



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/26508/ 2013

THE IMMIGRATION ACTS

Heard at Field House
On 18th February 2014

Determination Promulgated
On 19th February 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR ARVINDER SINGH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Singh (ATM Law Solicitors)
For the Respondent: Mr G Jack (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Moore) by which, in a determination promulgated on 20th December 2013, he dismissed the Appellant's appeal against the Secretary of State's decision to refuse him leave to remain as a Tier 4 (General) Student Migrant.

2. The Secretary of State refused the application because the Appellant was required, in order to claim 30 points for his Confirmation of Acceptances for Studies (CAS), to submit "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" (paragraph 118(b)(ii)(4)). The Appellant had in fact submitted three TOEIC certificates from the Educational Testing Service and so the Secretary of State found he was not entitled to the 30 points.
3. The First-tier Tribunal Judge agreed and dismissed the appeal on that basis. The Judge dealt with the case on the papers as requested by the Appellant.
4. The Appellant then sought permission to appeal on the basis that the Judge's interpretation of the English language requirements and Appendices A and O to the Immigration Rules was incorrect. In particular, the requirement in Appendix O that all elements be passes at a single sitting was introduced on 1st October 2013 which was after the decision under appeal.
5. This is an argument commonly run before the First-tier Tribunal, namely that prior to the changes contained in HC 628 on 1st October 2013 it was acceptable for an applicant to put forward various test scores which cumulatively indicated a pass at the appropriate level even though the applicant had not been able to pass all of the elements at the same time.
6. Prior to the changes brought in on 1st October 2013 the requirement of Appendix A, paragraph 118(b)(ii)(4) was as follows:-

“(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
 - (iii) the date of the award”.
7. At the same time; prior to 1st October 2013 changes, the head note of Appendix O read:-

“Appendix O: list of English Language Tests that have been approved by the UK Border Agency for English language requirements for limited leave to enter or remain under the Immigration Rules

Only the level (s) of test specified for each test are approved”.

8. After 1st October 2013 paragraph 118(b)(ii)(4) reads:-

(4) the applicant provides the specified documents from an English language test provider approved by the Secretary of State for these purposes as listed in Appendix O, which clearly show:

(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,

(iii) the date of the award, and

(iv) that the test is within its validity date (where applicable)“

9. After 1 October 2013 Appendix O contains a head note which reads as follows:-

“1. Where two or more components (reading, writing, speaking and listening) of an English language test are examined and awarded together, for example a combined exam and certificate for reading and writing skills, the specified evidence submitted by the applicant must show that he achieved the required scores in all the relevant components during a single sitting that examination, unless exempted from sitting a component on the basis of his disability. This requirement does not apply to applications made under part 8 or Appendix FM unless Appendix KoLL applies”.

10. Accordingly, at the date of decision in the extant case, namely prior to the changes of 1st October 2013 the requirements are quite clearly set out in paragraph 118 of Appendix A as set out above. The Appellant must produce "**an original certificate**" (my emphasis). It is not open to him to provide several original certificates. In this case it is accepted that he had produced three separate certificates having passed different elements on different occasions. That clearly does not meet the requirements of the Rules. He does not therefore earn the requisite 30 points and his application was rightly refused by the Secretary of State and the First-tier Tribunal Judge.

11. The appeal to the Upper Tribunal is dismissed.

Signed

Date 18th February 2014

Upper Tribunal Judge Martin