



IAC-FH-NL-V1

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

Appeal Number: IA/36808/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 January 2016**

**Decision & Reasons Promulgated
On 11 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**MR. AAMER SHAHZAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S. Karim of Counsel, instructed by CDRK Solicitors
For the Respondent: Mr. N. Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge G. Jones QC promulgated on 1 July 2015 in which he dismissed the Appellant's appeal against the Secretary of State's decision to refuse to grant leave to remain as the spouse of a person present and settled in the United Kingdom.
2. Permission to appeal was granted as it was arguable that the judge had not correctly applied the relevant test provided for by the immigration rules.

3. At the hearing I found that there was a material error of law in the decision of the First-tier Tribunal. I set aside that decision and remade the decision, allowing the appeal under the immigration rules, for reasons set out below.

Error of law

4. The application was refused by reference to paragraph S-LTR 2.2 (a) of Appendix FM of the immigration rules. There is no reference in the decision to this paragraph. Paragraph S-LTR2.2(a) provides that an applicant will not meet the requirements of the rules where “whether or not to the applicant’s knowledge false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application).”
5. Both the reasons for refusal letter, and the decision, make reference to TOEIC test results dated 27 June 2012. It is with reference to these test results that both the application was refused and the appeal dismissed. However, these TOEIC test results were not submitted in relation to the application made by the Appellant for leave to remain as a spouse. The English language test results provided by the Appellant for this application are found at pages 92 and 93 of the Appellant’s bundle provided for the hearing in the First-tier Tribunal. They are dated 18 April 2014, and are not TOEIC test results. These are the documents “submitted in relation to the application”. Mr. Bramble accepted that these were the relevant English language documents, rather than the TOEIC documents referred to in the Respondent’s decision.
6. I found that the TOEIC test results were not relevant for the purposes of this application. Irrespective of any concerns which the Respondent may have in relation to that test, the TOEIC test results were not “submitted in relation to the application” made by the Appellant, and therefore are not relevant to this appeal.
7. The judge in the First-tier Tribunal failed to address paragraph S-LTR2.2(a). He failed to consider which English language test results had been submitted in relation to the application. I find that the decision of the First-tier Tribunal contains an error of law. Given that this was the only reason that the application was refused, and that the appeal was dismissed, it is a material error, and I set the decision aside.

Remaking

8. Given the evidence, Mr. Bramble accepted that the Respondent was not entitled to refuse the application by reference to paragraph S-LTR2.2(a). He further accepted that the application had not been refused by reference to any other requirements, although it was noted that the decision was not entirely clear in its approach. The only reason that the

Respondent had refused the application was that the Appellant did not meet the suitability requirements.

9. Given that the only reason that the application was refused was not a reason open to the Respondent, who wrongly referred to the TOEIC test results which were not submitted with the application, I find that the application should not have been refused under paragraph S-LTR2.2(a). Given that this was the only reason that the application was refused, I find on the balance of probabilities that the Appellant meets the requirements of the immigration rules. The appeal under the immigration rules is allowed.
10. As I have allowed the appeal under the immigration rules, I do not need to go on to consider Article 8.

Notice of decision

The decision of the First-tier Tribunal involves the making of an error on a point of law. The decision is set aside.

I remake the decision allowing the Appellant's appeal under the immigration rules.

Signed

Date 9 January 2016

Deputy Upper Tribunal Judge Chamberlain