**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: HU/04257/2016**

**THE IMMIGRATION ACTS**

**Heard at: Field House**
**On:14 March 2018**

**Decision and Reasons Promulgated**
**On: 09 April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAILER**

**Between**
**MISS SELBI GUCHGELDIYEVA**
(ANONYMITY DIRECTION NOT MADE)
Appellant
**and**
**SECRETARY OF STATE FOR THE HOME DEPARTMENT**
Respondent

**Representation:**

For the Appellant: Mr A Briddock, counsel (instructed by Lighthouse Solicitors)
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Turkmenistan, born on 11 November 1998. She appeals with permission against the decision of First-tier Tribunal Judge Norton-Taylor, dismissing her appeal against the respondent's decision dated 1 February 2016 refusing her human rights claim.
2. The appellant arrived in the UK on 13 June 2015 as a visitor. She applied for leave to remain during the currency of her leave based upon paragraph 298 of the Immigration Rules. Her mother, who has indefinite leave to remain in the UK, was her sponsor [2].
3. Judge Norton-Taylor noted that the only ground available to the appellant was that the respondent's decision breached her human rights. He referred to the respective bundles of evidence before him which he set out at [8-9].

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4. He found that the appellant had failed to show that the sponsor has had sole responsibility for her upbringing[27]. He had regard to the decision in TD (paragraph 297(i)(e)) "Sole responsibility" Yemen [2006] UKAIT 00049.

5. He found that between 2000 and 2009 the appellant's parents had shared responsibility for her upbringing [31]. The sponsor left Turkmenistan for the UK in 2009. The appellant went to live with her father [32].

6. He had regard to two letters from the appellant's father. In his first letter dated 8 September 2015 he stated that since the appellant's mother left the country, he has continued to cover her costs and "maintained custody" of her, taking over the main decisions and representing her at school. The appellant accepted during her oral evidence that key decisions had been made by both parents. The evidence fits in with what the sponsor said in her witness statement and also the contents of the first letter [34].

7. Despite submissions to the contrary, he found that the first letter is reliable as to the contents. It was clearly written with the appellant's latest application in mind. This was a letter in support of the application, 'candidly written' [36].

8. He noted that at some point the appellant left her father's house and went to live with her maternal grandmother. Her father stated that she moved out some six months prior to the writing the letter in September 2015. The appellant confirmed that she had been living with her grandmother for a few months before arriving in the UK. That contrasted with the sponsor's evidence which changed from being a period of one year to that of eight months during the course of her oral evidence [39]. During the period of residence at the grandmother's house, shared responsibility continued. Her father continued "as her guardian" [40].

9. Judge Norton-Taylor stated that he is 'willing' to accept that it was the sponsor's idea for the appellant to come to the UK [41]. He found that her father had been on assignment in Turkey and was likely to be based there until autumn. He has worked abroad in the past and this has not prevented him from maintaining shared responsibility [42]. The father had not abdicated all responsibility for the appellant since her arrival in the UK. He had regard to the father's second letter dated 20 May 2017.

10. It struck him that the letter was written at the behest of the sponsor who sought to downplay his involvement in the appellant's life and to resile from what he said in the first letter. He did not accept that there has been an absence of communications, nor that the father is now entirely "disinterested" in the appellant's upbringing [44].

11. He found that shared responsibility has continued whilst the appellant has been in the UK, albeit that the division of the responsibility shifted towards the sponsor [45].

12. He accordingly found that the sponsor had not, and does not, have sole responsibility for the appellant's upbringing. Paragraph 298(i) of the Rules cannot be satisfied [52].

13. He had regard to paragraph 276ADE of the Rules as "time fixed". The appellant had not been in the UK for seven years. She could therefore not rely on paragraph

276ADE (1)(iv). As she was under 18 at the date of the application, she could not rely on paragraph 276ADE(1)(vi) [53]

14. He considered the claim under Article 8, taking into account the factors set out in s.117B of the 2002 Act. The appellant is now an adult but this did not mean that the family is "cut off automatically." He found that there is family life with her mother and younger sister. The appellant also has private life based in the UK over the last two years [59-60].

15. He considered the proportionality of the decision from [69]. Returning to the country would involve a degree of upset and difficulty in terms of re-establishing herself there. He considered the country situation in Turkmenistan. He had regard to the 2017 US Commission on International Religious Freedom indicating that the government holds a tight grip on society. Of particular relevance is the 2016 religion law which, it is said, prohibits the wearing of religious garb in public except by clerics. There is nothing further on how or if this law is enforced or what the implications of non-observance might be. [70]

16. He noted at [71] that the appellant has been wearing a hijab for about 18 months. On the face of it the law in Turkmenistan would appear to interfere with her wish to wear religious clothing in public [71].

17. At [74] he took into account the appellant's re-establishment into Turkmenistan. He found that she is a healthy individual who has benefited from aspects of the UK educational system. There is no evidence that women cannot obtain employment or go into higher education in Turkmenistan. She would continue to receive financial and emotional support from her mother, at least in respect of funding and from her father as well. She has not been in the UK for very long. She could go and live with her grandmother in a stable domestic environment. The appellant's exams will now have finished removing a possible objection to having to leave "at this moment in time" [74].

