ASYLUM AND IMMIGRATION TRIBUNAL

THE IMMIGRATION ACTS

No hearing

Before:

Mr C M G Ockelton, Deputy President of the Asylum and Immigration Tribunal
Senior Immigration Judge Grubb

Between

MD

Appellant

and

ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

1. An Immigration Judge who believes that, in dealing with other cases, he has developed a specialised familiarity with a particular sort of evidence, that causes him to reach an adverse view of the genuineness of evidence produced to him, ought not to act on that view without giving the parties an opportunity to deal with the point.

2. An appellant may be able to make himself understood in written English statements produced in his own time without having the ability in English necessary to follow an advanced course dealing with abstract concepts.

DETERMINATION AND REASONS

1. The appellant, a national of Pakistan, appealed to the Tribunal against the decision of the Respondent Entry Clearance Officer on 25 September 2007 refusing him Entry Clearance as a student. An Immigration Judge dismissed the appeal. The appellant sought and obtained an order for reconsideration. Thus the matter comes before us.

2. The appellant is outside the United Kingdom and has no nominated representative in the United Kingdom. This appearing to us to be a suitable case in which to do so, we have exercised our discretion to determine this

reconsideration without a hearing, as we are permitted to do by rule 15(2)(b) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (as amended).

3. The respondent stated that he refused the application because he was not satisfied that the appellant met the requirements of subparagraphs 57(ii) and (vii) of the Statement of Changes in Immigration Rules, HC 395. That is to say, he was not persuaded that the appellant was able and intended to follow his course, or (as he makes clear by the text of the notice of refusal) that there were sufficient funds available to the appellant to enable him to meet the costs of the course and his maintenance and accommodation during it.

4. In his determination dismissing the appeal the Immigration Judge begins by alleging that the application was refused because the appellant could not meet the 'following requirements of paragraph 57', and then sets out paragraph 57 in full. It is not clear how he reaches the view that the respondent thought that none of the requirements of para 57 were met, and it seems to us that that of itself would be sufficient to amount to a material error of law, in that it is extremely difficult to say that the Immigration Judge would himself necessarily have reached the view he did on the outcome of the appeal if he had appreciated the limited nature of the respondent's refusal.

5. The Immigration Judge continues his determination by deciding that the documentation produced by the appellant to support his case should be rejected for a number of reasons. The IELC diploma, said to attest the appellant's abilities in the English language, is, he says, 'an obvious forgery'. He draws on his own knowledge and experience to make this judgment, stating that he has seen 'very many genuine IELC certificates', and that this one has 'plainly been produced on a word processor' and 'is not in the usual form with the score achieved in the test'.

6. We are not in a position specifically to doubt what the Immigration Judge says about having seen many genuine IELC certificates, although bearing in mind that, as the certificate itself makes clear, the abbreviation stands for 'Irich English Language Centre', a private institution in Peshawar founded in 1998, his assertion may be regarded as implausible. What is clear, however, is that if the Immigration Judge thought he had the specialised knowledge necessary to detect forgeries of IELC certificates, he should have declared it to both parties before acting on it. Further, the respondent had cast no doubt on the genuineness of the certificate: and in those circumstances although the Immigration Judge was clearly entitled to raise the issue, he ought not to have determined it against the appellant without giving him an opportunity to deal with the point. Further again, there is no trace in the determination that in reaching his conclusion the Immigration Judge bore in mind that forgery in a civil case requires proof to a high standard, the burden of proof being on the party relying (or, in a case such as this, presumed to rely) on the allegation of forgery. His treatment of this document is a further clear error of law, possibly compounded by his confusion

of this certificate with some other document of which he had indeed seen many examples.

7. The Immigration Judge went on to reject other documents because he thought they had been prepared on 'the word-processor' and others because they were self-serving or derived from members of the appellant's family. These were again points not previously taken against the appellant, and of which he ought to have been given notice if they were to motivate a decision against him. In reaching his conclusions the Immigration Judge referred, as the appellant has pointed out in his grounds for reconsideration, to a part of the application form that does not appear to exist.

8. For the foregoing reasons we find that the Immigration Judge materially erred in law in making his determination. We must therefore substitute a determination of the appeal.

9. As we have said, the respondent took two specific points against the appellant. He has had ample opportunity to deal with those points in the documents accompanying his appeal. We take them in turn.

10. The rules require that the appellant be able to undertake his course. In this case the course proposed is an Advanced Diploma in Business Management, taught from the beginning in English, awarded by the Association of Business Executives, a UK body that we have no reason to suppose does not endeavour to ensure that its advanced qualifications are awarded only to those who in a UK context are worthy of them. The crucial question is whether the appellant's abilities in English are sufficient. The respondent decided not to accept the IELC certificate as evidence of the appellant's ability to follow the course. He pointed out that there was no independent evidence of the appellant's abilities in English from any body that would be recognised in the UK as one whose opinions had weight. That is correct as far as it goes, but given that in applications under para 57 there is no specific requirement for an opinion from such a body we must do what we can with that material the appellant has supplied.

