



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

Appeal Number: IA/25296/2012

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 12th April 2013

On 13th June 2013

Before

UPPER TRIBUNAL JUDGE GOLDSTEIN

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS SHAVET DHAVAN

Respondent

Representation:

For the Appellant: Mr Z Malik, Counsel, instructed by Malik Law
Chambers Solicitors

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

DETERMINATION AND REASONS

Introduction

1. This is an appeal by the Secretary of State but in this determination we shall refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a citizen of India born on 1st November 1982. She arrived in the UK on 30th September 2010 with leave to enter as a Tier 4 (general) student migrant until 30th January 2012. She made an application to extend her leave on 26th January 2012, which was never determined by the respondent as on the 3rd July 2012 she made a further application on form FLR(M) to remain as the wife of Mr Musa Barrow, a British Citizen. The application to remain as a spouse was refused on 25th October 2012 on the basis that the appellant did not fulfil the relevant Immigration Rules to remain as a spouse or under Article 8 ECHR. Her appeal against the refusal decision was allowed by First-tier Tribunal Judge Lingam in a determination promulgated on the 8th February 2013.
3. Permission to appeal was granted by Upper Tribunal Judge Martins on 26th February 2013 on the basis that it was arguable that the First-tier judge had erred in law in not dealing with the English language requirement of the Immigration Rules at paragraph 284(ix) of HC 395 as amended, and also in her treatment of Article 8 ECHR.
4. The matter came before us to determine if there was an error of law in the determination of the First-tier Tribunal. Ms Kenny did not have full papers so she was provided with a copy of the appellant's bundle which was before the First-tier Tribunal and directed to page 78 which was the appellant's IELTS certificate which showed she had an overall band score of 6.0.

Submissions

5. Ms Kenny said that she accepted that the appellant's IELTS score was sufficient to satisfy paragraph 284(ix) HC 395 as amended: it did prove that the appellant had supplied an English language test certificate at level A1 of the Common European Framework Reference or above. She submitted that Judge Lingam ought to have referred to it in her determination however. She referred to the submission at paragraph one of the respondent's grounds of appeal, that the respondent had not conceded that the requirements of paragraph 284(i) of HC 395 as amended was fulfilled, but then did not pursue the

submission when it was not pointed out that the respondent's letter of 25th October 2012 explicitly states that "the FLR(M) application has been treated as being in time which attracts a right of appeal."

Conclusions

6. We find that Judge Lingam had erred in law in not referring to the fact the appellant had submitted evidence that showed she complied with the requirements of paragraph 284(ix) of HC 395 and that she was satisfied that this aspect of the Immigration Rules was met. However this error was not material as it was clear that the appellant had in fact submitted this evidence to the respondent with her application (see pages 9 (at question 5.4) and 17 of her FLR(M) application form) and provided it to the First-tier Tribunal in her bundle of evidence and there was no dispute that it was more than satisfactory to show that she met this requirement of the Immigration Rules.
7. As all other aspects of the Immigration Rules at paragraph 284 were found to be met by Judge Lingam, and no errors were pursued by the respondent in her analysis of these, we uphold her decision to allow the appeal on this basis. In the circumstances it is not necessary to examine Judge Lingam treatment of the appeal under Article 8 ECHR, but we note no errors in her analysis.

Decision

8. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
9. The decision of the First-tier Tribunal allowing the appeal under the Immigration Rules and under Article 8 ECHR is upheld.

Deputy Upper Tribunal Judge Lindsley

12th April 2013