



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09974/2018

THE IMMIGRATION ACTS

Heard at Fox Court
On 13 December 2018

Decision & Reasons Promulgated
On 10 January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SADAF JAVED JARRAL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Absent

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Lodge promulgated on 10/08/2018, which dismissed the Appellant's appeal.

Background

3. The Appellant was born on 31/07/1983 and is a national of Pakistan. On 19/04/2018 the Secretary of State refused the Appellant's application for leave to remain in the UK because the respondent believes the appellant had fraudulently obtained an English Language certificate to support an earlier application for leave to remain.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Lodge ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 02/11/2018 Judge Bird granted permission to appeal stating inter alia

It is arguable that in relying on the generic evidence in the supplementary bundle in the absence of specific evidence in relation to the appellant (see paragraphs 21 - 24) the Judge made an arguable error of law in finding that the respondent has established that the appellant had employed deception. Further the Judge's findings of fact are speculative and not supported by adequate reasoning - paragraphs 28 to 30. An arguable error of law has been made.

The Hearing

5. The appellant is unrepresented. She did not attend the hearing. Instead, she sent a letter dated 7 December 2018 explaining that she is unable to attend and asking that the appeal be dealt with in her absence. Attached to her letter there are written submissions together with the documents upon which the appellant relies.

6. (a) Ms Jones, for the respondent, told me that the decision does not contain an error, material or otherwise. I drew Ms Jones' attention to [24] of the decision. Ms Jones told me that, before the First-tier Tribunal both the appellant and the respondent were represented. Despite the fact that there was no Home Office bundle and transcripts of interviews were not produced, neither party asked for an adjournment. She told me that at first blush one might think that the initial evidential burden was not discharged by the respondent, but urged me to read [25] of the decision, where, she told me, there is an admission from the appellant that she did not sit an English language test at Cauldon College, despite the fact that her earlier application relied on a TOIEC certificate issued from Cauldon College.

(b) Ms Jones took me through the rest of the decision and told me that the appellant could not provide reliable evidence about an English language test which she claims that she took. She told me that the Judge's findings were open to the Judge on the evidence presented and that the grounds of appeal amount to nothing more than a

disagreement with the facts as the Judge found them to be. She urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. On 4 April 2017 the appellant submitted an application for indefinite leave to remain in the UK. The respondent refused that application on 19 April 2018. That is the decision the appellant appeals against. The appellant entered the UK on 2 September 2007 as a student. Leave to remain as a student was extended until 27 January 2014. The appellant made an unsuccessful application for leave to remain as a tier 1 entrepreneur in 2012. After seeking review and permission to appeal, her appeal rights were exhausted on 21 March 2017.

8. The respondent refused the appellant's application relying on paragraph 322(1A) and (5) of the immigration rules. The respondent says that in an application made on 12/12/2012 the appellant relied on an English language test certificate obtained from Cauldon College on 19/9/2012. The respondent says that the test certificate was obtained fraudulently.

9. In SM and Qadir (ETS - Evidence - Burden of Proof) [2016] UKUT 229 (IAC) it was held that (i) The Secretary of State's generic evidence, combined with her evidence particular to these two appellants, sufficed to discharge the evidential burden of proving that their TOEIC certificates had been procured by dishonesty; (ii) However, given the multiple frailties from which this generic evidence was considered to suffer and, in the light of the actual evidence adduced by the appellants, the Secretary of State failed (in this case) to discharge the legal burden of proving dishonesty on their part. During the course of the determination Tribunal added that "every case belonging to the ETS/TOEIC stable will invariably be fact sensitive. To this we add that every appeal will be determined on the basis of the evidence adduced by the parties".

10. From the case file, I can see that the respondent relied on a supplementary bundle of generic evidence containing witness statements from Rebecca Collings and Peter Millington and an expert report from Prof French. The bundle also contains the Home Office guidance note containing findings about Cauldon College, Essex, drawn from the criminal investigation known as "Project Façade". Crucially, items 2 and 3 of the bundle contain test results dated 19 September 2012 in the appellant's name from Cauldon College, together with an analysis from the ETS test centre look up tool showing that 100% of the English language tests taken at Cauldon College on 19 September 2012 are "questionable".

11. At [25] the Judge records the appellant's admission that she did not sit the test at Cauldon College. The Judge finds that the statement from the appellant combined with the generic bundle of evidence is sufficient to discharge the initial burden of proof. In the first sentence of [26] he says that the burden shifts to the appellant.

12. The appellant's admission that she did not sit an English language test at Cauldon College together with evidence that Cauldon College issued a test certificate in the appellant's name, dated 19 September 2012, is enough to discharge the initial burden of proof. The Judge is correct to find that the respondent's generic bundle bolstered by the appellant's admission is sufficient to shift the initial burden of proof to the appellant

13. Between [26] and [31] the Judge considers the appellant's explanation. He analyses the appellants evidence and asks himself whether that evidence amounts to an innocent explanation. He gives clear reasons for finding that the appellant cannot explain how she obtained an English language test certificate from a college that she did not go to. He gives clear reasons for finding that the appellant cannot provide any meaningful details of the college that she says she did go to (to sit the English language test which she says she sat). Notwithstanding the terms of the grant of permission to appeal, the Judge's findings of fact are not tainted by speculation and assumption. The Judge's findings are evidence-based findings of fact.

14. The Judge finds that the appellant does not meet the immigration rules. He then considers article 8. The Judge goes straight to paragraph 276 ADE of the Immigration Rules, and is right to do so because the appellant cannot meet the terms of appendix FM (because none of her family are British citizens, none of them have leave to remain as a result of a protection claim)

15. The Judge's findings in relation to paragraph 276ADE are clearly sustainable on the facts as the Judge found them to be. The Judge considers article 8 outside the rules from [33] of the decision. He takes account of the best interests of the appellant's two children. He considers the appellant's family as a whole and takes account of section 117B considerations. There is nothing wrong with the Judge's proportionality assessment.

16. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

17. A fair reading of the decision demonstrates that the Judge applied the correct test in law. The Judge carried out a holistic assessment of all of the evidence. There is nothing wrong with the Judge's fact-finding exercise. In reality the appellant's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as he found them to be. The appellant might not like the conclusion

that the Judge arrived at, but that conclusion is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

18. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

19. The appeal is dismissed. The decision of the First-tier Tribunal, promulgated on 10 August 2018, stands.

A handwritten signature in grey ink that reads "Paul Doyle". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

Signed

Date 21 December 2018

Deputy Upper Tribunal Judge Doyle