



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/32721/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 27 June 2017

**Decision & Reasons
Promulgated
On 7 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**WANPHEN PLIANGPLANG
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara of Counsel, instructed by Legend Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Moxon promulgated on 21 November 2016 in which he dismissed the appeal of Ms Pliangplang against a decision of the Secretary of State for the Home Department dated 28 September 2015 refusing leave to remain in the United Kingdom. The appeal comes before the Upper Tribunal pursuant to permission to appeal granted by First-tier Tribunal Judge Robertson on 17 May 2017.
2. The Appellant is a citizen of Thailand born on 27 September 1968. She is the wife of Mr Wararat Singnoi, also a citizen of Thailand born on 15

January 1981. She arrived in the UK on 12 February 2010 with entry clearance as a dependant of her husband, conferring leave valid until 28 January 2014. On 9 September 2011 her leave was varied to that of a dependant of a Tier 2 Migrant to run until 1 August 2014.

3. On 31 July 2014 the Appellant made an application for settlement as the dependant of her spouse. In support of the application, amongst other things, she submitted a ESOL Skills for Life (Speaking and Listening) Entry 3 level certificate issued by Pearson Edexcel as evidence of competency in the English language. This certificate was purported to have been awarded in March 2014.
4. During the course of the application the Appellant was interviewed by Immigration Officers on 29 May 2015. Thereafter the Appellant's application was refused by way of Notice of Immigration Decision dated 28 September 2015 with reference to paragraphs 319E and 322(1A) of the Immigration Rules for reasons set out in a 'reasons for refusal' letter ('RFRL') of the same date.
5. The Respondent essentially relied on two matters in refusing the Appellant's application, both primarily with reference to paragraph 319E(g) of the Rules. The first is set out in these terms in the RFRL:

"You failed to submit evidence that you have sufficient knowledge about life in the United Kingdom in accordance with Appendix KoLL. Your legal representative stated that you had booked to sit the Life in the UK test in the second week of August 2014. We have checked Home Office records and noted that as at the date of this letter you have taken and failed the Life in the UK test fourteen times."

There is on file a computer-generated record of those fourteen attempts and it was not denied before the First-tier Tribunal that that was the relevant history.

6. In respect of English language the following was said in the RFRL:

"You submitted a Pearson Edexcel Entry Level certificate issued 22 March 2014 certifying that you had attained Level Entry 3 of ESOL Skills for Life (Speaking and Listening) on completion of an approved programme at Asta College. However, you were requested to attend an interview at UKBA offices on 29 May 2015 in connection with your application and it was noted at this interview that when questioned about your English language qualification and the programme you undertook to achieve it you failed to understand or respond appropriately to the majority of questions asked of you. It was considered therefore that you had not attained Level Entry 3 of ESOL Skills for Life (Speaking and Listening) and that you had submitted false information in support of your application."

In this regard in addition to finding that paragraph 319E(g) had not been satisfied the Secretary of State also invoked paragraph 322(1A) of the Rules.

7. The Appellant lodged an appeal with the IAC. In her grounds of appeal she wrongly asserted that the only reason for the refusal by the Respondent was in relation to the allegedly false ESOL certificate. She otherwise pleaded in the grounds that the Secretary of State has not discharged the burden of proving the falsity of that document, and also claimed that there would be obstacles to establishing a family life in Thailand. The grounds of appeal do not in terms or at all address the issue in respect of the Life in the UK test.
8. On appeal before the First-tier Tribunal the Appellant relied in part upon a witness statement signed on 3 November 2016 and a 'Pass notification letter: Life in the UK test' produced subsequent to a test date of 26 September 2016. The Appellant's documents were forwarded to the Tribunal under cover of a letter dated 3 November 2016, the hearing before the First-tier Tribunal being listed for 4 November 2016.
9. The Appellant's witness statement, again erroneously, suggests that the 'sole reason' (see paragraph 6 of the witness statement) for the Respondent's refusal was in respect of the English language certificate. Again, mirroring the grounds, the witness statement otherwise emphasises that the burden of proof was on the Respondent in this regard and asserts that the document was genuine.
10. The First-tier Tribunal Judge refused the Appellant's appeal for reasons set out in the Decision promulgated on 21 November 2016.
11. It is to be noted at paragraph 3 of the Decision that the Appellant's representative indicated at the commencement of the hearing that no reliance was being placed on Article 8, and the claim in the grounds of appeal of significant obstacles to integration into Thailand was no longer being pursued. Accordingly the issues before the First-tier Tribunal related to the application for variation of leave with reference to paragraph 319E of the Rules, and also the issue in respect of paragraph 322(1A) in respect of the English language certificate. The Judge concluded against the Appellant in both regards and also declined to attach any weight to the 'pass notification letter' that had been forwarded to the Tribunal the date before the hearing.
12. Challenge is brought against the First-tier Tribunal Judge's decision pursuant to permission granted in these terms:

“Whilst the Judge has given adequate reasons for not giving weight to the life in the UK test certificate provided at the hearing... it is arguable, as stated in the grounds, that it is not clear from the decision whether the burden of proof had been unfairly placed on the Appellant where an allegation was made by the Respondent that she had submitted a false document.”

