

Name: Ruvimbo Thembela
Manyama

Case Number: APP-1519

Registration appeal hearing:

Hearing Venue: Remote conducted through Microsoft Teams

Date of hearing: Friday 30 October 2020

Hearing Outcome: Appeal dismissed; Directions given to the appellant to make all reasonable efforts within the next three months to arrange to sit the academic International English Language Test System IELTS test and to the Registrar to extend the time limit within which the test should be arranged accordingly. The test does not require to be undertaken within that period.

Introduction and attendees:

1. Ms Ruvimbo Manyama did not attend but she was represented by Dr Hazviperi Betty Makoni.
2. Social Work England was represented by Jeremy Loran, presenting officer from Capsticks LLP.

Adjudicators	Role
Name: Lesley White	Chair
Name: Gemma Bellwood	Social Work Adjudicator
Name: Colette Neville	Lay Adjudicator

Name: Calvin Ngwenya	Hearings Officer
Name: Robbie Morgan	Hearing Support Officer
Name: Gerry Coll	Legal Adviser

Background to appeal:

3. This is an appeal against the decision of Social Work England (“**the Registrar**”) contained in a letter dated 24 February 2020 to pause consideration of Ms Manyama’s application for entry to its Register of social workers until she obtains an overall score of 7 or more in the International English Language Testing System (Academic) test (IELTS). The Registrar decided that Ms Manyama did not currently satisfy any of the four ways to demonstrate her knowledge of English language which are prescribed in Rule 16 of the Social Work England (Registration) Rules 2019. Ms Manyama appeals that decision on the basis that she has amply demonstrated her proficiency in the English language by other means. She maintains that she has fully demonstrated that she is capable of safe and effective practice as a registered social worker. She says that to deny her registration in all the circumstances of this case is unfair and unjustified. This appeal is made pursuant to Regulation 19 of the Social Workers Regulations 2018 (the Regulations). The panel may in accordance with Regulation 19(6) of the Regulations:

(a) dismiss the appeal;

(b) quash the decision;

(c) substitute for the decision being appealed any other decision that the decision maker could have made; or,

(d) remit the decision to the regulator to be disposed of in accordance with the adjudicators' directions.

4. A case management meeting in respect of the appeal took place between the adjudicators on 11 September 2020. The adjudicators made the following directions at the case management meeting:

The adjudicators direct that this appeal should be heard at a hearing, and give the following further directions;

1. At least 21 days before the date set down for the hearing, Ms Manyama must submit a certified copy of her 2018 Bachelor's Degree certificate in social work.
2. At least 7 days before the date set down for the hearing, Ms Manyama must submit a chronology of her social work professional history including any social work placements with specific reference to work undertaken verbally and in writing in the English language.
2. At least 7 days before the date set down for the hearing, Ms Manyama must submit a letter from her current employer or line manager confirming:
 - what proportion of her work is conducted verbally and in writing in the English language, and
 - the scope and nature of that work including any formal proceedings such as court hearings.
3. At least 21 days before the date set down for the hearing, Ms Manyama must submit a statement explaining why she cannot comply with the requirements of Rule 16(2) set out below, if that is her position.
4. At least 21 days before the date set down for the hearing, Ms Manyama must submit any additional witness statements and any further documents on which she intends to rely.
5. At least 21 days before the date set down for the hearing, Ms Manyama must inform Social Work England whether she wishes any witness to attend.
6. At least 7 days before the date set down for the hearing, Social Work England and Ms Manyama are both directed to make written submissions setting out:

- whether, exceptionally in Ms Manyama’s case, based on any information available, the adjudicators have a discretionary power to find that Ms Manyama can meet the requirements for registration outside of Rule 16 set out below.

Knowledge of English

16. To determine that an applicant has the necessary knowledge of English, the regulator must be satisfied that the applicant:

- (1) has within the last five years passed a test of their knowledge of English that has been approved under the regulator’s education and training approval scheme; or*
- (2) has within the last five years obtained an overall score of 7 or more in the International English Language Testing System (Academic) test; or*
- (3) has been registered and practising for at least one year within the most recent five years in a country where the regulator recognises English is the First and Native language and an English language assessment was required for registration; or*
- (4) has obtained a recognised qualification within the meaning of schedule 1 to the Regulations within the most recent five years that was awarded in a country where the regulator recognises English is the First and Native language and can provide evidence that the qualification was entirely taught and examined in English.*

5. Ms Manyama and Mr Loran on behalf of Social Work England have complied with the directions except Ms Manyama in Direction 6 in that she did not identify a legal basis on which an exceptional discretionary power existed or could be exercised.
6. Social Work England is the regulator for social workers in England. Through the Registrar, it has the statutory obligation to maintain the Register of social workers in terms of the Social Workers Regulations 2018, Regulations 8 to 11 (the 2018 Regulations). This includes making determinations of eligibility for registration and admission to the Register of any suitably qualified person who is able to demonstrate that they are able to practise safely and effectively.
7. The Registrar is bound by the Social Work England (Registration) Rules 2019 (the 2019 Rules) which sets out the conditions for admission that must be met in any case. Applicants for admission to the Register who are from overseas are affected by an additional admission requirement, set out in the relevant Guidance, the Guidance for Applicants who Qualified Overseas (updated 5 August 2020) and the 2019 Rules. Competence in the English language (knowledge of English) is an important

qualification for admission to the Register and is dealt with in detail in Rule 16. If the Registrar is not satisfied in this regard, then in terms of Regulation 11(4)(b) they may require that the candidate undertake an examination. The Regulations link to Rules with regard to such examinations among other things in determining eligibility for registration under Regulation 11(6)(d). In that context, where the applicant lives overseas and does not live in a country where English is the First and Native language, the applicant is presented with a number of options including, where appropriate, passing with an overall score of 7 or more in the academic IELTS test.

