



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

Appeal Number: OA/08135/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 3 June 2015**

**Decision & Reasons Promulgated
On 11 June 2015**

Before

**UPPER TRIBUNAL JUDGE MCWILLIAM
DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

Between

**MRS FARTUN OMAR MOHAMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Bild, Camden Community Law Centre

For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Somalia and her date of birth is 2 February 1983. She made an application for entry clearance to join her spouse here in the UK, a British citizen, Mr Abdihakim Noor Hassan.
2. The appellant, though a citizen of Somalia, made an application for entry clearance in Ethiopia.
3. The application was refused by the ECO in Ethiopia for a number of reasons in a decision of 12 March 2013. The appellant appealed against

the decision of the ECO and her appeal was dismissed by Judge of the First-tier Tribunal Naphthine in a decision that was promulgated on 14 March 2014 following a hearing on 26 February 2014.

4. Permission to appeal was granted by Deputy Upper Tribunal Judge Chapman in a decision dated 6 May 2015. Thus the matter came before us.

The Decision of the First-tier Tribunal

5. The appeal was dismissed on the basis of the appellant's English language ability. Paragraph E-ECP.4.1. of the Immigration Rules (Appendix FM) requires the appellant to have passed an English language test. E-ECP.4.2. contains exemptions from the requirement which includes (at (c)) that there are exceptional circumstances which prevent the applicant from being able to meet the requirement prior to entry to the UK.

6. At the hearing before the First-tier Tribunal the appellant relied on a policy in force at the time of the decision (neither party was able to provide us with a copy of this but both agreed about what it said) in relation to exceptional circumstances (E-ECP.4.2.(c)) which reads as follows:

'If the applicant is a long-term resident of a country with no test centre, and they are applying from the country for a visa as a partner, then they will be exempt from the requirement to have passed an English language test'.

7. The judge considered the applicability of the policy to the appellant's case and made the following findings:

"29. Finally there is the question of the Appellant's English language ability. She has twice (in July and October 2013) taken a test which she has not at present managed to pass. She has attended classes in English whilst living in Ethiopia.

30. The Appellant was living in Ethiopia for over 4 months at the date of application. Over a year has passed since the date of decision (12/3/2013). She is still living in Ethiopia.

31. It is said that due to her complete lack of formal education she has found learning English difficult.

32. The head of 'Standard Institute of Languages' states:-

'She started learning English from pre-elementary level since she hadn't learnt English before. She is now good at understanding simple and familiar situations. Now she can speak a little English because she didn't get enough chance to attend spoken classes.'

33. On the Appellant's behalf it was submitted that because she is from Somalia, where she was a long term resident she should be exempt from the English language requirements as Somalia is a country without a test centre.

34. There would be some force in that submission if she had remained a resident of Somalia.

35. However, the wording of the exception (as submitted for my consideration by Ms. Scott) is:-

‘If the applicant is a long-term resident of a country with no test centre, and they are applying from that country for a visa as a partner, then they will be exempt from the requirements to have passed an English language test.’

36. The Appellant may have been a long-term resident of Somalia (a country on the list), however, she has for some time been resident in Ethiopia and it is from Ethiopia that she has applied for her entry clearance.
37. I find that the Appellant is not exempt from the English language requirements. She has availed herself of the opportunities in Ethiopia to learn English. She has been making some progress.
38. I find nothing unreasonable in requiring the Appellant to satisfy the normal requirements of the Immigration Rules including those concerning English language ability. She intends to come to the UK where such ability will be vital to her everyday life and ability to take part in society.”

The Grounds of Appeal

8. The grounds of appeal argue that the decision of the judge relating to the applicability of the policy is irrational. There is no test centre in Somalia. The appellant travelled to Ethiopia in October 2012 in order to marry. She made an application for entry clearance on 5 March 2013 which was refused on 12 March 2013.
9. We heard oral submissions from Mr Bild in the context of the grounds of appeal and Mr Nath made oral submissions in the context of the Rule 24 response.

Conclusions

10. The appellant in this case is a long-term resident of Somalia, but she did not make an application from there. She made an application in a country where she was not a long-term resident and where there is a test centre and thus the policy is of no assistance to her. How long the appellant has spent in Ethiopia is not in our view material to the decision. She was able to travel to Ethiopia and her evidence did not disclose exceptional circumstances that would prevent her from being able to take the English language test in Ethiopia. The policy is for those who are not able to sit the test in their country of long-term residence and who are unable to travel. We appreciate that this appellant could not make an application from Somalia and had to travel elsewhere to make an application, but we do not consider this to be material. Although we have reservations about the judge’s decision concerning the appellant’s country of long term residency, any error is immaterial because the policy does not apply.
11. The appeal is dismissed.

No anonymity direction is made.

Signed Joanna McWilliam

Date 9 June 2015

Upper Tribunal Judge McWilliam