



IAC-FH-AR-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/38229/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 April 2016**

**Decision & Reasons Promulgated  
On 28 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**NGOZI MAY OGBUITEPU  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss Judge Nkwocha, Counsel, instructed by K&S Law Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS  
EXTEMPORE JUDGMENT**

1. The appellant appeals a decision of First-tier Tribunal Judge Manyarara promulgated on 1 October 2015 in which the judge dismissed the appellant's appeal against the refusal of her Human rights application on

private and family life grounds. The application and decision followed an earlier cancellation of leave on the basis of deception following the respondent's interview with the appellant on her return to the United Kingdom from Nigeria. The respondent had interviewed the appellant about the English language certificate used to support an application for further leave to remain as a student and the appellant was subsequently issued with a notice of cancellation of her leave.

2. The judge had the benefit of documentary bundles filed by the respondent and also by the appellant. The appellant was legally represented and attended the hearing and was afforded the opportunity to provide her documentary and oral evidence.
3. The judge noted that the evidence in respect of the false certificate allegation came from the respondent by way of documents which were set out in the respondent's bundle and consisted of affidavit evidence of Peter Millington and Rebecca Collings as well as a spreadsheet providing information from subsequent enquiries conducted by the qualification provider ETS. The appellant's qualification was withdrawn to the point that it followed that the certificate which had been obtained is invalidated.
4. The grounds before this Tribunal assert that the evidence before the judge was insufficient to meet the burden of proof on the respondent of establishing that the certificate was a forgery. The judge noted the evidence in respect of the appellant setting out her claim and the evidence that the appellant provided at the hearing. The judge notes at paragraph 25 in the context of her Decision and Reasons that the evidence that she was taking into account included the interview that the appellant had had with the respondent in which she had asserted that she had only taken an IELTS test, after having taken the test twice and failed. The judge refers to Appendix G of the respondent's bundle. The appellant also said that she had taken her test initially at Southwark College, and then at a college in Lewisham. The judge notes that the appellant made no reference to having taken a TOEIC test at all.
5. In the context of the evidence concerning the TOEIC test that had been submitted in support of the application the judge considered the evidence put forward by the respondent, and found it sufficient to establish the burden of establishing a level of suspicion which required the appellant to adduce evidence in rebuttal.
6. The judge concluded on the evidence provided that the appellant had not rebutted the suspicions and that overall the respondent had met the necessary burden. The judge was not provided with any expert evidence by way of a report, and had no oral expert evidence in rebuttable. Although there is no specific reference to the case of Gazi, that self direction and conclusion is consistent with the jurisprudence relevant at the time of the judge's decision.

7. Before me Mr Nkwotcha for the appellant sought to place a gloss on the grounds for permission arguing that there had been procedural unfairness because the appellant had only been provided with the evidence of the interview transcripts at the hearing, and accordingly there had been insufficient opportunity to address the interview evidence. I find no merit in that contention, firstly I note that it was not raised in the grounds, and, secondly the judge has set out clearly that the representative had indicated that Appendix F had been omitted from the bundle, the documentation already provided meant that there was nothing that had taken the appellant by surprise. The judge provided a short adjournment in order to ensure that the late provision of evidence had been satisfactorily dealt with and also admitted evidence filed after the date of hearing.
8. Looking at the decision in the round, I am satisfied that the judge has not made a material error of law. On the evidence as it was as at the date of hearing, the judge was entitled to conclude that the respondent had met the burden upon them and further entitled to conclude that the appellant had failed to establish that she had in fact taken the TOEIC test as she asserted.
9. I am satisfied that the judge correctly self-directed and has reached conclusions which were open to her on the evidence.

**Notice of Decision**

10. For all the reasons above the appellant's appeal is dismissed and the decision of the First-tier Tribunal dismissing her appeal stands. There being no other issues before me that is sufficient to determine the appeal.

Signed

Date

Deputy Upper Tribunal Judge Davidge