



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/33528/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Centre City Tower Decision & Reasons
Birmingham Promulgated
On 12th April 2016 On 22nd April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**RAHILA SAHEBZADA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Senior Home Office Presenting Officer
For the Respondent: Mr R Ahmed of Counsel instructed by Harbans Singh
Solicitors

DECISION AND REASONS

1. The Secretary of State appeals against a decision of Judge Buckwell of the First-tier Tribunal (the FtT) promulgated on 20th November 2014.
2. The Respondent before the Upper Tribunal was the Appellant before the FtT and I will refer to her as the Claimant.

3. The Claimant is a female citizen of Afghanistan born 10th May 1980 who was granted entry clearance to the United Kingdom as the spouse of Mohammad Daud Sahebzadah (the Sponsor) who is a British citizen.
4. On 5th June 2014 the Claimant applied for further leave to remain as the Sponsor's spouse.
5. On 14th August 2014 the Secretary of State refused the application as the Claimant had failed to provide an English language test certificate as required by paragraph 284(ix)(a) of the Immigration Rules.
6. The Claimant appealed to the FtT. By the time the FtT hearing took place, the Claimant had obtained an English language certificate at Level A1 of the CEFR. The FtT decided that as this certificate had not been considered by the Secretary of State, it was appropriate to find the Secretary of State's decision not in accordance with the law, and therefore the Claimant's application remained outstanding before the Secretary of State, so that the English language certificate could be considered.
7. The Secretary of State applied for permission to appeal to the Upper Tribunal. The grounds relied upon Appendix FM-SE paragraph D which states that the initial decision maker will only consider documents submitted with the application unless certain exceptions apply, which the Secretary of State contended did not apply in this case.
8. Permission to appeal was granted on 15th January 2015.
9. At the hearing before the Upper Tribunal Mr Mills conceded that the decision of the FtT disclosed no error of law, and accepted that the application made by the Secretary of State was flawed, in placing reliance upon Appendix FM-SE, as this was an application that was considered pursuant to paragraph 284, and Appendix FM-SE was not relevant. Mr Mills accepted that the decision of the FtT must stand.
10. In view of the concession made on behalf of the Secretary of State, I find no error of law was made by the FtT. The decision of the FtT stands, and it is now for the Secretary of State to consider the English language test certificate, the original of which is held by the Sponsor, and should be submitted to the Secretary of State.

Notice of Decision

The making of 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. I do not set aside the decision. The appeal of the Secretary of State 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 order is made.

Signed

Date: 13th April 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
Deputy Upper Tribunal Judge M A Hall

Date: 13th April 2016