18. He had regard to the "religious clothing issue." There is no protection claim before him. Nor did counsel who appeared for her rely on Article 9. There is no evidence as to how, or whether, the law is actually enforced. There is no persecution there and insufficient evidence to show a flagrant denial of religious freedoms. He concluded that the appellant could either wear the hijab in public and there would on the evidence before him be no significant consequences. Alternatively she could choose not to wear it and comply with the letter of the law [75].

19. He rejected the submission raised about the possibility that the appellant might not be permitted to leave Turkmenistan in the future [76].

**<u>Permission to appeal</u>**

20. On 31 December 2017 Upper Tribunal Judge Martin granted the appellant permission to appeal. She saw no merit in the grounds that the appellant's mother did not have sole responsibility for her. That was soundly reasoned and based on the evidence.

21. However, she found that there is merit in the ground that the Judge failed to consider specifically section 55 or the best interests of the appellant who was a minor at the date of the decision.

22. Mr Briddock who did not represent the appellant at the hearing before the First-tier Tribunal, accepted at the outset, that as at the date of hearing before the First-tier Tribunal, the appellant had been over 18 years of age and thus was no longer a child. Accordingly there was no error of law on that discrete ground.

23. Mr Briddock did however seek to rely on ground 4 of the grounds seeking permission where it was contended that the Judge failed to correctly address the appellant's rights under Article 8 and failed to apply the correct criteria "for the same."

24. He submitted that although the appellant had not been able to "technically" rely on paragraph 276ADE (1) (vi), the Rules constitute the prism through which the Article 8 claim should be considered.

25. He noted that at [64] the Judge took into account the fact that the appellant was unable to meet the Rules as they bear on Article 8. He submitted that the Judge should have looked at Article 8 through the prism of the Rules. There was no consideration as to whether there would be very significant obstacles to her integration into Turkmenistan. In the proportionality assessment he did not consider this at all.

26. Mr Briddock submitted that the main reasons why it was claimed that there would be very significant obstacles is because of the issue of wearing the hijab. He accepted that this is 'straying into asylum law'. However, a person cannot be expected to change the way they are. He submitted that the findings at [75] constitute a significant error. The Judge should have assessed her evidence in considering whether there were significant obstacles that she faced if returned. There was evidence that she would not be able to wear that clothing.

27. Mr Briddock also referred to ground 3 where it was contended that the Judge erred in failing to apply the correct test for sole responsibility. He submitted that as noted in ground 2 the Judge made various assumptions about the appellant's father without any kind of evidence substantiating the assumption which led to "a perverse decision". The grounds were thus connected.

28. Mr Briddock referred to the findings at [36] regarding the first letter, namely, that it was a letter in support of the application, candidly written and that it was improbable that he was unaware of what he was writing or what the purpose of his letter was aimed at. That, he submitted was a "bare assertion." Moreover, the Judge's findings at [42] amount to "pure speculation." These constitute errors of law.

29. On behalf of the respondent Mr Kotas submitted that the appellant has not been granted permission beyond the s.55 issue. In any event they were nowhere identified in the grounds. The generic challenge does not encompass the assertion in respect of paragraph 276ADE(1)(vi) of the Rules.

30. Further, it was not even in the notice of appeal to the First-tier Tribunal contained in his letter from Lighthouse Solicitors dated 14 February 2016. Although there was a s.120 notice, there were no consequent variations, amendments or enlargement of the grounds.

31. Mr Kotas referred to the manner in which the case was put at the hearing. At [23] it was simply asserted that the appellant, being a religious person, would find it difficult to re-integrate into Turkmenistan society.

32. With regard to the contention that the Judge did not properly deal with the issue of very significant obstacles under paragraph 276(1)(vi) Mr Kotas submitted that the findings at [74] have never been challenged and this contention cannot "prosper" in the circumstances.

33. He submitted that the evidence before the Tribunal was that the appellant had arrived on a visit visa in the summer of 2015. Before that, her life had been spent in Turkmenistan. That is the context in which the human rights claim had to be assessed. There have been no specific challenges to the findings of fact at [30-33]. The first letter from the appellant's father stated that during the appellant's stay with her grandmother he maintained custody of her since the sponsor left the country. That "destroys her case" on sole responsibility.

34. The submissions advanced by Mr Briddock amount to a mere disagreement with the decision and the findings at [36].

35. Nor was there any challenge to the Judge's findings of fact at [43], that her father had not abdicated all responsibility for the appellant since her arrival in the UK. His finding at [45] that shared responsibility continued whilst the appellant has been in the UK, albeit that the division of responsibility has shifted towards the sponsor, is sustainable and rational.

36. With regard to the issue of the hijab, Mr Kotas referred to the decision of SSHD v Kamara [2016] EWCA Civ 813. Lord Justice Sales in considering a foreign criminal's "integration" into the country where he is to be deported, stated at [14] that the idea "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of a insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.

