IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/15413/2014

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham	**Decision & Reasons Promulgated**
On 18th December 2015	**On 13th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

ISRA YOUNIS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:
For the Appellant: Mr M Azmi, Counsel
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of Pakistan born on 2nd March 1993. She applied on 13th August 2014 to the British High Commission, Islamabad, for entry clearance to the UK as the wife of the Sponsor, Mohammed Younis. That application was refused for the reasons given in a Notice of Refusal dated 6th November 2014. The Appellant appealed, and her appeal was heard by First-tier Tribunal Judge Moan (the Judge) sitting at Birmingham on 28th May 2015. She decided to allow the appeal for the reasons set out

in her Decision dated 1st June 2015. The Respondent sought leave to appeal that Decision, and on 13th August 2015 such permission was granted.

Error of Law

2. I must first decide if the Decision of the Judge contained an error on a point of law so that it should be set aside. The sole issue before the Judge was whether the Appellant met the English language requirement set out in paragraph E.ECP.4.1(b) of Appendix FM of the Statement of Changes in Immigration Rules HC 395. The Judge allowed the appeal because there was before her a certificate from ETS current for the period from 10th June 2013 to 10th June 2015 indicating that the Appellant had achieved the required level of proficiency for both speaking and listening 2 English. The original application had been refused because whereas ETS was an approved test provider at the time when the Appellant took her test in April 2014, by the time she made her application for entry clearance in August 2014 ETS was no longer an authorised provider. However, as the Judge decided that there were no transitional provisions in the Rules to deal with this situation, she was entitled to find that the Appellant satisfied the English language requirement at the time of her application.

3. At the hearing, Mr Mills argued that the Judge had erred in law in coming to that conclusion. The Judge had erred in deciding the sole issue in the appeal on the basis that there were no transitional provisions relating to the situation where a test provider ceased to be an authorised test provider during the period between the Appellant taking her test and making her application for entry clearance. That transitional provision was that:

> "Anyone who has taken a previously approved test on or before 5th April 2015 may still use it in a UK immigration application until 5th November 2015 providing the test is one of those detailed in the transitional approved tests list."

Mr Mills produced the relevant transitional approved tests list which revealed that it did not include ETS. Therefore when she made her application for entry clearance the Appellant did not have a certificate from an authorised test provider showing that the Appellant had passed the English language test.

4. In response, Mr Azmi referred to the Decision of the Judge and argued that there had been no such error of law without explaining why.

5. I do find an error of law in the Decision of the Judge so that it should be set aside. The Judge based her Decision on her belief that there were no transitional provisions relating to the circumstances where a test provider had become an unauthorised test provider during the period between the taking of an English language test and the submission of an application for entry clearance. There are such transitional provisions which exclude a test certificate issued by ETS being relied upon. The Judge therefore erred in law.

Remade Decision

6. I decided to proceed to remake the Decision of the Judge. In this respect I heard further submissions from the representatives. Mr Azmi addressed me first. He did not argue that the Appellant met the requirements of Appendix FM, but informed me that the Appellant had obtained a further certificate from an authorised test provider showing that she was proficient to the required standard in speaking and listening 2 English as had been stated by the previous certificate. Therefore the Decision to refuse her entry clearance was disproportionate.

7. In response, Mr Mills submitted that the Decision was proportionate. It was in the public interest to impose an English language requirement on those seeking to come to the UK for settlement from abroad. A certificate of success in an English language test post the application for entry clearance was irrelevant. There were no compelling circumstances allowing the Appellant's Article 8 ECHR rights to be considered. She would have to apply for entry clearance from abroad again. This was in accordance with the Decision in **SSHD v SS (Congo) and Others [2015] EWCA Civ 387**.

8. Mr Azmi did not argue that the Appellant qualified for leave to enter under Appendix FM of the Immigration Rules and I so find. The Appellant has failed to meet the requirements of paragraph E.ECP.4.1 of Appendix FM of HC 395 and therefore her appeal must be dismissed under the Immigration Rules.

9. Mr Azmi argued that as the Appellant subsequently passed an English language test carried out by an authorised test provider it would be a disproportionate breach of her rights under Article 8 ECHR to refuse her entry clearance. Her case was put on no wider basis than that. I find that this alone is insufficient for me to conclude that there are compelling circumstances which might outweigh the public interest in excluding those who are unable to produce at the relevant time a certificate of proficiency in English language and therefore following the Decision in **SS Congo** I am not satisfied that the Decision to refuse entry clearance was disproportionate. The appeal is also dismissed on human rights grounds.

Notice of Decision

The making of the Decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that Decision.

I remake the Decision in the appeal by dismissing it under the Immigration Rules and also on human rights grounds.

Anonymity

The First-tier Tribunal did not make an order for anonymity and I find no reason to do so.

Signed Date

Upper Tribunal Judge Renton

TO THE RESPONDENT
FEE AWARD

In the light of my Decision to remake the Decision in the appeal by dismissing it, there can be no fee award and the Decision of the First-tier Tribunal in this respect is remade accordingly.

Signed Date

Upper Tribunal Judge Renton