

# Nursing and Midwifery Council

## Registrations Appeal Hearing 28 March 2022

Virtual Hearing

<b>Name of appellant:</b>	Jisha Babu
<b>Type of case:</b>	Registrations appeal
<b>Panel members:</b>	Maureen Gunn (Chair, Registrant member) Elizabeth Williamson (Registrant member) Sally Allbeury (Lay member)
<b>Legal Assessor:</b>	Graeme Henderson
<b>Hearings Coordinator:</b>	Roshani Wanigasinghe
<b>Nursing and Midwifery Council:</b>	Represented by Harriet Gilchrist, Case Presenter
<b>Ms Babu:</b>	Present and unrepresented
<b>Decision:</b>	<b>Appeal dismissed</b>

## **Decision and reasons**

The panel decided to dismiss your appeal against the decision of the Assistant Registrar of the Nursing and Midwifery Council (NMC).

This appeal is made under Article 37 of the Nursing and Midwifery Order 2001 (the Order). You have appealed the decision of the Assistant Registrar, dated 16 September 2021, that in order to demonstrate you have the necessary knowledge of English to practise safely and effectively, you should take an approved language test and meet the required scores. The approved language tests are the academic International English Language Testing System (IELTS) and the Occupational English Test (OET).

Article 9(2) of the Order, states that one of the requirements of registration is that an applicant must satisfy the Registrar that they have the necessary knowledge of English.

In reaching its decision, the panel considered all of the evidence in this case, including the documents you submitted and your oral submissions. It also considered the evidence of Ms 1 and the submissions from Ms Gilchrist on behalf of the NMC.

## **Background**

You first submitted an application for registration as an overseas-trained nurse on 11 February 2021.

You provided the following English language evidence in support of your application for registration:

- i. Transcript of training
- ii. Assurance Letter from Employer dated 6 June 2021

The Assistant Registrar considered this evidence and decided that the information you had provided to evidence your English language skills did not meet the necessary criteria and therefore did not accept your application. The Assistant Registrar decided that you should take the academic IELTS or an OET to demonstrate your knowledge of English.

This decision was conveyed to you in writing on 16 September 2021.

You appealed the decision of the Assistant Registrar in a Notice of Appeal (NOA) dated 9 October 2021 and attached the following documents to the NOA:

- i. Maria Theresa Hospital-School of Nursing-Letter dated 18 September 2021
- ii. Further copy of assurance letter from Employer dated 6 June 2021
- iii. Nursing plan of care dated 05 April 2021
- iv. Post graduate diploma in Nursing Management from Ealing, Hammersmith and West London College dated March 2010.

## **Submissions**

You told the panel that you regularly communicated in English whilst practising as a nurse in India. You said that although India is a non-majority English speaking country you communicated in English to all members of the multidisciplinary team. You said that all of your training was conducted in English and you have completed 1300 hours of classes in English.

You said you came to the UK in 2009 and have been working within a healthcare setting since. You said that in 2010 you completed a postgraduate diploma in Nursing Management from Ealing Hammersmith and West London College and have been working as a Health Care Assistant looking after high dependency patients at Fairlie Healthcare (the Centre).

Ms 1, who was the clinical lead and Home Manager at Woodstock at Fairlie Healthcare, provided live evidence on your behalf. She told the panel that Fairlie Healthcare is a neurological rehabilitation centre and that you have been working there since 2010.

Ms 1 told the panel that all staff members are subject to a training programme, which includes a competency programme with both literacy and numeracy tests. She said that the training programme involves approximately 150 hours of supernumerary hours. Ms 1

also added that you have a background in nursing in India in a high dependency ward and therefore you were comfortable to look after ventilated patients at the Centre. She told the panel that the care plans at the Centre are audited monthly and that you were graded 96% when your work was last audited in February 2022. She said that your writing is good and that your spelling is excellent. She said you are able to competently communicate verbally with staff at other hospitals and pharmacists and communicate in writing via email. She also added that as a Senior HCA, you are required to present your patients at weekly multidisciplinary meetings. She reiterated to the panel that you are able to do so without concern.

Ms 1 told the panel that you had sat the OSC examinations in August 2021 and had passed first time. She told the panel that your reading, writing, listening and reading skills were utilised during this examination.

Ms 1 also told the panel that you had taken the Occupational English Test (OET) in December 2021 and had scored a grade of 'C+' in all sections.

Ms 1 further informed the panel that you have been on the Pre-registration Nurse Programme at the Centre since January 2022.

