



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006212
First-tier Tribunal No: HU/03996/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27 April 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL
and
DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

ENTRY CLEARANCE OFFICER

Appellant

and

MARIA ISABEL LLUEN SAENZ

Respondent

Representation:

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: No attendance or representation

Heard at Field House on 23 March 2023

DECISION AND REASONS

1. On 16 November 2022, First-tier Tribunal Judge Bulpitt (“the judge”) allowed the respondent’s appeal against the Entry Clearance Officer’s decision to refuse her entry clearance as a spouse. The judge found that the requirements of Appendix FM of the Immigration Rules were met, and allowed the appeal on human rights grounds, in accordance with the approach endorsed at [34] of TZ (Pakistan) & Anor v SSHD [2018] EWCA Civ 1109; [2018] Imm AR 1301.
2. The Entry Clearance Officer sought permission to appeal, contending that the judge had failed to consider an issue raised in her notice of refusal. The issue in

question was whether the respondent met the English Language Requirement for entry clearance which is, in summary, to have passed an English language test, at a provider approved by the Secretary of State, at level A1 of the Common European Framework of Reference ("CEFR").

3. The Entry Clearance Officer was granted permission to appeal on that basis. Permission to appeal was granted by First-tier Tribunal Judge Rodger on 6 January 2023. She considered the ECO's single ground of appeal to be arguable.
4. On perusing the papers in advance of the hearing, it became clear to the Upper Tribunal that the respondent had asserted in her notice of appeal to the First-tier Tribunal that she had passed an IELTS test at level A1 of the CEFR. The notice of appeal stated that the IELTS certificate was appended to it, although it was not amongst the papers which had been transmitted digitally from the FtT to the Upper Tribunal. We therefore directed that a copy of the certificate should be filed and served not later than the day before the hearing. The sponsor, Mr Stagg, duly complied with that direction.
5. When the appeal was called on before us, the ECO was represented by Mr Clarke. The respondent was unrepresented. We had expected that to be so, since Mr Stagg had written to the Tribunal on 8 March to state that he and the respondent live in Singapore and did not propose to attend. We therefore proceeded in the respondent's absence.
6. Mr Clarke submitted that the judge had erred in law in failing to consider the English Language Requirement, which had clearly been raised in the ECO's notice of refusal. In light of the IELTS certificate which had been filed and served by Mr Stagg, however, he accepted that he was unable to show that any such error was material to the outcome. He accepted, in other words, that the outcome of the appeal would have been the same if the judge had considered this issue, since the certificate demonstrated that the respondent meets the English Language Requirement.
7. We agree with those submissions. It is not clear why the judge did not consider the English Language Requirement; it was clearly raised in the ECO's decision, and we have not seen anything (whether in the form of an Entry Clearance Manager review or otherwise) which removed that ground of refusal. The point was evidently live before the FtT and should have been considered. The failure to do so represented an error of law. As Mr Clarke recognised, however, the respondent's IELTS certificate undoubtedly answers the omitted question in her favour. The judge's error is therefore immaterial to the outcome of the appeal, in that he would have found the respondent to meet the Immigration Rules if he had considered the remaining point.
8. We should add that we were told by Mr Clarke that the IELTS certificate had not, for whatever reason, been provided to the ECO at any stage, and did not appear in the electronic records which were available to him. We need not attribute responsibility for that error. We mention the point in case it might be thought that the ECO should not have appealed against the judge's decision. As far as she was aware, at least until the day before the hearing in the Upper Tribunal, the judge had failed to consider a matter in issue between the parties and there was no evidence which was capable of answering that issue in the respondent's favour.

9. It is in those circumstances that we will uphold the decision of the FtT. The holding that the requirements of the Immigration Rules were met was demonstrably correct, albeit for incomplete reasons, and the appeal was correctly allowed on human rights grounds as a result.

Notice of Decision

The Entry Clearance Officer's appeal is dismissed. The decision of the FtT allowing the appeal on human rights grounds shall stand.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 March 2023