



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Ce-File Number: UI-2022-  
002672**

**UI-2022-002669**

**First-tier Tribunal No:**

**HU/54039/2021**

**HU/54041/2021**

**IA/10557/2021 & IA/10512/2021**

**THE IMMIGRATION ACTS**

**Heard at George House,  
Edinburgh  
On the 21 December 2022**

**Decision & Reasons Promulgated  
On the 27 February 2023**

**Before**

**UT JUDGE MACLEMAN**

**Between**

**SAHIBI BIBI & HARRIS SAEED**

Appellants

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

*For the Appellant: Mr T Haddow, Advocate, instructed by Five Star  
International Ltd, Immigration Advisers, Glasgow*

*For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer*

**DETERMINATION AND REASONS**

1. By a decision dated 30 November 2020, the respondent refused the first appellant's application for entry clearance to join her husband in the UK.
2. It is agreed that (i) the only issue is whether she should have been exempted from the requirement in the immigration rules to submit an English language test certificate, and (ii) the second appellant's case stands or falls with hers.
3. The respondent's policy is that exemption applies:
  - ... only where the applicant has a physical or mental condition which prevents them from learning English or taking an approved ... test ...
4. The policy requires:
  - ... satisfactory medical evidence from a ... practitioner ... qualified in the appropriate field who sets out the relevant ... condition and from which it may be concluded that exemption on those grounds is justified.
5. The appellant provided a report from Dr Sarwar Khan, a medical practitioner and psychiatrist, dated 13 May 2020. He had been treating the appellant for 18 months, firstly at his clinic and later at home, as she did not have the confidence to attend. The report sets out the criteria for a diagnosis of Generalized Anxiety Disorder (GAD) and the treatment prescribed to the appellant: weekly sessions of Cognitive Behaviour Therapy (CBT); two medications; and a follow up after 2 months. The report ends:
  - Clinical opinion and summary
  - My assessment of Mrs Bibi Sahiba's psychological wellbeing and mental health has shown that she is currently presenting with symptoms of depression, anxiety and hopelessness. All these factors mean that she would not be able to attend the necessary exam required to join her husband in the UK.
6. The respondent's decision says of Dr Khan's report:
  - ... whilst this letter states that you would not be able to attend an English test ... it does not confirm that you are not capable of learning English.
7. The appellant's application was not based on her being unable to speak English to the (basic) level required by the test, or on her being unable to learn.
8. The respondent's decision goes on to discuss, in confused terms, whether the appellant met the terms of the exemption; but it begins with a misconception which has infected the rest of the proceedings.
9. FtT Judge Farrelly dismissed the appellant's appeal by a decision dated 15 March 2022. At [17], he said that the evidence did not indicate that the appellant's anxiety was
  - ... such that she could never sit an examination.

10. The crux of the decision is at [19]:

It is my conclusion that the English requirement is reasonable in the circumstance and is not a disproportionate interference with family life. Her husband with his earnings may be able to arrange private tuition for his wife. As stated, it is suggested the impediment is her anxiety rather than her ability. A physician has been engaged. There is reference to cognitive behavioural therapies. I do not see her anxiety as something which would be permanent or insurmountable obstacle to her taking the test. Meantime, the sponsor can continue to contact his family by telephone and video call and visits .

11. While Mr Mullen strove to extract from that passage a sufficient justification for the outcome, I consider that to be absent.

12. The decision of the FtT is conditioned on the obstacle to taking the test not being “permanent or insurmountable”. Those criteria are far above the terms of the policy. The observations on private tuition are irrelevant to the case put. Continuation of family life by other means is irrelevant to the first and decisive point in issue.

13. The grounds of appeal to the UT and the submissions of Mr Haddow demonstrate that the FtT misdirected itself in law on what was required to justify exemption. Its decision is set aside.

14. Mr Haddow asked the UT to proceed to remake the decision. Mr Mullen did not suggest any other course.

15. I am obliged to both representatives for their assistance, including provision by Mr Haddow of a helpful written submission and a convenient bundle of materials.

16. I do not find in the respondent’s decision, or in the respondent’s submissions to the FtT and to the UT, any reason to conclude other than as follows.

17. The applicant provided, in terms of the respondent’s policy, satisfactory medical evidence from a practitioner qualified in the appropriate field that exemption was justified due to a mental condition preventing her from taking an approved language test.

18. That was all that was required for the applications for entry clearance to succeed, so both appeals, as originally brought to the FtT, are allowed on human rights grounds.

19. No anonymity direction has been requested or made.

H Macleman

22 December 2022

UT Judge Macleman

---

**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is **“sent”** is that appearing on the covering letter or covering email.