Ms Gilchrist invited the panel to consider whether your documentary evidence demonstrates the required level of English in order for you to practise safely and effectively as a registered nurse. She reminded the panel to consider the matter afresh by weighing up the evidence before it today. Ms Gilchrist told the panel that you have not submitted evidence that meets the criteria set out at paragraph 17 of the NMC's Guidance on registration language requirements dated 28 July 2020 (Guidance), namely Evidence types 1, 2 or 3. She invited the panel to dismiss your appeal.

The panel accepted the advice of the legal assessor.

### **Panel's decision**

The panel accepted the advice of the legal assessor, who referred it to the relevant parts of the Nursing and Midwifery Order 2001 (the Order). He advised the panel that the issue

to determine is whether you are capable of safe and effective practice as a registered nurse by having the necessary knowledge of English.

The panel gave careful consideration to all of the information before it today and submissions by both parties.

The panel took into account the Guidance.

The Guidance at paragraph 17, sets out the following as types of evidence that the NMC will accept from applicants to demonstrate that they have the necessary knowledge of English to be able to practise safely and effectively:

*17.1 Evidence type 1: Recent achievement of the required score in the International English Language Testing System (IELTS) or in one of the other English language tests accepted by the NMC. You must achieve the required score in reading, writing, listening and speaking.*

*17.2 Evidence type 2: Completion of a pre-registration nurse, midwife or nursing associate programme that was taught and examined in English, composed of at least 50 percent clinical interaction, and at least 75 percent of the clinical interaction with patients, service users, their families and other healthcare professionals took place in English.*

*17.3 Evidence type 3: Recent practice for one year in a majority English-speaking country.*

The panel noted that Ms Gilchrist submitted that you have not satisfied the requirements under paragraph 17 of the Guidance. The panel could find no evidence of types 1, 2 or 3 to satisfy the requirements of paragraph 17 of the Guidance. The panel therefore went onto consider 'other' evidence under paragraph 16 of the Guidance.

The panel took particular account of paragraph 16 of the guidance, which states:

- 16 *We will consider the evidence we receive against the following criteria:*
- 16.1 *whether it is recent, objective and independent;*
- 16.2 *whether it clearly demonstrates that you can read, write, communicate and interact with patients, service users, relatives and healthcare professionals effectively in English as a nurse, midwife or in a role comparable to that of a nursing associate; and*
- 16.3 *whether we can readily verify it.*

The panel noted that it was informed that you have completed and passed an OSC examination on your first attempt. It bore in mind that this was a Test of Competence. This is used by the NMC to assess a person's clinical skills and knowledge as a nurse where they trained overseas. The Test of Competence is not a measure of a nurse's ability in English. In addition, the panel noted that it did not have any written evidence of this before it.

The panel also noted that you provided information confirming that you have successfully worked in professional caring roles for a number of years in the UK, including at the Centre and at a renal dialysis unit. However, in order for you to rely upon this, you would have to show recent practice of one year in a majority English-speaking country. A caring role is unregistered and therefore does not qualify as Evidence type 3. The panel appreciated that you have been given significant responsibilities at your workplace, which indicates that you have a good level of English, however, as you have not successfully passed an approved English language test in the four competencies, the panel could not be certain that your English meets the required standards.

The panel noted that you have provided a reference from a matron from the dialysis unit whom you have worked with since 2018. This reference states that you have a good command of English language both verbally and in writing. The panel was mindful that

references do not form part of the NMC's accepted evidence types and may not be regarded as objective when considering 'other' evidence.

The panel noted the 'transcript' of your nursing studies certificate in India. However, the panel was mindful that in order to rely on Evidence type 2, you must show that 75% of your clinical interaction was in English and must be capable of verification. You told the panel that you used English regularly when communicating with patients whose first language was not familiar to you; however, you were not able to reassure the panel that this happened 75% of the time.

The panel had sight of your OET statement of results. It noted that you had scored a 'C+' in all areas of listening, reading, speaking and writing. The panel bore in mind that in order to meet the criteria you are required to obtain a level of at least 'B' in reading, listening and speaking and a score of at least 'C+' in writing. You should also achieve an overall score of 'B'.

The panel noted that the burden is upon you to satisfy the panel of your competence in English language in all four areas. In light of the material before the panel today, it decided that you have not discharged that burden and therefore it dismisses your appeal. In this regard, the material that you have presented does not clearly demonstrate that you can read, write, communicate and interact with patients, service users, relatives and healthcare professionals safely and effectively in English as a registered nurse.

The panel therefore decided to dismiss your appeal, to uphold the decision of the Assistant Registrar, thereby refusing your application to the NMC register.

This will be confirmed to you in writing.

That concludes this determination.