



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/16880/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 14<sup>th</sup> March 2014

Determination Promulgated  
On 27<sup>th</sup> March 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

CHETANKUMAR PATEL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr V Makol (Legal Representative), o Maalik & Co Solicitors  
For the Respondent: Mr G Saunders (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The appellant is a citizen of India born on 31<sup>st</sup> July 1988.
2. The appellant sought leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant.

3. That application was refused by the respondent on 25<sup>th</sup> April 2013 and directions for removal were also made.
4. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Walters.
5. The appeal was dismissed both on immigration grounds and on human rights grounds.
6. Grounds of appeal were submitted on the basis that the Judge had had regard to the incorrect version of the Immigration Rules.
7. Leave to appeal was granted on that basis. Thus the matter came before me in pursuance of that grant.
8. It was a requirement of the Rules that the appellant had to show proficiency in the English language at a minimum CEFR B2.
9. The appellant had submitted TOEIC certificates dated 19<sup>th</sup> June 2012 to show that he passed the requisite scores in listening, reading, writing but not speaking. No points were awarded for his CAS.
10. At the hearing before the First-tier Tribunal Judge it had been argued on behalf of the appellant that in fact he had passed all four areas as required and had submitted the requisite certificates before the date of decision, as such he met the minimum English requirement.
11. The Judge found at paragraph 35 that the Immigration Rules required the appellant to show that he had achieved the required scores and all the relevant components of the English language test during a single sitting and could not combine scores from different parts of the same examination set at different times. Thus the Judge did not find that the appellant met the requirements of the Rules.
12. It was argued that such was to misunderstand the requirement of the Rules. Such a requirement of the Rules only came in after October 2013 and not before. That was the argument that had been advanced before the Judge which had not been accepted.
13. Mr Makol, who represents the appellant, submitted that all relevant documents had been submitted prior to the decision.
14. At E1 was the TOEIC dated 24<sup>th</sup> May 2012 which showed that listening and reading tests had been taken on that occasion and both had been passed. At Annex E2 of the respondent's bundle showed the TOEIC dated 15<sup>th</sup> May 2012 which had the speaking and writing tests. It was clear that the speaking one was below the 150 points that

was required but on 19<sup>th</sup> June 2012 a further TOEIC was submitted showing that in relation to speaking he scored 180.

15. It was a matter of concern that the decision letter made no reference to that second speaking score. There was no requirement at that stage to have the test all on one occasion. Further a new CAS had been obtained from a different college on 15<sup>th</sup> April 2013 and that had also been submitted to the respondent.
16. Mr Saunders, who represents the respondent, most fairly conceded that the requirement to pass all four language tests on the same occasion was brought into the Rules in October 2013 postdating the date of decision. He conceded therefore that the Judge was wrong in that regard.
17. In those circumstances, I find that there was a material error of law such that the decision should be set aside and remade.
18. Turning to the refusal letter it makes no reference to the certificate showing that the speaking score had been achieved. It seems to reflect that reading and listening should be on one certificate at the same date and speaking and writing on another of the same date.
19. The extracts from the Rules said to be in operation at the material time are set out in the grounds of appeal at paragraph 9. It was a requirement  

“that the appellant has achieved or exceeded Level B1 of the Council of Europe’s Common European Framework for Language Learning in all four components (reading, writing, speaking and listening), unless exempted from sitting a component on the basis of the appellant’s disability.”
20. It was submitted there was no requirement, therefore, to have two pairs of examination as set out in the decision letter. Whether or not that was a requirement set out in the guidance is irrelevant. It was not set out in the Rules.
21. Mr Saunders did not seek to argue to the contrary but rather was content for me to determine the matter upon the merits.
22. I find that the appellant had been proficient in all four subjects prior to the decision and had notified the respondent of that fact. I find, therefore, that at the date of the decision the appellant did meet the Immigration Rules and the relevant requirements.
23. In the alternative given the failure to acknowledge the passing of all components I find that there has been a lack of fairness in the decision with regard to **Naveed [2013] UKUT 00114**.

24. So far as Article 8 is concerned, although the appellant does not satisfy the requirements of private and family life so as to entitle him to a freestanding consideration of Article 8 of the ECHR, nevertheless given my findings that he meets the Immigration Rules it would be disproportionate to remove him.
25. In all the circumstances therefore the appeal in respect of the Immigration Rules is allowed. The appeal in respect of Article 8 ECHR is also allowed in line with the above.

Signed

Date

Upper Tribunal Judge King TD