37. Mr Kotas submitted that the suggestion that the appellant would not be able to operate on a day to day basis is misconceived. The Judge did have proper regard to the relevant 2016 Religion Law [70]. There has been no reliance on Article 9 of the Human Rights Convention. There is no evidence as to how, or if, the law is actually enforced [75].

38. In the circumstances the findings at [75] that there would be no significant consequences on the evidence is a rational.

39. In reply Mr Briddock submitted that not every point needs to be raised. The arguments put forward can accordingly be raised under ground 4.

40. The Judge was aware of paragraph 276ADE(vi) at [52-55]. However he did not consider them. The challenges that are now made are in respect of errors of law. The Judge did not consider the hijab in a broad evaluative judgment. There has been no conflation between an asylum and private life claim in this respect. The issue of the hijab is a relevant factor under private life.

41. He referred to the US Commission on International Religious Freedom: Annual Report 2017 at pages 65-67 of the appellant's bundle. The law is enforced. There accordingly was evidence which goes to the appellant's private life claim.

**Assessment**

42. Judge Martin granted the appellant permission to appeal on the basis that the Judge did not specifically consider s.55 in the appeal. However, as noted, the appellant was over 18 years of age at the date of hearing. Accordingly, it is accepted by the parties that there has been no error of law in that respect.

43. Mr Briddock has however contended, albeit without permission from Judge Martin, that there are various findings by the Judge with regard to the sole responsibility issue that simply amount to assertions by the Judge. This includes the underlying assumptions for his conclusions set out at [41-44].

44. However, I find that the Judge has properly taken into account the evidence as a whole relating to sole responsibility and has given sustainable reasons for his findings that shared responsibility has continued even whilst the appellant has been in the UK, albeit that it has shifted towards the sponsor. He has had proper regard to the decision in TD (Yemen), supra.

45. The current submissions amount to a disagreement of those findings which are neither irrational nor perverse as claimed in ground 2. I agree with Judge Martin that there is no merit in the grounds relating to the conclusion that the appellant's mother did not have sole responsibility.

46. Mr Briddock also contends that the Judge failed to properly evaluate the Article 8 claim through the prism of the Rules. In particular, he failed to make a proper evaluative assessment as to whether there would be very significant obstacles to the appellant's integration into Turkmenistan. The Judge did not properly grapple with the issue raised by the appellant concerning the wearing of a hijab.

47. I find that the Judge properly followed the Razgar steps. He found that the appellant has family life with her mother and younger sister. She has also established a private life in the UK over the last two years or so. He took into account the factors under s.117B(1) of the 2002 Act.

48. He has set out the factors both in the appellant's and the respondent's favour from [63] onwards. He acknowledged that returning her to the country would involve a degree of difficulty in terms of re-establishing herself.

49. The Judge has had regard to the conclusions and observations of the Supreme Court in Agyarko [2017] UKSC 11 at [56-60]. The consequences of removal would need to be shown to be very significant [72].

50. He had express regard to the country situation in Turkmenistan at [70]. The appellant claimed to have been wearing a hijab for about 18 months now. He considered that this would appear to interfere with her wish to wear religious clothing in public having regard to the 2016 religion law [70-71].

51. Mr Briddock submitted that the finding at [75] amounted to an error. This is particularly so with regard to his conclusion that the appellant could either wear the hijab in public and there would be no significant consequences for her, or in the alternative, she could choose not to wear it in public, thus complying with the letter of the law. He submitted that evidence produced in the report to which I have referred indicates that there is a prohibition on wearing religious garb in public except by clerics.

52. I note in the report referred to in the annual report of the US Commission on international Religious Freedom, at page 67, regarding punishment for religious activities" that unregistered and registered religious groups face frequent raids by the secret police, ordinary police (especially from anti terrorism and organised crime units), local officials and local CWRO officials. The government continues to hand down harsh penalties such as imprisonment, involuntary drug treatment and torture, for religious activities and human rights advocacy, including for religious freedom. In recent years Muslims, Protestants and Jehovah's Witnesses have been detained, fined, imprisoned or internally exiled for their religious beliefs or activities.

53. There is however no indication in the report of any prosecution arising out of the prohibition on wearing religious garb in public. As noted by the Judge there is no evidence as to how or whether the law is actually enforced.

54. The Judge noted that no protection claim had been placed before him. Nor was Article 9 relied on. There was thus insufficient evidence to show a flagrant denial of religious freedoms [75].

55. In her statement relied on before the First-tier Tribunal dated 19 May 2017 the appellant did not even raise the issue of wearing a hijab.

56. The Judge had regard at [74] to the appellant's re-integration into Turkmenistan. He found that she is healthy; she has benefited from the UK educational system; there is no suggestion that women cannot obtain employment or go into higher education there. She would continue to receive support, both financial and emotional, from her mother and at least funding from her father. Nor had she been in the UK for very long. She could go on to live with her grandmother in a stable environment without having to care for her. This arrangement could be short, medium or longer term. The appellant's examinations will have now been 'finished'.

57. Those are sustainable findings based on the evidence before the Tribunal.

<u>**Notice of Decision**</u>

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

Anonymity direction not made.

Signed Date 30 March 2018

Deputy Upper Tribunal Judge C R Mailer