



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/33284/2014
IA/33297/2014
IA/33288/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 19 August 2015**

**Determination Promulgated
On 14 September 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

**IPEK EFE
GULFER EFE
OZGUR EFE**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ian Jarvis, Senior Home Office Presenting Officer

For the Respondent: Ms Seema Kansal, Counsel, instructed by Kings Solicitors

DETERMINATION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.

2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge Telford) allowing the respondents' appeal against a decision taken on 6 August 2014 to refuse the respondents' applications for indefinite leave to remain in the UK on the basis that the first respondent is the married partner of Yusuf Efe who is a British citizen ("the sponsor"). The second and third respondents are child dependents.

Introduction

3. The respondents applied for a variation of leave to remain on 6 August 2014.
4. The Secretary of State refused the application on the basis that the required ESOL certificate had not been supplied by the date of decision and a letter was received from the sponsor on 10 July 2014 stating that the parties were no longer together and had decided to split up for good.

The Appeal

5. The respondents appealed to the First-tier Tribunal and attended an oral hearing at Hatton Cross on 26 February 2015. They were represented by Ms Kansal. The Secretary of State was not represented. The First-tier Tribunal found that the argument was merely a temporary spat, the parties were residing together and the marriage was subsisting. The judge offered some marital advice at paragraph 10 of the decision. The judge had an ESOL certificate from June 2014 which was accepted as valid and meeting the language criteria. The appeal was allowed.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law because it was not clear when or whether the ESOL certificate had been submitted to the Secretary of State. The judge had acknowledged that the certificate had been submitted too late to be considered before the decision. The proper course was to remit the case to the Secretary of State in order to allow proper consideration of the document.
7. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth on 20 May 2015 on the basis that it was arguable that the Secretary of State should have been given the opportunity of inspecting the certificate.
8. Thus, the appeal came before me

Discussion

9. Mr Jarvis initially submitted that the judge had fallen into error by allowing the appeal without reference to all of the Immigration Rules, namely paragraph 27 of Appendix FM-SE which provides that the evidence of passing the English language test in speaking and listening must take the form of a certificate and/or other documents and the Home Office **must** be able to verify the evidence online. Further checks carried out had

established that Trinity College was an approved provider for the purposes of the appeal but further checks carried out on 18 August 2015 to verify the document had been unsuccessful. That was because there was no online verification of the ESOL certificate submitted by the first respondent. The judge should have dismissed the appeal on the basis that the ESOL certificate had not been verified or at least adjourned the hearing for the requisite check to be made.

10. Ms Kansal responded that the ESOL certificate had been sent by solicitors on 11 June 2014 and the Home Office had signed for receipt on 16 June 2014. That is confirmed by documents in the respondents' bundle. The Secretary of State chose not to attend the hearing and it was wrong to take issue with a document sent before the hearing. The judge was entitled to make a decision. On line testing is discretionary but those Rules were not in force in August 2014 in any event. There is no mention of online verification in the Rules in force in 2014. The online verification requirement does not feature in the refusal letter.
11. After further exchanges of submissions, Mr Jarvis conceded that he could not go so far as to submit that the ESOL certificate was not genuine. However, the relevant date for the Rules was the date of hearing. Ms Kansal checked the archived version of the Rules and submitted that the Rules in force as at the date of hearing were the same as those in force as at the date of decision. Mr Jarvis then helpfully conceded that the judge might not have made an error of law and that he was happy for the Upper Tribunal to research the matter and determine the appeal.
12. Ms Kansal supplied a copy of the Rules in force as at the date of decision and hearing shortly after the Upper Tribunal hearing concluded. I have considered those Rules and find that paragraph 27 of Appendix FM-SE did not include any requirement for online verification. The ESOL certificate was submitted by 16 June 2014 and there was no requirement for online verification between June 2014 and February 2015. The ESOL certificate meets all of the requirements of paragraph 27 as it was at the dates of decision and hearing. The judge correctly found that the English language requirement was met.
13. Thus, the First-tier Tribunal's decision to allow the respondent's appeal under the Immigration Rules did not involve the making of an error of law and its decision stands.

Decision

14. Consequently, I dismiss the appeal of the Secretary of State against the decision of the First-tier Tribunal.

Signed



Date 12 September 2015

Judge Archer
Deputy Judge of the Upper Tribunal