paragraphs 9 and 11 that the Appellant “was not and is not exempt from meeting the relevant English language requirement.” The grounds submitted by the Appellant disclose a disagreement with the FtT, but they do not disclose a material error of law.

Notice of Decision

The decision of the FtT did not involve the making of an error on a point of law such that the decision must be set aside. The appeal is dismissed.

Anonymity

No anonymity direction was made by the FtT. There has been no request for anonymity made to the Upper Tribunal and no anonymity direction is made.

Signed

Date 5th July 2016

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

As the decision of the FtT stands, so does the decision not to make a fee award.

Signed

Date 5th July 2016

Deputy Upper Tribunal Judge M A Hall