Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/20023/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 25th February 2014	**On 4th March 2014**

Before

Upper Tribunal Judge Chalkley

Between

UMAIR MAQBOOL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr Wilding, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan who was born on 9th April, 1988, and who first entered the United Kingdom at Heathrow on 16th March, 2001, with entry clearance confirming leave until 7th April, 2013, as a Tier 4 (General) Student. On 15th March, 2013, the appellant applied for further leave to remain as a Tier 4 (General) Student Migrant under the points-based system.

2. The respondent's decision of 16th May, 2013, noted that the appellant had claimed 30 points for Confirmation of Acceptance for Studies, but the Secretary of State was not satisfied that the appellant was either competent in English at a minimum level of B2 of the Common European Framework for Reference for Languages, or that he was a person who met an alternative requirement. The Secretary of State was not satisfied, therefore, that he should be awarded 30 points under Appendix A and O of the Immigration Rules.

3. The Secretary of State noted that the appellant had submitted TOEIC certificates of the Educational Testing Service documents which state that the appellant has obtained scores below in the following categories:

Listening	-	465
Reading	-	440
Speaking	-	140
Writing	-	160

B2 requires the appellant to have scored a minimum of 400 points for listening 385 points for reading 150 points for writing and 160 points for speaking. Since the appellant had not met that requirement 0 points had been awarded.

4. The Secretary of State did not accept a TOECI certificate of 19th February, 2013 which only showed a speaking score and not a reading, listening and writing score.

5. Dissatisfied with the Secretary of State's decision, the appellant appealed to the First-tier Tribunal and his appeal was heard on 30th September last, by First-tier Tribunal Judge Burnett who, in a determination promulgated on 14th October, 2013, dismissed his appeal under the Immigration Rules and on human rights grounds.

6. The judge found at paragraph 21 that the relevant Immigration Rule did not require that the appellant should achieve the necessary scores and the same time and therefore in one test Certificate. He concluded that the respondent was wrong to exclude consideration of the test score report. However, he went on to note that in respect of that test score report of 19th February, 2013, the appellant's birth certificate was recorded as being 9th April, 1987, whereas in fact his birth took place on 9th April, 1988. He noted that the appellant's score reports were two months apart but he was not persuaded that the appellant had shown that reliance could be placed upon the score report of 19th February, 2013 and dismissed the appeal, suggesting that the appellant had failed to meet the requirements of the Rules. The appellant was dissatisfied with the decision and sought permission to appeal.

7. Unfortunately the document in which the appellant sets out his grievance is not at all clear. It was dated 20th September 2013, and points out that the appellant was sponsored by Mancunia College, a highly trusted college, but a non-HEI sponsor and that the appellant was following a course of QCF level. Reference is made to the guidance and the appellant points out that he passed a TOEIC test. TOEIC which was one of the awarding bodies acceptable to the UK Borders Agency. He referred to a City and Guilds result, which he said comes on one certificate, providing a result in respect of reading, writing and listening and that a speaking result is given separately and in a separate certificate. The same, he said, was true for TOEIC, which was accepted as an awarding body by the UK Borders Agency. So he asserts that it was not correct that the Secretary of State for the Home Department insisted that the necessary marks for each of the elements in the English test had to be included in one Certificate.

8. Permission was granted on, it appears, an entirely different basis. Permission was granted on the basis that the appellant had suffered a procedural unfairness, because he did not know that the test certificate of 19th February, 2013, would be questioned and did not have an opportunity to produce evidence to seek to show that it was a genuine and reliable document, because the appeal was heard by the judge without an oral hearing.

9. The appellant has chosen on to attend the hearing before me. I am satisfied by an examination of the Upper Tribunal's file that the appellant was sent Notice of the date, time and place fixed for the hearing of the appeal on 3rd February. It was set to his last know address and he has given no explanation for his non-attendance. I concluded that I should proceed to hear the appeal in his absence.

10. At paragraph 20 of the determination the judge has extracted the Immigration Rules as they were at the date of the decision, and says this:

> "The following is an extract of the Rules in place at the date of application taken from the archived version of the UKBA website and from paragraph 118:-
>
> "(4) The applicant provides an original English language test certificate from an English language test provider approved by the Secretary of State for these purposes as listed in Appendix O, which is within its validity date, and clearly shows:
>
> (i) the applicant's name,
>
> (ii) that the applicant has achieved or exceeded level B2 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 applicant's disability, and
>
> or
>
> (iii) the date of the award"

11. Then at paragraph 22 he said that the Rules did not specify that the score reports must only be two reports and must provide a test score for either speaking and writing or listening and reading together. That in my view was an error on his part. The Rule as quoted by him clearly **does** require the test certificate to show that the applicant has achieved or exceeded level B2 in **all** four components; in other words, in all four components on one certificate and at the same time time.

12. The challenge of the appellant disclosed no error of law on the part of the judge. However, permission was granted, because, it was said that there was procedural unfairness, because the judge suggested that the test report of 19 February 2013 could not be relied upon, because the date of birth for the appellant is incorrectly recorded on it. That was not, however, something that was challenged by the appellant. The unfairness, as I understand it, is because the judge decided the appeal without a hearing and, therefore, the appellant had no opportunity of commenting on the test score report for 13 February 2013, and since the Secretary of State had not found it to be unreliable, it was wrong of the judge to do so without giving the appellant an opportunity to comment.

13. To that extent, there was an error of law in the judge's determination. The judge was also in my view wrong in suggesting that the test score result could be shown on more than one certificate. The Rule clearly required that the appellant must demonstrate an achievement at level B2 in all four components, unless exempted from sitting a component on the basis of disability. There is

no evidence that the appellant was exempted on the basis of any disability. He should therefore have provided one certificate showing that he had achieved or exceed the required level for reading, writing, speaking and listening and not several certificates, issued at different times, showing that at various times he had exceeded the necessary level in each of the four components, but not all at the same time. The judge was wrong to make a finding in respect of the test report of 19th February without adjourning and giving the appellant an opportunity of commenting upon the apparent discrepancy. It may well have been that the error was simply a typing error.

14. I set aside the determination and remake it myself. For reasons I have given the appellant's appeal is **dismissed**.

Upper Tribunal Judge Chalkley