Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09645/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22nd December 2017	**On 21st February 2018**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR NAVEED MEHMOOD
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr E Tufan, Home Office Presenting Officer
For the Respondent: No appearance

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State for the Home Department, I shall refer to the parties as in the First-tier Tribunal.

2. The Appellant is a national of Pakistan, born on 11 December 1990. His appeal against the refusal of entry clearance as a spouse was allowed by First-tier Tribunal Asjad on 9 January 2017 on human rights grounds.

3. The judge found: "Even if it is accepted that the English language test certificate is not a recognised qualification at the time of the application, the public interest in 117B is that those who come to the UK should speak

English so that they are better able to integrate into society and are less of a burden to the taxpayer. The fact remains that the Appellant has an English language qualification and passed such a test as demonstrated by his results shown on his City and Guilds certificate. The Appellant is able to speak English to a standard that was recognised by the Home Office up to November 2015." The judge found that the relationship was genuine and subsisting and that the refusal of entry clearance breached Article 8.

4. The Secretary of State for the Home Department sought permission to appeal on the following grounds:

> "2. A sought to rely on a City and Guilds certificate as evidence to demonstrate an ability to speak to the requisite level. The Respondent does not take issue with the educational institute City and Guilds *per se* – the application was made before 5 November 2015 and the test was taken prior to 5 April 2015 therefore A can rely on a qualification from this source. However, it was incumbent on A to submit the certificate as well as a notification of the candidate results sheet. This was the only point advanced in the ECO's decision:
>
> > *You are not exempt from the English language requirement under paragraph E-ECP.4.2. In support of your application you have provided City & Guilds certificates for listening and speaking; however you have failed to provide the corroborating 'notification of candidate results'. I therefore refuse your application under paragraph EC-P.1.1(d) of Appendix FM of the Immigration Rules. (E-ECP.4.1.)*
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> 3. As such without the corresponding notification A cannot satisfy the requirements of the Rules. It is unclear from [11] and [17] whether the FTTJ fully grasped the need to satisfy the Rules in their entirety – indeed there appears to be no explicit finding whether A did or did not meet Appendix FM and thus whether any compelling circumstances exist to consider 'Article 8 outside of the Rules'.
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> 4. The Appellant appears to assert that City and Guilds do not provide the relevant notification – see [8]. The FTTJ is silent on this. However, the evidence relied upon does not support the proposition that successful candidates are not given such a document only that unsuccessful candidates are given performance feedback.
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> 5. It is submitted that without all of the required evidence the Appellant has not, contrary to the conclusion in [17], demonstrated they speak English to a standard recognised by the Respondent.
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> 6. The Respondent asserts that the failure to consider whether there are compelling circumstances coupled with a failure to engage with the requisite Immigration Rules (and thus the need for effective immigration control) renders the proportionality assessment erroneous."

5. Permission was granted by Resident Judge of the First-tier Tribunal Zucker on the grounds that: "It was arguable that the judge failed to make any or any sufficient findings as to whether the Appellant had provided any sufficient notification of his results as required under the rules and that

without any such finding the finding with respect to the application of the wider application of article 8 ECHR was flawed."

6. In submissions Mr Tufan relied on home office guidance and pointed out that, in relation to listening and speaking, the documents required were International Speaking and Listening IESOL Diploma Certificate or ISESOL Certificate plus IESOL Listening A1 Certificate. For tests booked or taken before 6 April 2013 one of the following combinations of documents were required – the Diploma Certificate plus the notification of candidate results sheet.

7. Mr Tufan relied on the grounds of appeal. No one appeared on behalf of the Appellant and therefore no submissions were made on his behalf.

8. The application was refused by the Entry Clearance Officer [ECO] on the ground that the Appellant had failed to submit notification of candidate results. The application was refused under EC-P.1.1(d) of Appendix FM (E-ECP.4.1). EC-P.1.1(d) states that the applicant must meet all the requirements of E-ECP: Eligibility for entry clearance as a partner and E-ECP.4.1 states that in relation to the English language requirement the applicant must provide specified evidence that -

   (a) they are a national of a majority English speaking country listed in paragraph GEN 1.6;

   (b) have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of References for Languages with a provider approved by the Secretary of State;

   (c) have an academic qualification recognised by UK NARIC to be equivalent to the standard of a Bachelor's or Master's degree or PhD in the UK which was taught in English or;

   (d) are exempt from the English language requirement under paragraph E-ECP.4.2.

9. There is no requirement under the Immigration Rules that the Appellant provide notification of candidate results. That phrase appears in the Respondent's guidance and I was not made aware or shown any corresponding requirement under any of the Appendices.

10. Appendix O deals with a list of English language tests that have been approved by the Home Office. Part of Appendix O which deals with City and Guilds states that in relation to speaking and listening, only the certificate is required, but for tests booked or taken before 6 April 2013, both the certificate and the notification of candidate results are required. For A1 tests booked and taken online on or after 6 April 2013 only the certificate is required, but for other categories of test the IESOL diploma certificate is required or a combination of the ISESOL certificate, the IESOL certificate plus the notification of results sheets is required.

11. An argument was made before the First-tier Tribunal that the City and Guilds test taken by the Appellant was not recognised. However, after hearing argument on the point, the judge found that test certificates up 6 April 2015 could be used for UK applications and there was no beginning date. There was no objection raised by the ECO about the type of qualification the Appellant had submitted and if any issue was to be raised it should have been done at that point. The argument that the Appellant could not rely on his certificate was rejected and no challenge was made to that in the Respondent's grounds of appeal.

12. The Appellant in this case was relying on a City and Guilds certificate for listening and speaking and Appendix O suggested that was sufficient. Accordingly, there was no error in the judge's conclusion that the Appellant could rely on his City and Guild's certificate, and since there was no requirement, the failure to submit notification of results was not fatal to the application. The judge was well aware at paragraph 5 that this was the basis of refusal. However, it is apparent from the Respondent's guidance and Appendix O that the requirement to submit a notification sheet did not apply in the Appellant's case.

13. The Appellant had submitted an English language certificate and was able to speak English to a standard that was recognised by the Home Office up to November 2015. That was enough to satisfy the substantive English language requirements of the Immigration Rules. The judge assessed proportionality in accordance with Section 117B.

14. I find that there was no error of law in the judge's decision of 9 January 2017 and I dismiss the Respondent's appeal.

Notice of Decision

The Respondent's appeal is dismissed.

No anonymity direction is made.

J Frances

Signed Date: 16 February 2018
Upper Tribunal Judge Frances