



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

Appeal Number: OA/08710/2012

THE IMMIGRATION ACTS

Heard at Bradford

On 5th July 2013

Determination

Promulgated

On 11th July 2013

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

**MRS NUNA ABDI HUSSEN
(ANONYMITY NOT DIRECTED)**

Appellant

and

THE ENTRY CLEARANCE OFFICER - NAIROBI

Respondent

Representation:

For the Appellant: Mr M S Patel, Solicitor

For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Somalia who was born on the 1st February 2012. She appeals with permission from the First-tier Tribunal (Judge Caswell), which dismissed her appeal against the respondent's decision to refuse her application for entry clearance as the spouse of Mr Ismail Kulane.
2. The respondent originally refused entry clearance on grounds that the appellant had not demonstrated that she met either the English language or

the maintenance and accommodation requirements of paragraph 281 of the Immigration Rules. However, Judge Caswell was satisfied on a balance of probabilities that the appellant had met the maintenance and accommodation requirements.

3. It was (and is) the appellant's case that she is exempted from the English language requirement of the Immigration Rules because there is no testing centre in her country of origin. Judge Caswell dealt with this at paragraphs 11 and 12 of her determination –

11. However, on the issue of the English language requirement, the evidence before me does not support the Appellant's contention that she was exempt from this. It is correct that Somalia is named as an exempt country, and I am prepared to accept that there is no British High Commission in Somalia from which an application could be made. However, the UKBA guidance produced by the Appellant states that "If you are a long-term resident of a country with no test centre, and you are applying from that country for a visa as a partner, your are exempt ... The list of countries where no test centre is available is subject to change, and currently includes ... Somalia".

- 12 It is accepted that the Appellant did not apply from Somalia, but from Kenya (and indeed she had been resident in Kenya for some time before she made her application). Mr Hans asks me to find that the fact that all Somalis would have to apply outside their country means that I should read this guidance as meaning that the Appellant is still exempt. However, I do not accept that argument. The point of the guidance is to exempt those who are applying from countries where there is no test centre, and therefore where it would be unfair to expect them to show they meet the requirement by taking the test. It is not to allow persons from certain countries to have more favourable countries to have more favourable treatment than others when it comes to meeting the English language requirements for entry to the UK.

4. Mr Patel began his submissions by re-emphasising the guidance quoted by the judge at paragraph 11 of her determination, and submitted that this covered all those who were ordinarily resident in an exempt country such as Somalia. He also produced evidence that there are currently a total of 14 countries without British consular facilities. Some of those countries also appear on the list of 30 countries that are without English language testing centres and whose long-term residents are thus exempt from the English language requirement of the Immigration Rules. That evidence is helpful because it casts light upon the rationale that lies behind the exempting long-term residents of certain countries. Thus, where a person is able and decides to apply for entry clearance in the country of which he is a long-term resident it would be clearly unreasonable to expect him to travel to another country simply in order to sit an English language test. However, the position is otherwise where a person is either unable or decides for his own reasons to apply for entry clearance from a country where he can conveniently also sit the English language test. Thus, as the guidance makes plain, the applicant must (i) have been a long-term resident of a country where there is no English language test centre *and* (ii) have applied for entry clearance *from that country*.

5. It is certainly arguable that in the appellant met the first of the above conditions even though, as the judge observed, she had been residing in Kenya for some time when she made her application. However, it is beyond debate that the appellant did not meet the second condition because she did not apply for entry clearance from Somalia. Thus, once the appellant had taken the trouble to travel to Kenya in order to take advantage of the British consular facilities that were available in that country, it was reasonable to expect her also to take the opportunity of sitting the English language test at one of the testing centres that are available in the country. It is therefore clear that the respondent's decision was in accordance with Immigration Rules and the judge was legally bound to find that this was so.
6. Mr Patel also raised the issue of Article 8. This had been raised in the grounds of appeal to the First-tier Tribunal and it was thus technically incorrect for the judge to suggest otherwise in the first sentence of paragraph 14 of her determination. It may of course be that the judge had intended merely to indicate that it was not an argument that had been pursued at the hearing. Be that as it may, the judge nevertheless went on to consider it. As Mr Patel was unable to point to any fault in the judge's reasoning in respect thereof it follows that any failure by her to appreciate that the appellant had raised Article 8 in his grounds of appeal is not such as to justify setting aside her determination.

Decision

7. The First-tier Tribunal did not make an error of law such as to set aside its determination and the appeal is therefore dismissed.

Anonymity is not directed.

Signed

Date

Deputy Judge of the Upper Tribunal