



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

Appeal Number: IA/30635/2015

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Tribunal
On 13 February 2019**

**Decision & Reasons
Promulgated
On 01 March 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**ZOYA RIAZ
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sarwar of West Midlands Solicitors.

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. By a decision handed down on 25 September 2018 the Upper Tribunal found an error of law in the decision of the First-Tier Tribunal Judge who allowed the appellant's appeal on human rights grounds.

Background

2. The appellant is a citizen of Pakistan born on 4 May 1989. The appeal had been allowed outside the Immigration Rules but was challenged on

the basis the Judge failed to give adequate weight to the Rules when making the proportionality assessment. The issue that arose in the appeal was the inability of the appellant to show she could meet the English language requirements and had failed to provide evidence of compelling reasons as to why she should be excused from doing so or to warrant consideration of the matter outside the Rules.

3. The appeal was adjourned following the finding of an error of law with an extended period being allowed to permit the appellant the opportunity to arrange and take the requisite English language test. The appellant did so and provided both to the respondent and Tribunal a copy of a certificate issued on 14 December 2018 confirming that she had been awarded a Grade 3 qualification in spoken English (GESE) equivalent to Entry Level Certificate in ESOL International Speaking and Listening (Entry 2) and CEFR Level A2.1, with distinction.
4. The original decision of the respondent to refuse the appellant's application has not been shown to be unlawful in light of the inability of the appellant to satisfy an important aspect of the Rules.
5. It was accepted by Mrs Aboni that the production of the certificate, establishing the minimum language requirement has now been satisfied, meant the appellant would now be able to meet the requirements of the Rules. It was, accordingly, accepted that in the circumstances now prevailing it was appropriate for the Upper Tribunal to substitute a decision allowing the appeal pursuant to article 8 ECHR; as there is no provision following the introduction of the Immigration Act 2014 to allow the appeal under the Immigration Rules.
6. In light of recent developments coupled with the respondent's findings in the original decision and acceptance by the Senior Presenting Officer of the situation appertaining at the date of the hearing, this Tribunal finds that any interference with the protected family and/or private life of the appellant in the United Kingdom will not be proportionate to the legitimate aim relied upon.

Decision

7. **I remake the decision as follows. This appeal is allowed pursuant to article 8 ECHR.**

Anonymity.

8. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 27 February 2019