



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

Akhtar (CEFR; UKBA Guidance and IELTS) [2013] UKUT 00306 (IAC)

THE IMMIGRATION ACTS

Heard at Newport

Determination Promulgated

On 28 September 2012

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Before

MR C M G OCKELTON, VICE PRESIDENT

UPPER TRIBUNAL JUDGE GRUBB

Between

HUMA AKHTAR

Appellant

and

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation :

For the Appellant: Ms L Fenney of Duncan Moghal Solicitors and Advocates

For the Respondent: Ms L Goodfellow, Home Office Presenting Officer

1. Where, under Immigration Rules, it was required that, as an English language requirement, an individual must achieve a certain level by reference to the Common European Framework Reference (CEFR) (i.e. A1, B1, B2 etc) and the individual relies on an International English Language Test System (IELTS) test result awarded by Cambridge ESOL, that individual must necessarily rely on the relevant UKBA's Guidance to succeed because the Rules do not state an equivalence between the IELTS test results and the levels of the CEFR.

2. The UKBA's Guidance does not attribute any mark less than level B1 to any IELTS score and so, in practical terms, equivalence to at least B1 must be established even where the level to be achieved is A1.

3. In order to achieve a particular CEFR level, it is not enough simply to look at the individual's overall score: the Guidance requires that at least each of the individual modules in "speaking" and "listening" has been assessed at the level required. ¹

DETERMINATION AND REASONS

1.

The Appellant is a citizen of Pakistan who was born on 6 September 1986. On 13 July 2011, the ECO refused her application for entry clearance to come to the UK as the spouse of a person present and settled in the UK, namely her husband, Mr Muhammad Daud Akhtar under para 281 of Statement of Changes in Immigration Rules HC 395 (as amended). The ECO was not satisfied that the appellant met the English language requirement in para 281(ii) of the Rules.

2.

The appellant appealed to the First-tier Tribunal. Judge E M Simpson dismissed her appeal. The Judge was not satisfied that the appellant's International English Language Test System (IELTS) test result of an "overall band score" of 4.5 was the equivalent of, or exceeded, level A1 of the Common European Framework Reference (CEFR) as required by the Rules. The Judge went on also to dismiss the appeal under Article 8 of the ECHR.

3.

The appellant sought permission to appeal to the Upper Tribunal on the basis that the Judge had erred in law in finding that the appellant's IELTS result did not meet the requirements of the Rules. No challenge was made to the Judge's decision in relation to Article 8. On 30 May 2012, the Upper Tribunal granted the appellant permission to appeal. Thus the appeal came before us.

4.

The relevant provision of the Rules to this appeal is para 281(ii) which provides as follows:

"The requirements to be met by a person seeking leave to enter the United Kingdom with a view to settlement as the spouse.....of a person present and settled in the United Kingdom... are that:

....(ii) the applicant provides an original English language test certificate in speaking and listening from an English language test provider approved by the Secretary of State for these purposes, which clearly shows the applicant's name and the qualification obtained (which must meet or exceed level A1 of the Common European Framework of Reference)..."

5.

Although para 281(ii) creates a number of exceptions to this requirement, none of which are relevant to this appeal. Further, it is clear from the ECO's decision that the appellant meets all the remaining requirements of para 281. Thus, the only requirement in dispute is that in para 281(ii).

6.

In support of her application, the appellant relied upon a Test Report Form dated 16 April 2011 which gave her test results as follows:

"Listening 5.5

Reading 4.0

Writing 5.0

Speaking 3.5

Overall Band Score 4.5"

7.

At paras 11-12, the Judge rejected the appellant's claim that this test result was equivalent to or exceeded level A1 of the CEFR. The Judge said this:

“11. The IELTS test certificate which is awarded by Cambridge ESOL is one approved by the Secretary of State but the minimum level test approved is at B1 and providing a minimum grade requirement of 4.0 across the board for listening, speaking, reading and writing. (UKBA IDIs chapter 8 & Annex A3), UKBA entry clearance guidance SET17).

12. If taking the IELTS test to attain level A1 of the CEFR in listening and speaking the Appellant had to in effect meet the B1 level and a minimum grade of 4.0 in each of listening and speaking having regard to this being the minimum level approved by the Secretary of State for this test and test provider. The Appellant manifestly met the requisite standard for listening 5.5, but failed to meet it for speaking with the score of 3.5. She thus failed to provide an English language test certificate showing a qualification obtained meeting or exceeding level A1 of the CEFR.”

8.

On behalf of the appellant, Ms Fenney submitted that the overall score of 4.5 equated to a result exceeding level A1 because it exceeded the necessary score to reach level B1 which was set at 4.0. In support of that submission she referred us to the relevant UKBA guidance, in particular the list of approved providers which included Cambridge ESOL and the IELTS test. There, Ms Fenney pointed out that it was stated that level “B1” had a “grade” required of “4.0”. She submitted that level B1 exceeded level A1 and therefore the Judge had been wrong to find that the appellant’s IELTS score did not satisfy the requirement in the Rules.

9.

