



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

Appeal Number: HU/03335/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 21st January 2020**

**Decision & Reasons
Promulgated
On 13th February 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

OGULSENEM TEGELEKOVA

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Saifolahi, instructed by Sterling Lawyers Ltd
For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was granted permission to appeal the decision of First-tier Tribunal Judge Adio who dismissed her appeal against a decision of the respondent to refuse her human rights claim dated 7th February 2019.
2. Permission to appeal was sought and granted on the grounds that the First-tier Tribunal judge failed to provide reasons for his finding that the appellant

had tendered documents from Portsmouth International College; that the judge failed to consider adequately or at all the appellant's educational certificates and degree and failed to engage with the appellant's evidence in assessing the proportionality of the decision that she could return to Turkmenistan.

Background

3. The appellant arrived in the UK as a student on 10th May 2008. Her leave to enter was varied and extended until 29th December 2014. That leave to remain was curtailed and expired on 7th November 2012 with no right of appeal.
4. On 4th January 2014 she was granted leave to enter as a student valid until 4 December 2014. That leave to enter was then cancelled at port on a return visit on 23rd August 2014. Her appeal against that decision was dismissed on 10th November 2015 by First-tier Tribunal judge Higgins and she was appeal rights exhausted on 9th June 2016.
5. On 7th July 2016 the appellant made a human rights (family and private life) application which was refused and certified as 'clearly unfounded'. That certificate was subsequently withdrawn, and she appealed the decision. Her appeal was heard and dismissed by First-tier Tribunal judge Adio. It is the appeal against that decision that comes before me.
6. The SSHD submitted the appellant had relied upon a fraudulently obtained TOEIC certificate from Portsmouth International College and had thus used deception in her application for leave to remain made on 23rd April 2012.
7. The appellant expressed a fear of return to Turkmenistan. She has not made an application for international protection. She does not have a partner or child in the UK.

First-tier Tribunal decision

8. First-tier Tribunal Judge Adio correctly identifies that the starting point for his consideration is the earlier decision of First-tier Tribunal Judge Higgins. He summarises that decision and notes that the judge was informed that the appellant stated she had not attended Portsmouth International College, that she claimed to have taken the language test independently elsewhere and that the judge had found that the appellant had succumbed to temptation and had submitted a TOEIC report to which she knew she was not entitled. First-tier Tribunal Judge Higgins states, *inter alia*:

29.I am satisfied nonetheless that frustration at her inadequate IELTS and Pearson results and her desperation to continue with her education in this country led her to succumb to temptation and submit with her application to the Home Office a TOEIC score report to which she knew she was not entitled. I am satisfied in the light of the conclusion drawn by ETS on the basis of voice recognition technology, the Appellant's own admission that she did not go to Portsmouth where I am satisfied that TOEIC was allegedly administered, and her answers when interviewed in

August and September 2014, that she used deception in order to secure a CAS from the School of Business and Law and , ultimately, leave to remain.....

9. Judge Adio set out a summary of the submissions made to him. He noted that the appellant's representative referred, inter alia, to the evidence in 2015 being different to that in 2019; that the appellant's academic achievements had not been factored into the decision; that *SM and Qadir* had not been before Judge Higgins, that the National Audit Report undermined the evidence relied upon by the SSHD, she had not been cross examined on the details she had given to provide a plausible explanation concerning her TOEIC test.
10. Judge Adio reached the following conclusion:
 16.I have taken into account the submissions made by Mr Singer concerning the executive summary of investigation into response to cheating in English language tests which was not before the first judge. I note that the concluding remarks in the executive summary is that the data environment is weak, and the department has not been able to independently validate ETS judgements about cheating. The remarks also state that it is reasonable based on the balance of probabilities to conclude that there was cheating on a large scale because of the unusual distribution of marks and high numbers of invalid tests in test centres successfully prosecuted for cheating. ...
 17. I have to consider whether the doubts created by this report with regards to some of the actions taken by the Respondent affects this Appellant. I find that the particular aspects of this Appellant's case are different. The fact remains that she tendered documents which gave the impression that she took exams at Portsmouth International College. She does not deal with this particular issue in her witness statement...I find that the fact that the Appellant made an admission, coupled with the fact that she submitted a TOEIC certificate from a college at which she did not sit the exam, means that she is unable to give a reasonable explanation for the contested matters which were advanced as constituting dishonesty on her part.
 18. Even though **Devaseelan** is a starting point I find that the particular facts of this case are such that the later evidence does not make any difference to the findings Judge Higgins made in his decision dated 2nd November 2015. I find that the explanation the Appellant has given at paragraphs 7 to 21 do not make a difference to the findings of Judge Higgins despite the fact that Ms Kugendran did not cross-examine her....

