



IAC-FH-AR-V2

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

Appeal Numbers: IA/50066/2014  
IA/50079/2014  
IA/50088/2014  
IA/50094/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 March 2016**

**Decision & Reasons  
Promulgated  
On 21 April 2016**

**Before**

**UPPER TRIBUNAL JUDGE STOREY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MEJO JOSHI  
JOSHI KANJOOKKARAN ESTAPPAN  
[A J]  
[J J]  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mr T Melvin, Home Office Presenting Officer  
For the Respondent: Mr R Singer, Counsel, Paul John & Co Solicitors

**DECISION AND REASONS**

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1. The respondent (hereafter the claimant) is a citizen of India who on 25 November 2014 received a decision from the appellant (hereafter the Secretary of State or SSHD) refusing her application for leave to remain as a Tier 2 (General) Migrant. The SSHD decided she did not meet the requirement at paragraph 245edD(f) and under Appendix A with reference to Appendix J because she was not satisfied (1) that the job the claimant was being sponsored for met the required skill level; and (2) the job as described in the Certificate of Sponsorship and the job title corresponded with the job tasks and job titles shown in the Codes of Practice under occupation code 2229.
2. The claimant appealed. On 28 September 2014, First-tier Tribunal Judge Davey allowed the claimant's appeal. At [6] and [7] he concluded:
  - “6. It therefore seemed to me that the appellant falls within Category 2229 as a therapy profession not elsewhere classified and that the Secretary of State must intend in the light of the current published guidance on the Standard Classifications for Operatives under the SOC codes. As I understand the evidence the position is that the Appellant is operating at NQF Level 6 and no issue was argued to the contrary. I find the sponsor was expected to comply with and entitled to rely upon the published guidance.
  7. I find the appellant therefore has discharged the burden that her application fell for consideration under the Rules and that she had the required attributes. There was no issue that the appellant had the required level of appropriate salary. She met the English language and maintenance requirements.”
3. The SSHD's grounds were confined to one short point; it being submitted that “[t]he Tribunal has inadequately explained how the final determination was arrived at”.
4. At the hearing I heard submissions from both representatives. Mr Melvin conceded that there was no challenge to the judge's findings that the claimant had met the required skill level by virtue of operating at NQF Level 6. He maintained, however, that the judge had erred in finding the claimant's job tasks and job title met the requirements of Appendix J with reference to the Codes of Practice for Skilled Workers and Student Occupational Classification (SOC) Codes. Mr Melvin accepted that the Codes of Practice did not require a perfect match between the tasks and

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titles set out at 2229, but her application did not demonstrate that she was a therapy professional.

5. I am not persuaded that the SSHD's ground is made out.
6. Mr Singer devoted some time to defending the failure of the judge to specify that he accepted the claimant's evidence about her job and job tasks, but, as Mr Melvin was quick to accept, the SSHD had never disputed the claimant's claim about what she did. The only matter in dispute concerned whether she came within 2229 or not.
7. I discern no error of law on the part of the judge in respect of this matter.
8. In assessing this matter I have paid particular attention to the terms of Code 2229 which I reproduce in its relevant parts here:

#### **Occupations skilled to NQF Level 6**

<b>SOC 2010</b>	<b>Description</b>
<b>2229</b>	<p><b>Therapy professionals not elsewhere classified</b></p> <p><b>Example job tasks:</b></p> <ul style="list-style-type: none"> <li>• prescribes diet therapy and gives advice to patients, health care professionals and the public on dietetic and nutritional matters for those with special dietary requirements or to prevent illness amongst the general population;</li> <li>• diagnoses and treats disorders of vision and eye movements, monitors subsequent progress and recommends further optical, pharmacological or surgical treatment as required;</li> <li>• manipulates and massages patient to discover the cause of pain, relieve discomfort, restore function and mobility and to correct irregularities in body structure;</li> <li>• adopts a holistic approach in assessing the overall health of the patient, and treats by inserting needles under the skin at particular locations according to the disorder being treated;</li> <li>• administers aromatic herbs and oils and massage to relieve pain and restore health;</li> <li>• assesses and provides treatment for people with mental disabilities, or those suffering with mental illness, stress, and emotional and relationship problems;</li> </ul>

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	<ul style="list-style-type: none"> <li>• diagnoses and treats behavioural problems in animals.</li> </ul> <p><b>Related job titles:</b></p> <ul style="list-style-type: none"> <li>• Art therapist</li> <li>• Chiropractor</li> <li>• Cognitive behaviour therapist</li> <li>• Dance movement therapist</li> <li>• Family therapist</li> <li>• Nutritionist</li> <li>• Osteopath</li> <li>• Psychotherapist</li> </ul>
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9. Several features of this Description are salient. First the term used is “Therapy professionals” which on its plain and ordinary meaning encompasses all professionals who are therapists – a very wide category. Second, the category is expressly described as being a residual one: (“Therapy professionals not elsewhere classified”). Third, in line with the rest of the Codes of Practice document, the description does not purport to set out an exhaustive list of necessary job tasks, it is confined to identification of “Example job tasks”. Fourth, the seven examples given are not stated as self-contained requirements. Put another way, the wording does not exclude a person being able to meet the Description by virtue of exhibiting elements of each example. Fifth, there is no direct correlation between the “The Example job tasks” and the “Related job titles” – e.g. there is no specific reference in the form to any task related to Dance Movement.
10. In light of the above features it would seem that the task of the fact-finder is to examine the extent of the correlation between the job tasks performed with the examples given by reference to the related job titles. On any reading the correlating does not need to be exact, but it must be identifiably close.
11. In my judgement that is precisely the type of fact-finding exercise conducted by First-tier Tribunal Judge Davey. At [5] he stated:
- “In this case however it is plain that the employer (sponsor) derived the job description as persons responsible for specialised Indian ayurvedic therapeutic treatments and massages like pizhichil, njavarakizhi, shirodhara, ubhayagam, udvarthanam, panchakarma, etc. and other ayurvedic clinical procedures and examinations.

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Massages patients to discover the cause of pain, relieve discomfort, restore function and mobility and to correct irregularities in body structure; preparing items used for the treatments and massages using ingredients such as herbs and other materials/decorations; ensuring treatment areas and utensils are maintained at the required hygiene and safety standards, maintaining treatment records, training and supervising junior staff; preparing reports; ensuring that a good quality of service is offered to clients, meeting clients for treatments at various locations if required, etc.”

12. Further, Judge Davey correctly noted the lack of direct correlation between Example job tasks and Related job tiles, he stating at [4] that:

“From the above it will be seen that many of the job tasks do not fall to be performed fall by art therapists, chiropractors, cognitive behavioural therapist, dance movement therapist, family therapist, nutritionist, osteopath or psychotherapist. Elements of perhaps psychotherapist and osteopath, or possibly, a chiropractor work may be found in some of those examples of job tasks. The tasks of eyes surgery and animals plainly contemplate a far wider group than the headed description of code 2220.”

13. I am entirely satisfied that his findings were not within the range of reasonable responses. From the claimant’s own undisputed evidence about the tasks her job entailed, there was a strong correlation with the description of job tasks in Code 229; as regards the third, fourth and fifth bullet points especially. In addition, the claimant’s job title was in essence clear of a therapy professional.
14. I would underline that the only ground of challenge was that the judge’s decision was inadequately reasoned. From the above it will be clear that it was anything but.

### **Notice of Decision**

15. For the above reasons I conclude that the First-tier Tribunal Judge did not err in law and her decision is upheld.
16. No anonymity direction is made.

Signed

Date

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Dr H H Storey  
Judge of the Upper Tribunal