

# **Nursing and Midwifery Council**

## **Registrations Appeal Hearing 27 August 2021**

Virtual hearing

<b>Name of appellant:</b>	Geetha Rangaswamy Chandra Sekar
<b>Type of case:</b>	Registrations appeal
<b>Panel members:</b>	Maureen Gunn (Chair, registrant member) Anne Ward (Registrant member) Christine Castledine (Lay member)
<b>Legal Assessor:</b>	Paul Hester
<b>Panel Secretary:</b>	Roshani Wanigasinghe
<b>Nursing and Midwifery Council:</b>	Represented by Gulcan Olurcan, Case Presenter
<b>The appellant:</b>	Present and represented by Nadine Knight
<b>Decision:</b>	<b>Appeal dismissed</b>

## **Background**

You first applied for registration as a non-EU (Overseas) applicant on 21 April 2020. On 25 June 2020 your qualification was fully recognised by the NMC. A 'Language evidence assessment' pack was then sent to you so that you could provide evidence that you met the English language requirements for registration.

You provided the following evidence in support of your English language for consideration by the Assistant Registrar:

- Reference from Ms 1 of Richmond Nursing Home, dated 25 June 2020
- Transcript of training from Saveetha Dental College & Hospitals dated 6 December 2005
- Tamil Nadu Dr. M.G.R. Medical University Chennai statement of marks for April 2001, November 2001, November 2002, April 2003, November 2003
- Letter from Ms 2 dated 13 March 2020

On 1 March 2021, an Assistant Registrar considered this evidence and decided that you should take an IELTS or an OET and meet the required scores in order to demonstrate that you had the necessary knowledge of English to be able to practise safely and effectively. A letter was sent advising you of the Assistant Registrar's decision.

On 25 March 2021 you appealed the decision of the Assistant Registrar in a Notice of Appeal.

Your appeal is made under Article 37(1) of the Nursing and Midwifery Order 2001 (the Order). You appealed the decision of the Assistant Registrar, dated 1 March 2021, that you do not have the necessary knowledge of English language for safe and effective practice as a registered nurse. Article 9(2)(ba) of the Nursing and Midwifery Order 2001, provides that one of the requirements of registration is that an applicant must satisfy the Registrar that they have the necessary knowledge of English. The Assistant Registrar decision required you to complete an approved English language test and meet the required scores.

## Submissions

Ms Olurcan outlined the background to the appeal and 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 Olurcan 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. However, she submitted that it is a matter for the panel having considered your 'other' evidence against the criteria set out at paragraph 16 of the Guidance whether the panel can be satisfied that you have the necessary knowledge of English language so as to be capable of safe and effective practice.

Ms Olurcan referred the panel to her written submissions dated 17 August 2021. These submissions include detailed responses to your Notice of Appeal.

Ms Knight on your behalf submitted that you have provided sufficient evidence to demonstrate that you have the necessary knowledge of English language so as to be capable of safe and effective practice. She invited the panel to consider your evidence as a whole and in respect of each requirement under paragraph 15 of the Guidance namely reading, writing, listening and speaking.

Ms Knight told the panel that you trained as a nurse in India, where although the primary language spoken in the country is not English, English is widely spoken in the country and hospitals as a common language. Ms Knight submitted that the entirety of your nursing training course was taught in English and referred the panel to the 'transcript' of the course in which it shows the breakdown of your clinical and theory hours. She submitted that your clinical hours amounted to 3850 hours which equates to 65% of the course being more than the required 50% under Evidence type 2. She then submitted that once you had completed your course in India, you had moved to Sri Lanka for one year where you practised as a nurse using English in your daily life. Following that, you moved to Northern Ireland in 2008 and have been living there ever since. Ms Knight told the panel that you have undertaken a number of courses in English during your time there. She told the

panel that although these English courses were completed in 2011 and therefore some time ago, your involvement in such courses demonstrates that you have the necessary language skills. Ms Knight drew the panel's attention to the bundle of documents and submitted that in 2011 when you had completed the Cambridge IELTS course, your level of English was at an 'advanced stage'. Ms Knight further drew the panel's attention to a number of references provided on your behalf which attest to your language skills. She submitted that you have been working within the health care environment in Northern Ireland as a Care Assistant and have been given significant responsibilities. She submitted that your responsibilities include checking and recording vital signs, preparing care plans in the nursing home, making and receiving phone calls, arranging visitation and keeping families of residents up to date about their care. You also, at times, assist the nurses in the Home with preparation of medication under their supervision. Ms Knight also submitted that whilst you have been living and working in Northern Ireland, you have been speaking English on a daily basis.

In response to panel questions, Ms Knight submitted that you have not been able to sit the IELTS examinations as there had been various personal circumstances that have occupied your attention and time. She submitted that the COVID-19 pandemic has impeded you from sitting the most recent examination after your language course which you took between January 2020 and March 2021.

Ms Knight submitted that although you have not undertaken the examinations, the evidence presented to the panel in its entirety demonstrates a full range of examples addressing the competencies of speaking, writing, reading and listening. Ms Knight therefore invited the panel to allow your appeal.

### **Decision and reasons**

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 Knight did not submit that you have 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 you have completed a CBT and OSC examinations. The CBT and OSC are collectively known as the 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 used as a yard stick to assess a nurse's ability in English.

The panel noted that you provided information confirming that you have successfully worked in a professional caring role for a number of years. 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 your current employer with whom you have been employed for two years. This reference states that your level of English is satisfactory in the workplace. 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 nursing studies in India and your ground of appeal that 50% of your clinical interaction was in English. 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.

The panel noted that the burden is upon you to satisfy the panel of your competence in English 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.