



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

Appeal Number: OA/24230/2012

THE IMMIGRATION ACTS

Heard at Field House

On 4 August 2014

Determination

Promulgated

On 15 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**TAHERA BEGUM SUMA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - DHAKA

Respondent

Representation:

For the Appellant: Mr T Shah Solicitor of Taj Solicitors

For the Respondent: Mr J Parkinson of the Specialist Appeals Team

DETERMINATION AND REASONS

The Appellant

1. The Appellant is a Bangladeshi born on 5 February 1988. On or about 3 July 2012 she applied to the Respondent for entry clearance under paragraph 281 of the Immigration Rules for settlement as the wife of Rumman Ahmad, a person settled and resident in the United Kingdom.

2. On 21 October 2012 the Respondent refused the application under paragraph 281(iii) of the Immigration Rules because he did not consider the Appellant and her husband who is her Sponsor intended permanently to live together as a married couple. The Respondent also considered the evidence of the Sponsor's employment and was not satisfied that he and the Appellant would be able to maintain themselves and any dependants adequately without recourse to public funds as required by paragraph 281(v).
3. On 6 January 2014 the Respondent reviewed the decision and accepted the relationship was genuine. However, he noted the absence of additional documentation and was satisfied the Appellant had not adequately discharged the burden of proof to show she and the Sponsor would be able adequately to maintain themselves.
4. The Respondent also raised a new issue, namely whether the Appellant had shown she satisfied the English Language requirements of the Immigration Rules. The validity of the certificates she had produced was not doubted but it was considered those who had been involved in the examining of candidates for the certificates had operated a system with procedures which the Respondent and the examining authority had found disclosed irregularities in the conduct of English Language examinations in Bangladesh.
5. The Respondent in both the original decision and the review affirmed the view that the decision did not place the United Kingdom in breach of its obligations to respect the private and family life of the Appellant and the Sponsor protected by Article 8 of the European Convention.
6. On or shortly after 28 November 2012 the Appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended. The grounds assert the Sponsor had provided adequate evidence of his employment and that he would be able adequately to maintain himself and the Appellant without recourse to public funds. The other grounds are formulaic or generic.

The First-tier Tribunal Determination

7. Mr Shah represented the Appellant at the hearing at Hatton Cross on 21 February 2014. He informed me that on that occasion he had been instructed in connection with another two appeals in the same list, that of Rima Begum number OA/22732/2012 and Rabeya Begum number OA/24235/2012 and that all three appeals centred in whole or in part on whether in the light of the irregularities already mentioned the Appellant had satisfied the English Language requirements of the Immigration Rules. He informed me that appeal OA/24235/2012 had been adjourned and the hearings of the appeals of Tahera Begum Suma and Rima Begum were heard in part jointly on the basis that the issues and legal arguments about them were similar.

8. By separate determinations each promulgated on 17 March 2014 Judge of the First-tier Tribunal Zahed dismissed both appeals. Subsequently permission to appeal was granted in each case and both appeals appeared in my list in the Upper Tribunal on 4 August 2014. By that time the two files had been linked.
9. In his determination the Judge addressed only the issue of the English Language skills although at paragraph 5 he referred generically and generally to the evidence shown in his Record of Proceedings. There is no Record of Proceedings in the file for this Appellant although there is a Record of Proceedings relating to the hearing of Rima Begum's appeal.
10. The Judge recorded the issue with the certificates to evidence the Appellant's English Language skills but made no mention of the Sponsor's evidence about his employment contained in a witness statement of 21 February 2014 or to the fact that the Appellant had according to the Sponsor re-sat the English Language test or the letter of 8 January 2014 from the Respondent to the Appellant advising her of the arrangements made for free re-testing of all visa applicants affected by the irregularities.
11. The Appellant sought permission to appeal. The grounds for appeal make allegations about the conduct of the hearing and refer to the letter from the Respondent about the availability of free re-testing. The grounds are in identical terms for this Appellant and Rima Begum although it is not clear from the documents submitted in support of the allegations made about the conduct of the hearing whether they are made in relation to one Appellant or the other or both.
12. On 3 June 2014 Judge of the First-tier Tribunal Osborne granted each of the Appellant and Rima Begum permission to appeal in identical terms.

The Upper Tribunal Hearing

13. Absent a Record of Proceedings it is not possible to make any findings on the allegations about the conduct of the proceedings. Mr Shah produced an extract of his contemporaneous record which is in the file. What is surprising is that there is no evidence of any application having been made for an adjournment in the light of the fact that the Appellant had recently re-taken the English Language test and therefore her results would have been imminently expected. Indeed they became available on 6 March 2014, a fortnight after the hearing and some ten days before the determination was promulgated. In the event the Appellant passed the test.
14. The Respondent lodged a response under Procedure Rule 24 which re-asserted the Judge's finding that at the date of the decision the Appellant had not met the English Language requirements of the Immigration Rules. There was no reference to the failure of the Judge to make any findings on the issue of maintenance.

15. Mr Shah was concerned that this and the other appeal raised a matter of general concern because many people were affected by the difficulties which had been identified with the conduct of English Language examinations in Bangladesh. He accepted the Respondent had not published any policy but nevertheless referred to a determination of the First-tier Tribunal in another issue in which reference had been made to a policy. There was no explanation why it was necessary to rely on such a determination and indeed there was no explanation why the Practice Direction of 31 October 2008 referred to in paragraph 11.1 of the Practice Statements for the First-tier and Upper Tribunals of the Immigration and Asylum Chambers had not been followed. In any event he was unable to identify the policy referred to.
16. Mr Parkinson made enquiries and submitted there was no policy and the correspondence simply stated that following the discovery of irregularities in the conduct of English Language examinations in Bangladesh the examining body had offered free-re-testing to those visa applicants affected. There was no commitment on the part of the Respondent to consider after a decision any re-test results or to withdraw or review any previous refusal of entry clearance. Mr Shah suggested there had been a failure by the Respondent to deal adequately with the English Language testing irregularities issue and a clear decision was needed and the Respondent should withdraw the decisions in all affected cases.
17. There were further discussions between the parties and myself in chambers which did not result in an agreement on any point between the parties.

Findings and Consideration

18. The Judge failed to take account of the Sponsor's statement. He failed adequately to address the documentation from the examining body and the Respondent about the consequences of the discovery of the identification of the irregularities in the conduct of English Language examinations in Bangladesh. These amount to errors of law emerging from the grounds for appeal as pleaded. Having found there are errors of law, as pleaded, I also find that the Judge was in error in his failure to address the other issue in the appeal, namely maintenance, upon which he had documentary evidence and which could be said to have been particularly important in the light of the fact that the application appears (because the Respondent has failed to supply a copy of the application with the date stamp evidencing receipt) to attract the benefit of the transitional provisions of paragraph A280(d) of the Immigration Rules.
19. In all the circumstances, the determination is not safe and must be set aside in its entirety. Similarly, it is appropriate for the matter to be remitted to the First-tier Tribunal for hearing afresh because the effect of the error has been to deprive the Appellant before the First-tier Tribunal of a fair hearing or other opportunity for her case to be put to the Tribunal and considered.

DECISION

The determination of the First-tier Tribunal contained an error of law such that it must be set aside in its entirety and the matter heard afresh.

DIRECTIONS

The appeal is remitted for hearing afresh at Hatton Cross before a Judge other than Judge Zahed.

No interpreter has been requested.

No anonymity direction is made.

Signed/Official Crest

Date 14. viii. 2014

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal