Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/03734/2013

THE IMMIGRATION ACTS

Heard at Stoke on Trent | **Determination Promulgated**
On 13 October 2014 | **On 21 October 2014**

Before

Deputy Upper Tribunal Judge Pickup
Between

Asim Atarid
[No anonymity direction made]

Appellant

and

The Entry Clearance Officer Islamabad

Respondent

Representation:

For the appellant: Mr D Akhtar, instructed by Burton & Burton Solicitors
For the respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Asim Atarid, date of birth 1.2.85, is a citizen of Pakistan.

2. This is his appeal against the determination of First-tier Tribunal Judge Gurung-Thapa, promulgated on 14.3.14, dismissing his appeal against the decision of the respondent, dated 15.12.12, to refuse his application made on 6.7.12 for entry clearance to the United Kingdom as the spouse of Alia Javed, pursuant to paragraph 281 of the Immigration Rules. The Judge heard the appeal on 18.2.14.

© CROWN COPYRIGHT 2014

3. First-tier Tribunal Judge Bennett refused permission to appeal on 22.5.14. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Allen granted permission to appeal on 6.8.14.

4. Thus the matter came before me on 13.10.14 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Gurung-Thapa should be set aside.

6. The relevant background can be summarised as follows. The appellant's application was made prior to the change in the Rules coming into force on 9.7.12. Following Edgehill and the transitional provisions, the application thus falls to be considered under paragraph 281 of the Immigration Rules.

7. The application was refused because of failure to submit an acceptable English language test certificate from a provider approved by the Secretary of State showing that the appellant met or exceeded the A1 level of the CEFR.

8. The First-tier Tribunal Judge was not satisfied that the job offer for the appellant was genuine, but was satisfied that the appellant and the sponsor would be able to maintain and accommodate themselves within the Immigration Rules. However, the judge was not satisfied that the produced evidence met the English language requirements. That is the only issue in this appeal.

9. The application was also refused under the maintenance and accommodation requirements of paragraph 281.
10. In granting permission to appeal, considered simply that the grounds identified an arguable challenge to the judge's findings in respect of the appellant's English language qualification.
11. The Rule 24 response seems to address only the maintenance requirements and criticises the First-tier Tribunal findings, but there is no cross appeal by the Secretary of State. In relation to the English language requirement, the response states only that the judge made clear and reasoned findings as to the validity of the qualification.
12. I bear in mind that as this is an out of country appeal, I can only consider evidence pertaining to the circumstances prevailing at the date of decision, namely 15.12.12.
13. The document produced by the appellant with the application is a Pearson PTE Score Report, dated 10.7.12, a few days after the application but before the date of decision. It shows an overall score of 17. However, Mr Akhtar's submission was that the result demonstrated that the appellant met the listening and speaking requirements, 15 and 16 respectively. He relied on the reverse of the document which suggests that a PTE Academic Score in the range 10-29 met the CEFR A1 level. He also pointed me to

Appendix O which also suggests that the Pearson test is accepted for A1, even though it is designed to test at level B1. The difficulty in the argument is whether the scores are acceptable and mean what Mr Akhtar claims. The words, "A1 or below"gave me cause for concern, especially when read with the accompanying explanation that when using PTE Academic for a spouse/partner visa it states that, "spouse visa applicants require a minimum PTE Academic score of 24 in listening and Speaking only." Mr Akhtar suggested that this meant a total of 24 when taken together. However, the overall score was only 17, even when taking the other components into account. Mr Akhtar also suggested that as the Pearson PTE was at B1 level it must necessarily include the lower A1.

14. I adjourned briefly to allow Mr Harrison to take instructions as to whether the Pearson B1 level test is acceptable for A1 requirements. He produced to me the case of Akhtar (CEFR; UKBA Gudiance and IELTS) [2013] UKUT 00306 (IAC), which held that reliance must be placed on the UKBA Guidance, because the Rules did not state an equivalence between the IELTS results and the CEFR levels. It also states that at least each of the individual modules in speaking and listening must have been assessed at the level required.
15. The Guidance document relied on was published on 25.1.13, which Mr Akhtar points out was after the refusal decision. However, after checking it, I am satisfied that the Guidance applicable at the date of the decision was to the same effect. The Guidance states at SET 17.4.2 that the TOEFL test is not designed to test below B1 and thus there is no way to establish what score is required to meet A1. I do not find the Guidance helpful in this case, as the test was not TOEFL, but Pearson PTE Academic, which clearly states on the explanation page that it can be used.
16. Having considered both the Guidance the case of Akhtar, I am satisfied that potentially, the Pearson test can cover the A1 level for a spouse application. However, I am not satisfied that the appellant's results met the A1 level. The overall score of 17 was very poor. I am satisfied that the necessary pass of A1 is a score of 24 in each of both the speaking and listening tests. The appellant scored well below that level. I reject Mr Atkhar's submission that the scores have to be added together, as that is not stated on the Pearson guidance and makes sense of the statement that 10-29 overall score is A1 or below. Clearly, the appellant needed to pass each of speaking and listening at 24.
17. In the circumstances, I find that the appellant has failed to demonstrate that he meets the A1 CEFR level required to meet the Rules. In the circumstances his application must fail under the Immigration Rules as failing to meet the English language requirement of paragraph 281.
18. The grounds of appeal both to the First-tier Tribunal and the Upper Tribunal rely on article 8 ECHR, however, Mr Akhtar did not address me on family life at all. Even if family life is to be relied on, it is clear that Appendix FM and paragraph 276ADE do not apply to an out of country application.
19. Even had the First-tier Tribunal proceeded to consider article 8 ECHR under the Razgar five step process, conducting the careful proportionality balancing exercise between on the one hand the legitimate and necessary

aim of the state to protect the economic well-being of the UK through immigration control and on the other the rights of the appellant and the sponsor to respect for their family life, I find that the First-tier Tribunal would have undoubtedly found the decision entirely proportionate. The appellant is not entitled to settle in the UK simply because that is their choice. I would have to take into account that there is a route for entry for persons in his circumstances, but he has failed to demonstrate that he meets the requirements of the Immigration Rules. Article 8 is not a short circuit to compliance with the Rules. The appellant and the sponsor entered into their relationship in the full knowledge that they would only be able to settle in the UK if they met the Rules for doing so. There was no evidence before the Tribunal that the parties could not continue family life in Pakistan. It is also the case that if the appellant and the sponsor can demonstrate that they meet the requirements of the Rules they can make a new application with an appropriate English language test certificate. In the circumstances, it is difficult to see how the decision could ever be found to be disproportionate.

20. I also bear in mind that if the decision had to be set aside and made again, I would have to take account in the public interest assessment of section 117B(2) of the 2002 Act: “It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English— (a) are less of a burden on taxpayers, and (b) are better able to integrate into society.”

21. In all the circumstances, although article 8 family life was not considered by the First-tier Tribunal Judge, the appellant has failed to demonstrate that it would or could have produced any different outcome to the appeal than a dismissal. In the circumstances, I find no material error of law in the decision.

Conclusion & Decision:

22. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

Signed: Date: 16 October 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed.

Signed: Date: 16 October 2014

Deputy Upper Tribunal Judge Pickup