



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

Appeal Number: IA/06665/2014

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 23 January 2015

On 23 February 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL DRABU CBE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS AYGUL HUMMEDOVA

Respondent

ANONYMITY DIRECTION NOT MADE

Representation:

For the Appellant: Mr S Walker, Senior Presenting Officer

For the Respondent: Mr R Sharma of Counsel instructed by Karis Law

DETERMINATION AND REASONS

1. The appellant in this appeal is the Secretary of State who was granted permission to appeal to the Upper Tribunal against the decision of Judge Shamash, a Judge of the First Tier Tribunal Judge Shamash had allowed the appeal under Article 8 of the ECHR. The respondent in this appeal is a citizen of Turkmenistan and her date of birth is 22nd of June 1982.
2. The respondent first arrived in the United Kingdom with entry clearance as a student on 16 January 2006. Her leave was renewed until she was

granted Tier 1 (Post Study) dependent visa on 8 September 2012. Her visa expired on 10 December 2013 and on 9 December 2013 she made a further application for leave to remain outside of the Rules. As set out in the determination of Judge Shamash, the basis for the application was straightforward. "The appellant needs one year's further leave to remain in the United Kingdom in order to complete her ACCA examinations and practical training. The appellant cannot meet the immigration Rules because she cannot obtain leave as Tier 4 student, because she only has two examinations to take and no college will issue a CAS to a student with less than three examinations to take. Furthermore, the appellant is not eligible for a post-study work visa."

3. At the hearing of the appeal before Judge Shamash, the appellant gave evidence, adopting her written witness statement. . She said that there are no testing centres in Turkmenistan. The closest centre is in Uzbekistan, which is 3 hours by plane. There are also testing centres in Ukraine and Russia and both are 4 hours flight away and the respondent will need a visa to take the examinations in any of these centres. She stated that she had explored all the avenues open to her. She is in the middle of her work experience and there is unlikely to be anywhere in Turkmenistan where she can get experience as an ACCA accountant.
4. In the determination the Judge noted that there had been no dispute on the facts of the case. It had been accepted by the Secretary of State through Mr Sedgwick that the respondent was in employment, had completed almost 2 years of the 3 years required in order to obtain the practical component of her training and that she has two more examinations left to complete. It was also, noted the Judge, implicitly accepted by Mr Sedgwick that she would not be able to obtain a CAS or a further student visa because she only has two modules left to complete.
5. The Judge properly directing himself on the burden and standard of proof reminded herself that the matter before him was outside the rules and came under common law principles of Article 8. The Judge then carried out a detailed review of relevant case law such as **Shahzad [2014] UKUT 00085**, **Nagre [2013] UKUT EWHC 720**, **Gulshan [2013] UKUT 640 (IAC)**, **MM Lebanon {2014} EWCA Civ 985**, **OA [2008] EWCA Civ 82** and **Razgar [2004] UKHL**. The Judge took into account Section 117A to D of the Immigration Act 2014.
6. Taking account of all the facts established before him, the Judge said, "The appellant has invested a huge amount of time and money in her studies and her work is a main tranche of her life. In her case, I find that she developed a private life in the UK, which is limited to obtaining and completing her qualification. The threshold for establishing interference in private life is not a particularly high one. The decision to remove is in accordance with the law, as the appellant does not meet the rules. "

7. In addressing the issue of proportionality the Judge found that the facts of this case were rare and that the Secretary of State had failed to engage with the specific issue of the impact of removal upon the respondent. Her consideration of “compelling circumstances” did not bear a correct relation to the facts of the case and was generic in nature. The Judge went on to say, “It is this failure to engage with the specific issue which makes the balancing exercise conducted by the respondent meaningless. The facts of this case are unusual and the respondent needed to engage with the impact of her removal at this stage. I find that the decision is disproportionate.” On this basis the appeal was allowed.
8. Permission to appeal to Upper Tribunal was granted by Judge Deans, a Judge of the Upper Tribunal. He took the view that the grounds contending that in allowing the appeal Judge Shamash had made a material misdirection in law and had failed to give adequate reasons for conclusions reached were arguable.
9. After hearing Mr Sharma and Mr Walker and giving due consideration to the written “Supplementary Submissions” of Mr Sharma, I was satisfied that the grounds supporting the application were more about disagreement on facts found by Judge Shamash rather than any error in law on the part of the Judge. In a very well reasoned determination, Judge Shamash made clear and reasoned findings of fact and the conclusion she reached on those facts were perfectly in accord with the relevant case law on Article 8.
10. This appeal is dismissed. The decision of Judge Shamash allowing the appeal against the decision of the Secretary of State stands.

K Drabu CBE
Deputy Judge of the Upper Tribunal.
7 February 2015

DIRECTIONS REGARDING ANONYMITY NOT MADE.

K Drabu CBE
Deputy Judge of the Upper Tribunal