With respect, we do not accept this submission. First, the requirement in the Rules, namely para 281(ii) is plain. The appellant must establish on a balance of probabilities by providing an original test certificate that she has obtained a qualification which “must meet or exceed level A1” of the CEFR. The English test taken by the appellant, namely the IELTS test at Cambridge ESOL does not provide a result in terms of the CEFR grading. As we understand it, some tests would do this. In order for the appellant to demonstrate that her test result is the equivalent of at least level A1 she must therefore rely upon UKBA guidance reflecting the equivalence of marks obtained in the IELTS test to the levels of the CEFR.

10.

Looking at the UKBA schedule, the equivalences set out are as follows:

“B1 = 4.0

B2 = 5.5

C1 = 6.5”

11.

As will be obvious, there is no equivalence for level A1. As we understand it, and this is what is said on behalf of the Secretary of State, IELTS itself does not provide CEFR equivalences for scores below 4.0 such that no score is equivalent to levels A1, or A2. The appellant must, therefore, in practical terms show a score of at least B1 in order to meet the requirement in para 281(ii).

12.

Ms Fenney submits that her overall score of 4.5 is, by virtue of the schedule, the equivalent of B1 because she has an overall score of at least 4.0.

13.

Whilst that submission has a superficial attraction, it cannot be sustained when the guidance is read as a whole. The appellant must necessarily rely upon the guidance in order to show her IELTS has any prospect of meeting the Rules. Reading that guidance, it is clear that the overall score in itself is not sufficient to show that the appellant has a score which is the equivalent of level B1. Ms Fenney took us to the UKBA agency's guidance headed "Information for Applicants on the New English Language Requirements for Partners" This guidance is, as we understand it, provided with the application form and so is something of which any applicant should be aware. Under the sub-heading of "Meeting the Requirement", the guidance – in the form of question and answer – addresses the following question:

"I have taken a test at Level A1 which tested reading and writing as well as speaking and listening skills. I passed speaking and listening but failed to reach A1 in reading and writing. Can I still use this test?"

The guidance provides the following answer:

"Providing you can demonstrate you have passed in speaking and listening at Level A1 with one of the approved test providers you can use this evidence. We are only using tests which can show separate scores for speaking and listening skills."

14.

Although this question and answer is directed to a test at level A1, reflecting the requirement in para 281(ii), it is of course equally pertinent where, as in the case of this appellant, in practical terms a score at level B1 has to be established because the test taken does not recognise an equivalent directly at the A1 level. The guidance makes clear that the UKBA will take as the equivalent of a CEFR level a test result that reaches the equivalent level in the two elements of "speaking" and "listening skills". Here, the appellant has failed to do that. In the "listening" element of her test, the appellant achieved a score of 5.5 which on the basis of the schedule, is the equivalent of the even higher level B2. However, in relation to the element of "speaking" the appellant only achieved a score of 3.5. On the basis of the schedule, that score has no equivalence to a level of the CEFR. Only scores at 4.0 and above have equivalents. Ms Fenney initially relied upon a document (at page 40 of the appellant's bundle) which purported to state that an IELTS score of 3.0 was the equivalent of a CEFR level of A2. The provenance of this document taken from the internet is not clear to us. Although it has a footer including the "British Council" and "University of Cambridge, ESOL examinations" and is headed "IELTS" this document does not appear to emanate from IELTS itself. Indeed, it appears to contradict the information received from IELTS by the UKBA set out in the Rule 24 response dated 11 July 2012 that:

"IELTS has indicated to UKBA (and confirmed again recently) that they are not in a position to score tests below 4.0 for UKBA and although there is a wealth of information on the web which attempts to align IELTS scores below 4.0 to a score on the Common European Framework of Reference, a score below 4.0 is not equivalent to any scale on the Common European Framework of Reference."

15.

We accept that to be the present position. Consequently, in order to establish that she meets the requirements of para 281(ii) the appellant must rely upon the UKBA's guidance to demonstrate that her IELTS test score is the equivalent of at least level A1 and, in practical terms given the nature of the IELTS test, is at least at level B1. That guidance, when read as a whole which undoubtedly it must be, makes clear that the UKBA will only treat IELTS test scores as equivalent to a particular CEFR level if the appellant can show the required scores in both the "speaking" and "listening" elements. The appellant cannot do that because she only achieved a score of 3.5 in the "speaking" element.

16.

Our views may be summarised as follows. The Rules require level A1. A person who takes a test marked on a different scale needs to rely on the guidance to show that the mark obtained is equivalent to (at least) level A1. The guidance has to be read as a whole. It says that IELTS 4 is equivalent to level B1. But, apparently deliberately, it does not attribute any mark less than level B1 to any IELTS score; and it requires at least the individual modules in “speaking” and “listening” to have been assessed at the level required. The former prevents an assertion that any of the appellant's marks were equivalent to level A1; the latter prevents an assertion that a mark of 3.5 for speaking is sufficient, given that the guidance requires 4 for the lowest point at which equivalence is attributed.

17.

The Judge was therefore correct to find that the appellant’s English language test certificate did not establish that she had a qualification which met the requirements of the Rules, namely at or exceeding level A1 of the CEFR. No error of law is established and the Judge’s decision to dismiss the appeal stands.

18.

This appeal to the Upper Tribunal is dismissed.

Signed

A Grubb

Judge of the Upper Tribunal

Date:

¹ See now Appendix O to Immigration Rules HC 395.