8. Ms Manyama lives in Zimbabwe where she is registered as a social worker and practises there. She specialises in child welfare and child protection work, currently in rural areas of Zimbabwe. She applied to join the Social Work England Register in 2020.
9. The panel was told that Ms Manyama was unable to participate in the hearing due to not having access to a reliable internet connection. However, she was represented by Dr Makoni who presented her case fully and comprehensively, and on her behalf presented evidence from Mr Trust Zadzi, the Chair of the National Association of Social Workers Zimbabwe.
10. Dr Makoni explained the close affinity that the Zimbabwe educational system has with the system in Britain from Primary to University level, emphasising the degree to which written and spoken English language is required of students. Dr Makoni submitted that the substantial bundle of papers presented to the panel for today demonstrates a number of important factors that the panel must take into account. She described Ms Manyama as an exemplary social worker with an excellent command of the English language. The Zimbabwe educational system conducted in English is close in character to neighbouring South Africa which, uniquely among African countries is on the list of countries determined by the Foreign and Commonwealth Office where English is the First and Native language.
11. Dr Makoni submitted that Ms Manyama has already provided sufficient proof of her capability to practise safely and effectively in the English language and that hers was an exceptional case. The panel saw a short video of Ms Manyama giving a

presentation in English. Dr Makoni referred the panel to Ms Manyama's five-page written submission in support of her appeal, stressing the importance of the applicant having the 'necessary' knowledge of the English language. She described a number of practical difficulties currently encountered by Ms Manyama in taking the IELTS test, which included cost, foreign currency issues and the fact that Ms Manyama works in rural areas some distance from the test centres in Harare and Bulawayo.

12. Dr Makoni confirmed that representations had been made by her organisation, Black and Ethnic Minority Social Work Connector, to the Registrar at Social Work England and enquiries made of IELTS to establish if the test could be taken remotely.

Submissions:

The appellant

13. Dr Makoni submitted that the panel should quash the decision of the Registrar to pause consideration of Ms Manyama's application for registration pending her successful completion of an IELTS test. She submitted that the particular difficulties in Zimbabwe in fulfilling all the requirements of Rule 16, coupled with Ms Manyama's impressive skills, made this an exceptional case and that the panel had a discretion to allow the appeal. However, she did not identify the legal means by which such a discretion could be identified and employed.

14. Dr Makoni made submissions regarding the Regulations which she maintained, in effect, excluded a number of very well qualified applicants for registration. She stated that Mr Loran's submissions were too rigid and that Ms Manyama's position deserved empathy in a social work context. By her own admission, Dr Makoni accepted the Rules, but said she was making an emotional plea on Ms Manyama's behalf as she felt that her situation was unique.

Social Work England

15. Mr Loran, on behalf of Social Work England took the panel to his written submissions, drawing the panel's attention to the registration requirements of Regulations 11 and 16. He maintained that Ms Manyama could not meet the

requirements without first having successfully completed the IELTS test. The Rules applied to all applicants equally, and there was a danger in the panel finding a discretion that was not permitted expressly in the Regulations because it could result in applications being dealt with inconsistently and potentially lead to unforeseen consequences and unintentional discrimination in other cases. Despite the sympathy for the difficulties faced by Ms Manyama, Mr Loran submitted that the panel had no powers in addition to those available to the Registrar in relation to registration. He submitted that the Registrar had correctly applied the Regulations and that this appeal must fail for that reason.

Panel decision:

16. The panel heard and accepted the advice of the legal adviser and considered the oral and written submissions carefully and helpfully made by Dr Makoni on behalf of Ms Manyama and by Mr Loran on behalf of Social Work England. The panel took into account the Registrar's original decision to require Ms Manyama to successfully undertake an academic IELTS test before resuming consideration of her application for registration. The panel also took into account all of the documents submitted together with Social Work England's Guidance on Registration Appeals.
17. The panel noted the basis of Ms Manyama's appeal and determined that it had no power to go beyond the terms of the Regulations. The panel determined that it had no discretion to make its own informal assessment of Ms Manyama's competence in the English language, and that to do so would be arbitrary and set an unacceptable precedent.
18. While unfortunate, the individual difficulties faced by Ms Manyama could not justify a departure from the Regulations, nor was there any legal basis for a discretion to modify the Regulations in individual cases.
19. However, the panel would like to give Ms Manyama a further opportunity to take the IELTS test without forfeiting the fees that she has already paid to Social Work England in her application for registration. Accordingly, the panel directs that Ms Manyama's application will be held as undecided on the basis that she must now,

within the following three months, make all reasonable efforts to arrange a date to sit the IELTS test. If necessary, the date of the test itself may be after that period.

The panel determines that a period of three months takes into account the potential impact of the current COVID 19 pandemic which may restrict access to test centres.

20. The panel therefore dismissed Ms Manyama's appeal with that direction.

Right of appeal:

21. A person may appeal to the County Court against a decision of the regulator under Part 3 of the European Union (Recognition of Professional Qualifications) Regulations 2015 or, in the case of a social worker falling within Regulation 78(3)(a) of those Regulations, a decision of the regulator under Part 3 of the European Communities (Recognition of Professional Qualifications) Regulations 2007, requiring an exempt person to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to have access to, and to pursue, the social work profession in the United Kingdom.

22. On an appeal under paragraph (9) the County Court may:

- (a) dismiss the appeal;
- (b) quash the regulator's decision;
- (c) substitute for the regulator's decision any other decision that the regulator could have made; or,
- (d) remit the matter to the regulator to be disposed of in accordance with the directions of the Court, and may make any order as to costs as it thinks fit.

That concludes this determination.