



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

THE IMMIGRATION ACTS

**Heard at Field House
On 23 September 2013**

**Determination Promulgated
On 24 September 2013**

Before

UPPER TRIBUNAL JUDGE WARR

Between

SECRETARY OF STATE

and

**MRS RUKAYA IBRAHIM LEAPER
AKA RAKAYA BEGUM**

Appellant

Respondent

Representation:

For the Appellant: Mr N Bramble
For the Respondent: In person

DETERMINATION AND REASONS

1. This is the appeal of the Secretary of State but I will refer to the original appellant, a citizen of Ghana born on 4 October 1979, as the appellant herein.

2. The appellant came to the United Kingdom on a spouse visa on 28 September 2010. The visa was valid until 28 December 2012. The couple married on 7 February 2009 and lived together since November 2009.
3. The appellant applied for leave to remain as a spouse but this application was refused by the Secretary of State on 22nd March 2013 on the basis there was not evidence of co-habitation during the previous two years of the marriage and because the appellant had not provided an English Language Certificate from an approved English language test provider as provided by the immigration rules.
4. The appeal came before a First-tier Judge as a paper case on 26th June 2013. She resolved both issues in favour of the appellant. She was satisfied that the parties had been living together over the two year period and that the marriage was subsisting and there has been no challenge to that aspect of her decision.
5. In relation to the English Language Test Certificate, the judge found the appellant had passed the test the month after the decision and she met all the relevant requirements of the rules that were applicable given that she had leave to remain granted before 9 July 2012.
6. The Secretary of State applied for permission to appeal on the basis that the judge had not set out the scores the appellant had achieved when passing the test and on whether the appellant had undertaken a test by approved test provider.
7. The Secretary of State had not seen the certificate.
8. Permission to appeal was granted. It was noted the certificate relied upon had been returned to the appellant and it was not clear whether the respondent's points were good ones or not.
9. At the hearing the appellant produced the original certificate and Mr Bramble had the opportunity to consider it.
10. Having scrutinised it Mr Bramble accepted that the test had been conducted by an approved test provider. Had the document still been on the file it was doubtful that permission to appeal would have been granted. He was content that I should find that the First-tier Judge had not materially erred in law and that her decision should stand.
11. As Mr Bramble did not seek to advance the arguments in the grounds in the light of the test certificate the appellant produced I find the decision of the First-tier Judge was not materially flawed in law. The decision of the First-tier Judge shall stand.
12. The appeal of the Secretary of State is dismissed.

Signed

Upper Tribunal Judge Warr

23 September 2013