



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/29049/2013

THE IMMIGRATION ACTS

Heard at Field House
On 18 August 2014
Prepared 18 August 2014

Determination Promulgated
On 26th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

MD BADRUL ISLAM NUMAN

Respondent

Representation:

For the Appellant: Mr L Tarlow, Senior Presenting Officer
For the Respondent: None

DETERMINATION AND REASONS

1. In this determination the Secretary of State as the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.

2. The Claimant, a national of Bangladesh, date of birth 25 December 1989, appealed against the decision of the Secretary of State dated 26 June 2013 to refuse a combined application for leave to remain on 26 October 2012 seeking leave to remain as a Tier 4 (General) Student Migrant. The Secretary of State also refused the matter and made a decision to make removal directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.
3. An appeal against those decisions was made to First-tier Tribunal Judge Aziz (the judge) who on 2 June 2014 allowed the appeal under paragraph 245ZX finding that the claimant had met the requirements of the Rules by reason of having the necessary English language qualification and by providing a relevant test certificate as defined in paragraph 118(b)(ii)(1) - (3) of Appendix A to the Immigration Rules (the Rules).
4. The Secretary of State sought permission to appeal the judge's decision which was granted on 27 June 2014 by First-tier Tribunal Judge P J M Hollingworth.
5. Notice of hearing was served on the Claimant at his last identified address and upon his representatives at their last notified address by notice dated 9 July 2014.
6. Neither notice has been returned to the Tribunal undelivered and no representations have been made by either the Claimant or his representatives concerning the hearing today. I am satisfied that notice of hearing was given identifying Monday 18 August 2014 at 2pm as being the appropriate time to attend at Field House, 15 Breams Buildings, London EC4.
7. No request for an adjournment was made, no explanation for absence was given and in the circumstances, having considered the case file, I decided that it was fair, consistent with the overriding objectives, to proceed with the appeal in the absence of the Claimant.

8. It is common ground that the Claimant had three TOEIC certificates indicating that he had met the required reading and listening, as well as the speaking, and writing] requirements so as to meet as a fact the four English language components at level B2 (CEFR).
9. It is accepted that that evidence was contained within three certificates and in the circumstances there is no challenge to the fact that paragraph 118 of the Rules required the applicant to provide an original English language test certificate from an English language test provider and within that it should show the applicant's name, the achievement of all four components and the date of the award (my emphasis).
10. The judge concluded that it was open to read the requirements of paragraph 118 of the Rules as enabling two or more documents to be read as if they were one.
11. In reasoning which I have to say is confusing in paragraph 37 of the determination it appears that the judge was concluding that you could have one document which was an English language certificate showing the components had been met but reliant upon other documents which taken together, as he put it showed that the Claimant was able to meet the relevant English language standard and the requirements of the Rules.
12. I find the wording of paragraph 118(b)(ii) of Appendix A wholly unequivocal and clear as to what was required; One certificate must be produced. I do not accept the point that there is a general right to read into the Rules flexibility where none is provided for.
14. It is clear that what the Claimant should have done, when the language problem was identified, was made a fresh application having obtained the necessary supporting documents as required to meet the requirements of the Rules. However, that did not come to pass and I cannot resolve that matter now. In the circumstances I find that

the original Tribunal made an error of law in seeking to widely construe several documents as being one certificate.

15. The matter will have to be remade. I decided whether or not it was necessary, in the light of the absence of the Claimant, or his representatives, the remaking matter should proceed today.
16. In the light of the above facts set out and the absence of any response or any other indication to show how certificates could be justified I concluded that there was no single certificate provided which set out all of the components as required under paragraph 118 set out above find that the appeal by the claimant fails
17. The Original Tribunal's decision can not stand and the following decision is substituted.
18. The appeal on immigration grounds is dismissed.

ANONYMITY

No anonymity order was made nor is one now necessary or appropriate.

FEE AWARD

In remaking this case the appeal has failed and therefore there can be no fee award in the sum of £140 or otherwise in favour of the Claimant.

Signed

Date 19 August 2014

Deputy Upper Tribunal Judge Davey