



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

Appeal Numbers: IA/13236/2013

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 17th July 2014**

**Determination
Promulgated
On 24th July 2014**

Before

The President, The Hon. Mr Justice McCloskey

Between

MARY ANN PINDER

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant: Mr Z Jafferzi (of Counsel) instructed by Burton and Burton Solicitors.
Respondent: Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal originates in a decision made on behalf of the Secretary of State for the Home Department (the "*Secretary of State*"), dated 12 April 2013, whereby the Appellant's application for leave to remain in the United Kingdom, based on her marriage to a British citizen, was refused. The sole refusal reason was based on paragraph E-LTRP.4.1 of Appendix FM of the Immigration Rules, which provides, in material part:

“If the applicant has not met the requirement in a previous application for leave as a partner, the applicant must provide specified evidence that they

(b) Have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a provider approved by the UK Border Agency.”

The Appellant was deemed not to have satisfied this requirement, in circumstances where she had secured the requisite English language test certificate from an agency which was an approved provider at the material time but had its approval withdrawn subsequently.

2. Before the FtT, the question of whether the Appellant had satisfied this requirement in a previous application for leave as a partner (cf the opening words of the rule, *supra*,) was not considered. However, it was raised upon the hearing of this appeal. The point having been raised, Mr McVeety, on behalf of the Secretary of State, properly and correctly conceded that the Applicant had previously satisfied this requirement in the terms specified. It followed inexorably from this, and was not disputed, that:

(a) The determination of the FtT must be set aside; and

(b) In the exercise of remaking the decision, the appeal must be allowed.

I so order.

3. In passing, and *obiter*, I would have required some persuading that the refusal reason had any merit. Subject to further argument in a future case, I would have been minded to follow the decision of Upper Tribunal Judge Lane in Entry Clearance Officer, Islamabad - v - Mahmood [Unreported Appeal number OA/00985/2013].

4. I set aside the decision of the FtT, remake same and allow the appeal.

Bernard McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE

UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER
Date: 17 July 2014