



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

Appeal Number: OA/06563/2014

THE IMMIGRATION ACTS

Heard at Field House

On 5 July 2016

Determination

Promulgated

On 6 July 2016

Before

UPPER TRIBUNAL JUDGE WARR

Between

**ENTRY CLEARANCE OFFICER
(ISLAMABAD)**

And

**MISS SAMRA TUL HAYEE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr Melvin, Home Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

1. This is the appeal of the Entry Clearance Officer but I will refer to the Miss Hayee, a citizen of Pakistan, born on 24 May 1989, as the appellant herein. Her application for an entry clearance to join her partner, the

sponsor, Mr Fawaz Jamal, a British Citizen, for settlement in the United Kingdom was refused on 14 April 2014.

2. The appellant's appeal came before a First-tier Judge on 21 July 2015. The determination is lengthy and detailed but it is not necessary to recite it as the judge found in favour of the appellant on all the issues that had been advanced by the Entry Clearance Officer when reaching his decision and only one point has been raised in the grounds of appeal to the Upper Tribunal. That point relates to the IELTS certificate tendered before the Entry Clearance Officer which had passed the two year period of its validity.
3. However the First-tier Judge took into account a new IELTS certificate issued on 22 July 2014 showing an overall band score of 7.5(3).
4. In paragraph 52 of the determination the judge states:

"As to the outstanding issue of [the] English language requirement, the IELTS certificate of July 2014 meets this."
5. In the Entry Clearance Officer's grounds it is pointed out that the certificate is clearly dated after the date of decision and the appellant's application therefore failed under the rules and the First-tier Judge had erred in finding otherwise.
6. Permission to appeal was granted on 23 May 2016.
7. On 23 June 2016 the appellant's representatives wrote to the Tribunal stating that the appellant had instructed them to withdraw the appeal.
8. On 24 June 2016 the Tribunal replied pointing out that the Entry Clearance Officer had been granted permission to appeal and it was not for the appellant to withdraw. If she did not wish to proceed she should contact the respondent.
9. No one appeared before me on behalf of the appellant and I decided to proceed with the hearing, given the circumstances, under rule 38.
10. Mr Melvin said there was nothing on his file from the appellant's side. He relied on the point on which permission to appeal had been granted and invited me to allow the Entry Clearance Officer's appeal.
11. At the conclusion of the submissions I reserved my decision. The First-tier Judge went through all the disputed issues with great care and as I have mentioned resolved each one in favour of the appellant. This was a complex case to determine. It is however clear that there was a material error of law in that aspect of the decision in which reliance is placed on the IELTS certificate which post dates the decision.
12. It may well be that it was this that prompted the appellant's representatives to attempt to withdraw the appeal as their remedy would

appear to be a simple one: make a fresh application supported by the IELTS certificate rather than attempt to challenge the outcome of the appeal. Mr Melvin could give no concessions as to the outcome but observed that given the positive findings of fact that had been made and the limited challenge in the grounds to the findings, there was every chance the entry clearance would be granted on a further application.

13. It is clear the decision of the First-tier Judge was vitiated by a material error of law. In the premises I re-make the decision.
14. The Entry Clearance Officer's appeal is allowed. The appeal of the appellant is dismissed.

Anonymity Order

The First-tier Judge made no anonymity order and I make none.

Fee Award

The First-tier Judge made a fee award in favour of the appellant. In the particular circumstances of this case, although the appeal was ultimately unsuccessful, the vast majority of the issues were resolved in favour of the appellant and the fee award should stand.

Signed

G Warr, Judge of the Upper Tribunal

5 July 2016