11. He says in his grounds of appeal that he has studied English and has studied in English (in Pakistan) for many years. On the other hand, he now relies on a certificate from a body which itself is apparently unable to supply certificates in standard English. The printed parts of the form read (the bracketing of what might be otherwise regarded as the title of the certificate is a feature of the original):

> "(Diploma in English Language) ... Awarding to Mr/Miss/Mrs. ... On successful completion of the advanced level of English Language at IELC. ... This diploma is awarded to him/her because of excellent performance in English language examination."

12. The appellant's mark is recorded, here and on another IELC document, as 73%, but there is no information about what mark entitles the examinee to describe his result as 'excellent', nor is there any information about the qualifications of those who attribute the marks to candidates.

13. In his written submissions, the appellant claims that the college at which he proposed to study has accepted that his English is good enough. That does not appear to be the case. Amongst the papers is a letter from the college saying that his language skills will be tested on arrival, and 'if we don't find your skills up to our requirements, you will be required to follow an intensive language course before you start your major course'. So it is clear that acceptance by the college in question carries neither an assurance about the applicant's ability in English nor indeed an assurance that the candidate will, on arrival, be allowed to begin the course for which he has registered.

14. The papers contain a number of documents apparently emanating from the appellant and written in English. Only one of them contains an assertion that the appellant prepared and wrote it himself. It is the standard 'student questionnaire'. One of the questions is 'Did you personally type or write this form yourself?'. The appellant's typed answer is: 'Yes,I have typed and work it myself.' Asked why he has chosen to study abroad, and how the course chosen differs from similar course available in Pakistan, the appellant does not answer the latter part of the question, which suggests (assuming that he was not deliberately declining to answer the respondent's questions) that he did not understand it; amongst the reasons given in answer to the first part is 'UK Institution have strong faculty and an excellant studding envirement not only theoritical but also provide practical experience too.' Asked whether there has been a gap since his last studies and if so how he filled it, he again misunderstands the question, saying 'Yes,during this gap' he was employed; but the form was completed in September 2007 and his previous studies only ended in June 2007: the summer vacation is not normally called a 'gap' in studies. Elsewhere on the form he writes, in inverted commas for no apparent reason unless it is because he is copying from something else:

> "I have search many colleges for advance diploma in business Management on Web and finally I choose "RIMS COLLEGE".

No reason for the choice is given there, but later the reader of the form is told that 'This Programe is to enhance student's Carrier prospects', but what he proposes to do on its completion is clearly stated to be setting up 'my Own Business of Electric,Equipments in Pakistan'. Similar errors can be found in the other documents he has supplied, including the last, a letter complaining about the delay in dealing with his case (not an unusual delay, regrettably, given the vast number of cases whish the Tribunal has to determine), not set out like an ordinary English business or professional letter, and reading as follows:

> "Respected Sir/Madam!

> It is requested that my appeal for re-consideration was approved by the Senior Judge back in July 2008. But till date, I have not been assigned any hearing date by the Tribunal, I will be highly obliged if the Tribunal enlist it for my hearing date and let me inform about the final outcome.
> Sincerely yours!"

15. These documents are full of elementary errors and fail to observe the ordinary rules of grammar and business practice. It could rightly be said that they are largely intelligible. But we have to bear in mind that these documents are the best the appellant could do, given all the time he wished to take to prepare them, with all the help he wished to have, and in a context where he knew that his abilities in English were on trial. By contrast, the English abilities he needs are those for immediate oral discourse in an advanced business course which will no doubt deal from the very first day with concepts of some subtlety, taught and discussed in English alone. It also remains true that the appellant chose not to offer any recognised qualification (for example IELTS) and has done nothing since his original application to supplement it in this way.

16. It seems to us that despite the fact that, in the circumstances set out above, the appellant is capable of constructing sentences in almost intelligible near-English, we are unable to say that he has established that his English is sufficiently good for the course he proposed. We find that at the date of the decision he has not discharged the burden of proof in relation to para 57(ii).

17. That is sufficient to dispose of this appeal, but we look also at para 57(vii). The respondent noted that the appellant had provided certain documents said to show the financial standing of his father, who was to fund the appellant's studies, but refused the application in part because there was no material showing what other claims there might be on those funds. That remains the case. The appellant is one of six siblings. Only one other was at the date of the decision still in full-time education, but there is nothing to show what other demands there are on his father's resources; whether they, or any identifiable part of them, is genuinely available and genuinely going to be used for the further education of the appellant (in priority to any other demands that there may be or that may arise), or whether any of the fixed assets of which evidence has been offered can or will be rendered liquid in order to fund the appellant's proposal. The appellant has, as we said above, had every opportunity to deal with the respondent's concerns, but nothing to the point has been forthcoming. In these circumstances we find that the appellant has failed to discharge the burden upon him in relation to para 57(vii).

18. For the foregoing reasons, having found that the Immigration Judge materially erred in law, we substitute a determination dismissing the appellant's appeal.

C M G OCKELTON
DEPUTY PRESIDENT
Date: 12 March 2009