IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/25169/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 10 November 2014	**On 18 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

GHULAM FATIMA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Chohan Counsel instructed by M J Immigration
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

The History of the Appeal

1. The Appellant, a citizen of Pakistan, applied for further leave to remain in the UK as the wife of her husband. Her ensuing appeal against the refusal of her application was determined at her election on the papers by Judge Kempton sitting at North Shields on 6 August 2014 and dismissed in a determination promulgated the following day.

2. Permission to appeal, supplemented by subsequent procedural directions, was granted on 6 October 2014 by Judge Lever in the following terms:

> "1. The Appellant seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Kempton) who, in a determination promulgated on 13 Aug 2014 – dismissed the Appellant's appeal to remain as a spouse.
>
> 2. This application is a few days late and no explanation has been given. However in the interests of fairness I have extended time.
>
> 3. The Appellant had entered the UK in April 2012 on a spouse visa valid until April 2014. Her application dated 23 April 2014 to remain had been refused on the single basis that she had not passed an English language test. When the Appellant had entered the UK in April 2012 no language requirement was needed. It is arguable that in those circumstances when she came to apply having been given limited leave to remain prior to 9 Jul 2012, there was no need for her to pass an English test.
>
> 4. The judge had not looked at A8 ECHR. He had made reference to the Appellant claiming to have a 16 month child in the UK but noted that no evidence had been produced. I find no reference within the documents including the application in 2014 to the existence of a child and it is unclear as to this specific reference to a child. In respect of the language requirement and possibly in respect of the confusion or lack of clarity in respect of a child there were arguable errors of law.
>
> 5. There were arguable errors of law in this case."

3. On 10 October 2014 the Respondent submitted a Rule 24 response submitting that there was no error of law in relation to the English language requirement or Article 8 of the ECHR.

4. The Appellant attended the error of law hearing, which took the form of submissions, which I have taken into account. I reserved my determination at 2:20pm and returned at 3:55pm to give it and, should that have been my decision, to re-hear the appeal.

Determination

4. The Appellant was granted entry clearance as the wife of her husband for the period from 26 January 2012 until 26 April 2014. On this basis she entered the UK on 2 April 2012. On 23 April 2014, which was three days before the expiry of her leave to enter it, she applied to vary it. Her application was refused on 28 May 2014.

5. Since her first application had been made before the introduction of Appendix FM and paragraph 276ADE of the Immigration Rules on 12 July 2012, it fell to be decided not under those provisions but under paragraph 284 of the Immigration Rules. The Respondent decided it, correctly under paragraph 284 and also incorrectly under Appendix FM. Paragraph 284(ix)(a) required her to provide an original English language test certificate in speaking and listening from an English language test provider approved by the Respondent for these purposes clearly showing her name and the qualification obtained, which must meet or exceed level A1 of the Common European Framework of Reference. The Refusal Letter considered the documents which she had submitted and stated that the institution which had issued them was not on the list of approved English language test providers under Appendix O of the Immigration Rules. None of the exceptions within paragraph 284(ix) applied, so that the Appellant did not meet its requirements.

6. Determining the appeal on the papers and so without the benefit of representation, the judge did not consider it under paragraph 284 of the Immigration Rules. This was an error of law. He did consider it under Appendix FM, which was also an error of law into which the Refusal Letter had led him. In paragraph 9 he set out various requirements of Appendix FM, including E-LTRP4.1 relating to English language. At paragraph 10 he narrated the evidence, which was that the Appellant had not yet taken the English language test. At paragraph 11 he therefore concluded that she had not satisfied this requirement of appendix FM.

7. The requirements in Appendix FM about the English language test are identical to those in paragraph 284 of the Immigration Rules. So the judge asked the right question, but in the wrong context. On the evidence, he came to the only conclusion which he could. Had he considered the question in the proper context of paragraph 284, he would inevitably have reached the same conclusion. So his error was not material to his decision.

8. At the hearing Mr Chohan submitted and made submissions on the document issued by the Home Office entitled “Changes to the knowledge of language and life in the UK requirement for settlement and naturalisation”. These changes were made on 28 October 2013. Recognising at page 4 that they might be challenging for some, the document permitted transitional arrangements for settlement applications, by granting further periods of limited leave to certain categories of applicants including partners applying under Appendix FM or subject to transitional arrangements under Part 8 of the Immigration Rules. I have concluded that this document is not in point in the present appeal, since it relates to applications for settlement, which that of the Appellant was not, based upon changes to the knowledge of language and life in the UK requirement, which was not in point in the present appeal since the requirements to be met by the Appellant were identical. So although the document envisaged allowing certain categories of applicant to apply for

further periods of limited leave, this was in the different contexts of settlement applications and changes to the knowledge of language and life requirement.

9. As to Article 8 of the ECHR, the judge noted at paragraphs 12 and 13 the paucity of evidence about the Appellant's child, which precluded him from considering Article 8. He could not have done otherwise, and committed no error of law. Doubtless seeking to assist the Appellant, he counselled her at paragraph 14 to make a new application once she had passed the English language test and to consider utilising a legal representative and to apply for an oral hearing.

10. No error of law has been established. The determination is accordingly upheld.

Decision

11. The original determination does not contain any error of law which is material, and is upheld.

Signed Dated: 17 November 2014

Deputy Upper Tribunal Judge J M Lewis