



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001162

First-tier Tribunal No: HU/52773/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 10th of October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

AZEEM YAQOOB
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Janjua
For the Respondent: Ms S Cunha

Heard at Field House on 6 September 2023

DECISION AND REASONS

1. The Appellant appeals with permission a decision of the First-tier Tribunal, Judge Mensah, dismissing his appeal against a refusal of leave to remain as a partner under Appendix FM finding that the decision did not breach Article 8 family or private life rights. Permission was granted by Upper Tribunal Judge Gleeson on the basis that the representatives' post-hearing representations addressing a breach of Article 8 on the basis that the Appellant met the requirements of the Rules because he only needed to have a certificate satisfying A1 of the Common European Framework of Reference for Languages. He had obtained one for the purposes of his entry as a partner to the UK (United Kingdom) in 2016 and the Rules allowed him to rely on it again in this application.
2. Mr Janjua submitted the judge had failed to address this argument when stating at paragraph 7 that the appellant did not meet the requirements based on his previous certificate.

3. Mr Janjua took me to the requirements set out in Appendix FM under the heading family life with a partner at E-LTRP eligibility for limited leave to remain as a partner and argued that the Appellant was not caught by the A2 certificate requirement at E-LTRP 4.1A. Referring me to the guidance in respect of the acceptance of certificates, which he had provided to the judge following the hearing, he argued that because his client was switching from leave granted on an exceptional basis on private life grounds he did not come within the compass of the English language A2 certificate requirement at E-LTRP.4.1A. but instead could simply rely on the A1 certificate that he had provided in his earlier spousal application, the certificate being dated 27th August 2013. Mr Janjua argued that so long as the certificate met the validity requirements set out in the Home Office guidance in the context of acceptable specified evidence at Appendix FM SE 32D, i.e. had been provided in a successful application, it is still valid in terms of date, the test centre remains approved, and the test itself is still a recognised test, that was sufficient.
4. Ms Cunha agreed that the certificate met the specified evidence requirements referred to but that took the matter no further because the certificate did not meet the substantive requirements. Whilst Ms Cunha accepted that the judge at paragraph 7 of her findings does not refer to the submissions there was no need for her to explicitly reference them. It was enough for the judge to state that the Appellant cannot succeed based on his certificate because as a matter of law the certificate proffered simply did not meet the requirements of the Rules. The Appellant's argument is misconceived. No further reasoning is required because it is self-evident from the rule that an A1 certificate cannot meet a requirement for an A2 certificate. An applicant who is applying for an extension of leave as a partner must be able to show a language ability at A2 because of the public interest principle that language ability is important to financial independence and social integration. The rules reflect that when an applicant has already had time in the UK with an A1 certificate then they should be able to show an improvement from A1 to A2.
5. I set out the rule: English language requirement
E-LTRP.4.1. If the applicant has not met the requirement in a previous application for entry clearance or leave to remain as a partner or parent, the applicant must provide specified evidence that they-
 - (a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;
 - (b) have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;
 - (c) have an academic qualification which is either a Bachelor's or Master's degree or PhD awarded by an educational establishment in the UK; or, if awarded by an educational establishment outside the UK, is deemed by Ecctis to meet or exceed the recognised standard of a Bachelor's or Master's degree or PhD in the UK, and Ecctis has confirmed that the degree was taught or researched in English to level A1 of the Common European Framework of Reference for Languages or above; or

- (d) are exempt from the English language requirement under paragraph E-LTRP.4.2.;

unless paragraph EX.1. applies.

E-LTRP.4.1A. Where the applicant:

- (i) in a previous application for entry clearance or leave to remain as a partner or parent, met the English language requirement in paragraph E-ECP.4.1.(b), E-LTRP.4.1.(b), E-ECPT.4.1.(b) or E-LTRPT.5.1.(b) on the basis that they had passed an English language test in speaking and listening at level A1 of the Common European Framework of Reference for Languages;
- (ii) was granted entry clearance or leave to remain as a partner or parent; and
- (iii) now seeks further leave to remain as a partner after 30 months in the UK with leave as a partner; then, the applicant must provide specified evidence that they:
 - (a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;
 - (b) have passed an English language test in speaking and listening at a minimum of level A2 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;
 - (c) have an academic qualification which is either a Bachelor's or Master's degree or PhD awarded by an educational establishment in the UK; or, if awarded by an educational establishment outside the UK, is deemed by Ecctis to meet or exceed the recognised standard of a Bachelor's or Master's degree or PhD in the UK, and Ecctis has confirmed that the degree was taught or researched in English to level A2 of the Common European Framework of Reference for Languages or above; or
 - (d) are exempt from the English language requirement under paragraph E-LTRP.4.2.;

unless paragraph EX.1. applies.

E-LTRP.4.2. The applicant is exempt from the English language requirement in paragraph E-LTRP.4.1. or E-LTRP.4.1A. if at the date of application-

- (a) the applicant is aged 65 or over;
- (b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement; or
- (c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement.

6. Requirements for limited leave to remain as a partner require that the Appellant meet the language eligibility requirements. A sensible reading of the requirements shows that E-LTRP.4.1. and E-LTRP.4.1A. are in the alternative depending on the circumstances of the Appellant. The rule provides routes for those who have never met a requirement for an A1 certificate in the past, and a route for those who have met the requirement previously. The Appellant falls into the latter. Accordingly, it is the requirements at E-LTRP 4.1A. above which apply.
7. On the face of the Rule, I find Mr Janjua is correct. Ms Cunha conflates the requirements applicable to an applicant who has previously had leave for 30 months as a partner, with the position of all applicants applying for an extension as a partner. The rule treats them differently. Those who have already had leave as a partner for 30 months have to have an A2 certificate, those who are not in that position can continue to rely on an A1 certificate. This Appellant has not had leave to remain as a partner for 30 months his A1 certificate meets the requirements of the rule.
8. It follows that the judge's statement at paragraph 7 to the point that the A1 certificate does not meet the requirements is inadequately reasoned, and unsustainable so as to be a material error of law, and I set it aside. As the issue is a narrow one, dependent on the submissions I have already heard, I am in a position to remake the decision. For the reasons I have set out I find the language requirement is met by the earlier provided A1 certificate. The parties being agreed that the appeal turns on the issue of the satisfaction of the rule and having resolved the issue in the Appellant's favour it follows that I remake the decision by allowing the appeal on Article 8 grounds.

Decision

9. The First-tier Tribunal decision dismissing the appeal contains a material legal error. I set it aside. I remake the decision. I allow the appeal.

Elisabeth Davidge
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
04 October 2023