Indeed, it is that essential point that Mr Bellara has amplified in his submissions before the Tribunal, and it is in respect of that central point that Mr Avery has argued on behalf of the Respondent that in effect the Secretary of State’s case and evidence had ‘stood up’ before the First-tier Tribunal.

13. The First-tier Tribunal Judge sets out the core of the Respondent’s case in the preliminary parts of his decision. He then in due course proceeds to set out with reference to the witness statement and documents on file, and also the presentation at the hearing, the Appellant’s response to those matters. So, for example, at paragraph 14 he identifies that the Appellant denies deception in her witness statement and asserts that there was nothing to suggest that her English language was below the required entry level.

14. The Judge then sets out the Appellant’s explanation as to the answers provided at the interview that caused the Respondent such consternation in the refusal. At paragraph 16 the Judge states:

“Within the Sponsor’s statement it asserts that in interview the Appellant had replied ‘Asta College’ when asked which college she had studied and that it just sounded like ‘Excel College’. In reply to the question of who had paid for her course she had replied ‘my partner paid’ which had sounded like ‘my personal pay’.”

15. The Judge also observed the following in respect of the Appellant’s conduct at the hearing:

“During the hearing the Appellant gave evidence with the aid of an interpreter. She tried to speak English but her ability was so limited that it was difficult to understand what she was saying and I only understood her to say that she can understand and speak English slowly and that she can understand a bit.”

16. The Judge took all of those matters forward at paragraphs 18-20 under the heading *“Findings of Fact”*. At paragraph 18 the Judge says this:

“I find it more likely than not that the Appellant has not passed the tests asserted. I rely upon the high number of previous failed

attempts, her obvious lack of English during interview and the hearing, and the fact that she provided the wrong details as to the college in which the 2015 test was undertaken. I do not accept that she had said 'Asta' but was wrongly recorded as having said 'Excel'. I note that she is recorded to have given this answer on three occasions and I find it unlikely that the interviewer would have misunderstood on each occasion or would have failed to seek clarification."

17. The Judge goes on to conclude in these terms at paragraph 20: "*I therefore find on the balance of probabilities that the Appellant has sought to mislead in relation to passing the tests in 2015 and 2016*", before acknowledging that paragraph 322(1A) was therefore satisfied.
18. I accept Mr Avery's submission that at paragraph 18 the Judge is essentially indicating that he accepts the substance of the Respondent's case, and he does so applying the balance of probabilities. He then goes on to offer reasons which are essentially the reasons relied upon by the Respondent in the RFRL.
19. It is difficult, in my judgment, to see that the Judge is doing anything other than considering that the Respondent has established her case in preference to the Appellant's explanations and contrary assertions on appeal. In other words, the Respondent has raised the apparent irreconcilability of the English language certificate presented by the Appellant in support of her application and her manifest difficulty during the interview conducted in May 2015, which was not only indicative of a lack of sufficient competence but also indicated that it was more likely than not that the English language certificate could not be a genuine document. It seems to me that the Appellant was therefore reasonably required to offer something by way of explanation to meet these concerns and to reconcile the dissonant features of her application, but in substance failed to do so. She offered nothing more than a denial of the falsity. She did not, for example, provide any additional evidence by way of further test results which she could have sat for the purpose of the appeal. She did provide a document in respect of 'Life in the UK' which the Judge, for reasons I will come to in a moment, it seems to me had properly excluded from his consideration, but she did not offer anything by way of further verification of her English language ability.
20. As I indicate above, it seems to me the Judge was doing no more than accepting that the Respondent had established her case - inherently therefore acknowledging that the Respondent had discharged the burden in that regard; there is no issue before me but that the Judge applied the relevant standard of balance of probabilities.
21. So far as the Life in the UK 'pass notification letter' filed on the day before the First-tier Tribunal hearing, it seems to me that the Judge was entitled

to identify that this had been submitted very late and necessarily outside the period provided by the standard Directions that had been issued in the appeal, and it was therefore a document that the Respondent had had no opportunity to verify. In those circumstances, and with regard to the 'overriding objective', in my judgment the Judge was entitled to decide to proceed with the appeal rather than adjourn it for further verification. In any event, bearing in mind my conclusion in respect of the English language test it becomes immaterial as to whether or not the Appellant could have established before the Judge that she did indeed have sufficient knowledge of life in the UK because it was necessary for her to satisfy both that requirement and the English language requirement in order to succeed under the Rules.

22. Accordingly I conclude that there is no identifiable error of law in the Decision of the First-tier Tribunal and accordingly the Decision stands.

Notice of Decision

23. There is no error of law in the Decision of the First-tier Tribunal, which accordingly stands. The Appellant's challenge is dismissed and her appeal remains dismissed.

24. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed

Date: **6 July 2017**

Deputy Upper Tribunal Judge I A Lewis