



DECISION 21 - 024

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of the Examination Appeals Board of Leiden University

in the matter of the appeal of

[name] from [place], appellant,

against

the Board of the Faculty [X], respondent.

The course of the proceedings

The appellant requested the respondent to be admitted to the Master's Programme in [X], with a specialisation in [X] (hereafter referred to as "the programme starting in 1 February 2021).

In a decision of 15 December 2020, the respondent admitted the appellant conditionally to the programme.

On 15 January 2021, the appellant lodged an administrative appeal against this decision.

The respondent informed the Examination Appeals Board that an attempt was made to reach an amicable settlement. A meeting was held between the parties on 28 January 2021. No amicable settlement was reached.

The respondent submitted a letter of defence on 28 January 2021.

The appeal was considered on 3 February 2021 during an online hearing. The appellant attended the hearing. [name], Study Adviser/Programme Coordinator, attended the hearing on behalf of the respondent.



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Considerations

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1 – Facts and circumstances

The appellant was awarded a bachelor's diploma in [X] at [X] University in 2018.

She passed a Toefl language test in 2017.

2 – The position of the respondent

The respondent admitted the appellant to the programme on the condition that she submitted (a) an official, certified copy of the [X](a) in [X] and a transcript of the grades from the University of [X], and (b) the results of an English language test IELTS academic with an overall score of 7.0 and at least 6.5 for four components, or a similar result in a Toefl or Cambridge ESOL test. The test results may not be older than two years.

It was argued in the letter of defence on behalf of the Admissions Office that the appellant had not yet submitted a certified copy of her diploma on 28 January 2021 and that the results of the Toefl test submitted were too old. This is the reason that the Admissions Office holds that she does not meet the conditions for admission to the programme. Apart from this, the Admissions Office holds that the appellant has an adequate prior education and would be an excellent candidate for the programme in view of the high grades she was awarded.

In the meeting of 28 January 2021, the Admissions Office explained to the appellant how she can provide a certified copy of her diploma. It was also stated at this meeting that the requirement to pass a language test is upheld, since there are many false language tests in circulation and the Admissions Office does not want to set a precedent.

At the hearing, it was stated on behalf of the Admissions Office that no other language tests are accepted than those listed in the Course and Examination Regulations (*Onderwijs- en Examenregeling*, OER). It is correct that the OER does not state that these test results may not be more than two years old. However, this requirement is stated on the website and in the application letter and has been established practice for many years. Exemption from the language test is only granted in case of an IB diploma. The appellant does not hold such diploma.



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3 – The grounds for the appeal

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The appellant does not agree with the conditions that were set for admission to the programme. She holds that it is not necessary for her to sit an English language test since her English language skills are sufficiently demonstrated by her academic education and professional experience and the older results in the Toefl test (110/120), [X] ISE III-C1). For three years, she had English as her main language and she has lived, studied, and worked in an international environment since the summer of 2016.

She is incurring high costs to pay for the programme, besides the rent she has to pay. Due to the Corona crisis it is now difficult to work alongside all of this. These are reasons why it is quite expensive for her to take a new language test at present. She took the test in [X] on 2017. She has tried to ask whether the result of that test can be verified, so as to use those test results to demonstrate her language skills. As an alternative, she is willing to demonstrate her English language skills in another manner, i.e. by sitting a cheaper test.

She submitted a certified copy of her diploma and does not have other documents to submit.

At the hearing, the appellant stated that she studied in [X] for a semester and another semester in [X]. As such, she has ample experience in attending course units in English. And she has worked in an international environment. She holds that this could constitute grounds to exempt her from the language test requirement.

4 – Relevant legislation

The Course and Examination Regulations of the Master's Programme in [X] 2020-2021 stipulate, in so far as is relevant here:

Article 5.2.3.1

As further clarification of Article 2.8 concerning command of the language of instruction, a student who wishes to be admitted to an English-taught master's programme must have one of the following diplomas or must meet the criteria of:

- An International Baccalaureate diploma (with English A);
- A diploma of secondary or higher education completed in the United States, the United Kingdom, Ireland, New Zealand, Australia or Canada (with the exception of French-taught education in Canada);
- A diploma of an English-taught university degree programme completed at a Dutch research university;
- A pre-university education (VWO) diploma.

Article 5.2.3.2



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If a student who wishes to be admitted does not meet the requirements in 5.2.3.1, at least one of the following language requirements can be set:
Have proof of thorough proficiency in written and spoken English, e.g. by means of an IELTS score of 7 or a TOEFL score of 100/250/600 or equivalent (for non-native speakers of English)) with at least an IELTS score of 6.5 on partial scales of this test and at least a TOEFL score of 22 (reading), 22 (listening), 22 (speaking) and 25 (writing) on partial scales of this test.

5 - Considerations with regard to the dispute

In accordance with article 7.61, paragraph two, of the Higher Education and Academic Research Act (*Wet op het Hoger Onderwijs en Wetenschappelijk Onderzoek*; WHW), the Examination Appeals Board must consider whether the contested decision contravenes the law.

The Examination Appeals Board agrees with the respondent that it is correct to stipulate that the appellant must pass an English language test as a condition for admission to the programme. The appellant does not meet the requirement as stipulated in article 5.2.3.1 of the OER. The Admissions Office had proper grounds to adopt the position that there is no cause to divert from this admission requirement. The fact that the appellant lived, studied, and worked abroad for some time and attended English language course units during her studies does not alter this fact.

However, the Examination Appeals Board does not endorse the respondent's position that the results of the language test may not be older than two years. As the Admissions Office acknowledged at the hearing, this further requirement is not listed in article 5.2.3.2 of the OER. The circumstance that this further requirement is indeed stated on the website and in the application letter does not mean that the respondent may reject language tests that are more than two years old.

The Examination Appeals Board considers that the purpose in submitting the results of an English language test that has been passed is to demonstrate that the candidate has sufficient proficiency in the English language to be able to attend the programme. Since the appellant has achieved a result of 110/120 in a Toefl test she sat in 2017, she meets the requirement.

The Examination Appeals Board considers that article 5.2.3.2. of the OER does not list the requirement that the results of the language test cannot be older than two years. On these grounds, the Admissions Office should not have required this from the appellant.



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The Examination Appeals Board comments that, if the respondent holds that test results must be recent, as it has stated, this requirement must be included in the OER.

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The Examination Appeals Board considers that it was not made clear at the hearing that the parties are still discussing submission of a certified copy of the bachelor's diploma awarded, as stipulated in article 5.2.1 of the OER. Moreover, the Examination Appeals Board also remarks that the further requirement on certification is also not stipulated in articles 5.2.1 and 5.2.2, respectively, of the OER.

The Examination Appeals Board therefore concludes that the appellant must be admitted unconditionally to the programme. This means that the appellant's appeal is founded and that the contested decision must be annulled, in so far as it attaches conditions to the admission of the appellant to the programme.



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The decision

In view of article 7.61 of the Higher Education and Academic Research Act, the Examination Appeals Board of Leiden University,

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- I. holds the appeal founded;
- II. annuls the contested decision, in so far as it attaches conditions to the admission of the appellant to the programme

Established by a chamber of the Examination Appeals Board, comprised of K.H. Sanders, LL.M. (Chair), Dr C. de Groot, Dr J.J. Hylkema, Z.I. de Vos, LL.B., and J.J. Christiaans (members), in the presence of the Secretary of the Examination Appeals Board, I.L. Schretlen, LL.M.

K.H. Sanders, LL.M.
Chair

I.L. Schretlen, LL.M.,
Secretary

Certified true copy,

Sent on: 29 March 2021