

Nursing and Midwifery Council

Fitness to Practise Committee

Registration Appeal Hearing

21 March 2022

Virtual Hearing

Name of Appellant:	Mr Eby Kaniyadan Mathai
Type of Case:	Registration Appeal
Panel Members:	Ingrid Lee (Chair, Lay member) Jane Hughes (Registrant member) Cindy Leslie (Lay member)
Legal Assessor:	Michael Bell
Hearing Coordinator:	Leigham Malcolm
NMC Case Presenter:	Ms Gulcan Olurcan, NMC Case Presenter
Mr Mathai:	Present and not represented
Decision:	Appeal dismissed

Background

You applied to the Nursing and Midwifery Council's (NMC) register as an overseas-trained applicant on 12 January 2021. You were requested to provide evidence of your knowledge of English in accordance with the NMC's requirements.

The NMC's guidance at paragraph 17, sets out the following 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 evidence you submitted to show that you met the NMC's language requirements consisted of:

- Transcript of training from Bellary Institute of Nursing, India;
- Letter dated 14 July 2021 from Bellary Institute of Nursing, India;
- Employment reference dated 3 April 2021 from Fairlie Healthcare, UK.

The evidence you provided was considered by the Assistant Registrar (AR) who decided that it didn't meet the requirements. You were therefore required to take an approved language test and meet the required scores.

The AR's decision letter referred to the requirements under the Evidence type 2 route in the Guidance. Paragraph 25 of the Guidance sets out what an applicant would need to demonstrate in order to have their language evidence accepted under this route. The Guidance at paragraph 27.2 states that:

'If you completed your pre-registration nurse, midwife or nursing associate programme in a non-majority English-speaking country, you will need to demonstrate that the programme meets the requirements set out in paragraph 25. We will consider evidence that meets the criteria set out in paragraph 16, but please be aware that it is likely that you will need to provide an alternative type of evidence such as a language test.'

This appeal is made under Article 37(1)(a) of the Nursing and Midwifery Order 2001 (the Order). You are appealing against the decision of the AR dated 25 August 2021 that in order to demonstrate that 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).

Decision and reasons on application for hearing to be held in private

During your oral evidence you made reference to matters involving your personal and family life. Ms Olurcan, on behalf of the NMC, made a request that such parts of your case be held in private in accordance with Rule 30(1) of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004.

The legal assessor reminded the panel that as a starting point, that hearings shall be conducted in public, however, the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Given that your evidence included matters relating to your personal and family life the panel determined to hold such parts of the hearing in private in accordance with Rule 19 of the Rules.

Oral evidence and submissions

You gave evidence under affirmation. You outlined the background to the nursing training that you undertook in Bangalore, India. You referred the panel to a transcript and letter dated 14 July 2021 from the Bellary Institute of Nursing where you undertook a programme that was taught and examined in English between 2005 and 2009. This was composed of at least 50 percent clinical interaction and that, as stated in the letter, more than 75 percent of the clinical interaction with patients, service users, their families and other healthcare professionals took place in English. You said that during your training all your clinical interactions were in English, directly or via an interpreter since you did not speak the local Bangalore language.

You informed the panel that you have been working at Fairlie Healthcare as a senior Health Care Assistant (HCA) since July 2019, without issue, and have also completed an Objective Structured Clinical Examination. The panel also heard that you joined the COVID 19 temporary register on 26 May 2021 and that you have worked as a registered nurse at Fairlie Healthcare under conditions of practice since June 2021.

In response to questions, you told the panel you took practice tests in both the IELTS and OET but were unable to remember the scores you achieved or provide evidence of this to the panel. Further, you said that it would take you three months to prepare to take either of these tests.

Ms 1, the manager at Fairlie Healthcare and a witness called by you, also gave evidence under affirmation. She confirmed that you have been working as a senior HCA at Fairlie Healthcare since July 2019 and that she had no concerns about your work as a HCA. When asked whether or not she had any concerns regarding your language skills as a registered nurse, she stated that she could not be confident of this as she had only supervised you as a HCA. This was because she had moved to another care home prior to you working as a registered nurse. Ms 1 was unable to speak about your nursing practice whilst on the COVID 19 temporary register. Ms 1 also confirmed that she would not be the person who received any complaints about your communication, as another manager is in charge of the home where you are working.

Ms Olurcan submitted that ultimately it was a matter for the panel as to whether or not you had discharged your burden of proof and satisfied the panel that you possess sufficient knowledge of English language to be capable of safe and effective nursing practice. She submitted that it was the NMC's position that you have failed to provide recent, objective and independent evidence that could be verified, and therefore had not discharged the burden of proof.

Ms Olurcan highlighted the information before the panel relating to your reading and writing in clinical practice, and referred to your oral evidence during which you read paragraphs from the NMC's guidance. She submitted that, on the basis of this evidence, it was for the panel to make a professional judgement as to whether your knowledge of English was sufficient.

Ms Olurcan submitted that you gave confusing evidence around your undertaking of practice IELTS and OET tests and provided no evidence as to your results.

Panel's decision and reasons

The panel took account of all of the written and oral evidence before it as well as the submissions of yourself and Ms Olurcan. It accepted the advice of the legal assessor.

There was no evidence before the panel that you have undertaken and passed either an IELTS or OET test. Therefore you do not meet the NMC's requirements under evidence type 1 of the guidance.

The panel considered that the evidence you provided in relation to the Bellary Institute of Nursing where you undertook a programme that was taught and examined in English and noted that at least 50% clinical interaction was in English. The letter of 14 July 2021, written some 12 years after your course finished, stated that *'more than 75% of the communication to interact with doctors, nurses, multidisciplinary team, patients and family was in English'*. However, you were not able to provide any evidence as to how this information had been obtained and how it could be verified. In these circumstances, the panel concluded that the evidence was not sufficient to discharge the burden on you to establish that you came within evidence type 2 of the NMC's guidance.

In considering whether or not you met the requirements under evidence type 3 of the NMC's guidance, the panel bore in mind that you have worked on the COVID 19 temporary register as a registered nurse for some 10 months. However, you have not satisfied the requirement for you to practise in this capacity for at least one year.

The panel considered that the information you provided under affirmation that you had undertaken practise IELTS and OET tests to be vague. Although you asserted that you had taken such tests, there was no way for the panel to verify this nor did the panel have adequate information regarding the scores you achieved. The panel also noted your statement that you would need to prepare for three months before undertaking either test. Furthermore, Ms 1 was not able to provide information to the panel that your knowledge of English was sufficient to enable you to practise safely and effectively as a registered nurse.

In all the circumstances, the panel was not satisfied that you had provided sufficient information that was recent, objective, independent and verifiable, that clearly demonstrates that you have sufficient knowledge of English language to enable you to practise safely and effectively in English as a registered nurse.

The panel therefore decided to dismiss your appeal.

That concludes this determination.