Error of law

11. The appellant submits through Ms Saifolahi "it is wholly unclear on what basis the judge [Adio] find that the appellant did submit documents from Portsmouth International College...the appellant confirms in her witness statement that she undertook her language test at Sanjari International College...her evidence was that she had not attended Portsmouth...no certificate from Portsmouth was produced...the reference to Portsmouth in the decision letter is to score reports."
12. It is correct that a copy of the appellant's 2012 application for leave to remain was not produced either by her (she was legally represented at the time she made her application for further leave to remain and before each First-tier Tribunal hearing) or by the respondent. Nor was a copy of any documents that accompanied that application produced. The decision the subject of appeal refers clearly to the appellant having submitted a TOEIC certificate from ETS at Portsmouth with that 2012 application. The appellant

does not address that assertion. Her witness statement refers at length to the courses she has taken and her history of taking language tests. She does not deny submitting a language certificate from Portsmouth; the fundamental core of the rejection of her human rights application.

13. The submission that it is unclear on what basis either judge found she submitted documents from Portsmouth is incorrect. That finding was plainly because the basis of the rejection of her application initially and subsequently her human rights application was that she had submitted a certificate from Portsmouth. The appellant herself denies having sat the test in Portsmouth. She does not deny having submitted a test certificate from Portsmouth. It follows the test relied upon in that 2012 application was one to which she was not entitled.
14. It is not relevant that the copy certificate was not produced. The applicant was aware what she had relied upon in her 2012 application; she has not at any stage denied having put in that certificate.
15. There is no error of law by First-tier Tribunal Judge Adio in his finding that her circumstances differed from those that were before First-tier Tribunal Judge Higgins such that the decision could not be a starting point. The appellant relied upon a certificate from Portsmouth which on her own evidence she had not sat for.
16. The second limb of the appellant's appeal was that the judge had failed to take account of the appellant's explanation and the qualifications she had obtained. This is not relevant in this case. It is not a case of the judge having to determine whether the explanation before him was such that he could conclude that she had not 'cheated'. In this case the certificate relied upon in the 2012 application was from Portsmouth and the applicant said she had not been there.
17. The third limb of the appellant's appeal was that Judge Adio had failed to consider adequately the appellant's circumstances in whether it was disproportionate for her to be required to return to Turkmenistan given claims relating to her mental health, the expert's report, that she would be targeted by the security forces because she had been away from the country for so long, that she would be unable to access health etc services because of the Propiska system because she was estranged from her family because of a previous relationship.
18. The appellant had not claimed international protection. Her human rights claim was based upon a submission that it would be disproportionate for her to return.
19. The First-tier Tribunal judge considered the appellant's medical history and current health in the context of the supporting documents relied upon. He considered the medical facilities available and reached the conclusion open to him that her health was not such as to support her submission that it would be disproportionate for her to not return to Turkmenistan.

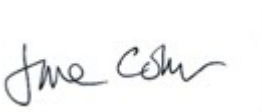
20. The judge considered her previous visits to Turkmenistan, her previous unpleasant experiences with immigration (there is a typographical error in the decision referring to her not having difficulties) and took her evidence at face value. He referred to her having previously worked in Turkmenistan and her qualifications. He took into account the expert's report that single women who have been, in effect, cut off from family support can be at risk. The evidence before the judge was not specific to the appellant. Although she has been away from the country for some considerable time, she has gained reputable qualifications, she is no longer in a relationship, she has friends who there is no reason to doubt would not continue to provide her with support and the expert's report, whilst identifying the discriminatory treatment meted out to single women and the risks that can be encountered, is insufficient to conclude that the First-tier Tribunal judge erred in finding that it would not be disproportionate for her to return there.
21. If her claims were such that she considered she was entitled to international protection either because of her health problems, or fear of physical harm on return or combination of all factors, then an international protection claim could have been made. The question of whether refusal of an Article 8 human rights claim is disproportionate is not a watered-down refugee or Article 3 claim.
22. The First-tier Tribunal judge considered the evidence before him holistically, addressed whether the refusal was a disproportionate interference in her human rights and reached a conclusion that was open to him on that evidence.
23. There is no error of law by the First-tier Tribunal judge in his decision dismissing her appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision; the decision of the First-tier Tribunal dismissing the appeal stands.

Date 10th February 2020



Upper Tribunal Judge Coker