



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

Appeal Number: OA/21556/2013

THE IMMIGRATION ACTS

Heard at Field House, London

**Decision and Reasons
Promulgated**

On 16 July 2015

On 14 August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ARCHER

Between

MRS MARIAM BALHAS

Appellant

and

ENTRY CLEARANCE OFFICER - BEIRUT

Respondent

Representation:

For the Appellant: Mr Taib Akrimu, Sponsor

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.
2. The appellant appeals against the decision of the First-tier Tribunal (Judge Swaniker) dismissing the appellant's appeal against a decision taken on 20 November 2013 to refuse entry to the UK as a partner under Appendix FM of the Immigration Rules.

Introduction

3. The appellant married the sponsor in the UK on 23 February 2013. The sponsor is Mr Taib Akrimu, a citizen of the UK born on 2 January 1967.
4. The respondent refused the application on the basis that the marriage was not genuine and subsisting, the parties did not intend to live permanently with each other, the financial requirements were not met and the appellant had not provided sufficient evidence to prove that she had passed the English language test to the required level from an approved provider.

The Appeal

5. The appellant appealed to the First-tier Tribunal and the sponsor attended an oral hearing at Taylor House on 24 November 2014. The appellant was represented by Mr Murphy, Counsel, instructed by Farani Taylor Solicitors. The First-tier Tribunal found that the sponsor was a credible witness and that all of the requirements of the Immigration Rules were met, except for the English language requirement.
6. At paragraph 16 of the decision, the judge found that the appellant had produced an English language test certificate showing an ESOL Entry level 1 qualification and a letter from Training Connect confirming that she had been awarded the qualification following a course at Training Connect Limited ("the college"). The certificate was issued by Learning Resource Network ("LRN"). There was no evidence that Training Connect Limited was approved by UKBA. The judge granted seven days for the appellant to submit evidence that the English language requirement was met. Solicitors for the appellant submitted further evidence on 28 November 2014. However, nothing had been received by the judge as of 5 January 2015.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law. It was now clear that the requirement was met and the judge made a decision without considering the further evidence. The appellant had been denied a fair hearing and the decision should be set aside.
8. Permission to appeal was granted by First-tier Tribunal Judge Nicholson on 23 February 2015. The Tribunal file showed that further evidence relating to LRN was submitted to the Tribunal on 1 December 2014, the seventh day after the hearing. It was arguable that there had been procedural unfairness.
9. Thus, the appeal came before me

Discussion

10. Mr Whitwell indicated that the credibility of the sponsor and the genuineness of the relationship are no longer in dispute conceded that

new evidence was submitted to the Tribunal (at pages 46-52 of the appellant's appeal bundle). The sponsor stated that he was not represented because the issue was straightforward and the case was costing him a lot of money. The evidence proves that LRN is on the Register of Regulated Qualifications (page 47) and the respondent's Immigration Directorate Instruction ("IDI", page 56) shows LRN as an approved awarding body. LRN is approved by the Home Office. The appellant went to the college on the advice of their lawyer; the college has a big sign and is on the high street. Everyone speaks English in Beirut.

11. Mr Whitwell submitted that the application was made on 23 September 2013 and the provider does not feature in Appendix O of the Immigration Rules in force at that time. If the IDI is accurate then the respondent would be in difficulty resisting the submission based upon procedural irregularity; however there is no material error of law because the provider does not appear in Appendix O. The IDI does not assist in any event because the submitted section refers to persons in the UK.
12. I find that the further evidence was submitted within seven days and there was procedural unfairness, through no fault of the judge. The issue is materiality. I find that the correct IDI has been submitted; covering applications received between 7 April 2010 and 27 October 2013. Although there is a heading at 2.2 referring to persons in the UK, 2.3.3.1 (page 62) confirms that the same evidence is required from overseas applicants. LRN is listed as an approved awarding body at 2.2.2.6. There is no separate list of awarding bodies for overseas applicants.
13. The archived Appendix O for 23 October 2013-30 November 2013 submitted by Mr Whitwell contains an entirely different (and much shorter) list of approved providers. No evidence has been submitted to explain the discrepancy and I find on balance of probabilities that the IDI is accurate. The key may be that the archived Appendix O was in force from 28 October 2013, after this application was submitted. I am satisfied that the further evidence proves that LRN was an approved awarding body as at the date of application. The certificate submitted by the appellant proves that the English language requirement was met as at the date of application.
14. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal under the Immigration Rules involved the making of an error of law and its decision cannot stand.

Decision

15. Consequently, I set aside the decision of the First-tier Tribunal. I remake the decision, allowing the appeal under the Immigration Rules.

Signed



Date 7 August 2015

Judge Archer

Deputy Judge of the Upper Tribunal