



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05450/2019

THE IMMIGRATION ACTS

Remote hearing held at Field House
On 04 February 2021 (V)

Decision & Reasons Promulgated
On 28 April 2021

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

SAJIA AFRIN CHOWDHURY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr P. Saini instructed by Direct Access

For the respondent: Ms S. Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 07 March 2019 to refuse a human rights claim. First-tier Tribunal Judge Greasley dismissed the appeal in a decision promulgated on 11 July 2019. In a decision dated 13 January 2020, Upper Tribunal Judge Perkins found that the First-tier Tribunal decision involved the making of an error of law and set it aside.

2. The case was reviewed following the start of the Covid-19 pandemic. The President of the Upper Tribunal directed for the matter to be listed for a telephone case management hearing, which took place on 12 May 2020. In light of the need to take precautions to prevent the spread of Covid-19 the appeal was listed for a remote hearing by video conference for the decision to be remade. The hearing listed on 16 June 2020 was adjourned for the respondent to clarify her position in relation to the allegations of deception. The respondent was directed to serve a written summary of her position in relation to each allegation of deception and legible copies of any evidence relied upon by 14 July 2020 at the latest.
3. There was no objection to the mode of hearing. After some initial difficulties getting the appellant online, she confirmed that she was able to see and hear the legal representatives. She was able to give evidence in English without any apparent difficulty. I monitored the situation throughout the hearing and was satisfied that the mode of hearing was fair and did not impair the appellant from giving her evidence in any material way.

Background

4. The appellant's immigration history is complex and some aspects are not entirely clear from the evidence. The appellant is a citizen of Bangladesh who entered the UK on 15 February 2010 with entry clearance as a Tier 4 student that was valid until 25 April 2011. She was granted further leave to remain as a Tier 4 student from 15 August 2011 until 30 October 2012 and again from 08 June 2012 to 01 July 2013. The exact dates of her applications for further leave to remain are unclear from the evidence.
5. The appellant says that she married a man called Plaban Majumder on 12 August 2012. It is reasonable to infer from the fact that the appellant says that she made a further application for leave to remain outside the immigration rules on 12 October 2012 naming him as her dependent that, at that time, he was not a British citizen and required leave to remain in the UK. The application was refused on 07 October 2013 with a right of appeal. The appellant lodged an appeal but subsequently withdrew it on 17 September 2014. The appellant's lawful leave extended by section 3C of the Immigration Act 1971 ("IA 1971") came to an end on that date. She has remained in the UK without lawful leave since then.
6. The appellant says that she made an application for leave to remain as a Tier 2 (General) Migrant on 16 September 2014. Although she says that she made the application the day before she withdrew the appeal, by operation of section 3C(4) IA 1971 a person cannot apply to vary an application while their leave is extended under section 3C. Such an application would normally be deemed invalid. However, it seems that the respondent accepted the application, which might have been received after the date she withdrew the appeal. Although the application was accepted, by operation of statute, the appellant's lawful leave still ended on the date the previous appeal came to an end. The application for leave to remain as a Tier 2

migrant was refused on 20 February 2015 with an in-country right of appeal. The First-tier Tribunal dismissed the appeal on 21 October 2015. Permission to appeal to the Upper Tribunal was refused and her appeal rights became exhausted on 24 June 2016.

7. On 20 July 2016 the appellant made further submissions on human rights grounds. In a decision dated 10 October 2017 the respondent refused to treat the submissions as a fresh human rights claim. The appellant sought to challenge the decision by way of an application for permission to bring judicial review proceedings, which was refused on 25 April 2018.
8. In her witness statement, the appellant says that she applied to 'vary' the human rights application on 01 November 2017. This was in fact a fresh application because the previous application was refused on 10 October 2017. In her statement she says that her husband was granted Indefinite Leave to Remain on 28 January 2018. The respondent states that the appellant applied to vary the application on 29 June 2018 but the copy of the application contained in the Home Office bundle indicates that her solicitors submitted the application by cover letter dated 16 March 2018. The appellant says that she separated from her husband on 17 May 2018 because of continuing domestic abuse.
9. The respondent's chronology records a subsequent application for leave under the domestic violence route, which was refused on 08 November 2018. The decision was maintained following an Administrative Review on 21 December 2018. In light of the appellant's stated fear of returning to Bangladesh she was invited to make a protection claim but failed to attend an appointment on 05 March 2019.
10. This appeal is brought against the respondent's decision dated 07 March 2019 to refuse the human rights claim which was made on 01 November 2017 and varied to an application based on family life as a partner. The respondent refused the application under the 'Suitability' requirements of Appendix FM of the immigration rules because it was alleged that she used a fraudulent English language test certificate in an earlier application for leave to remain made on 29 February 2012. Educational Testing Services (ETS) cancelled the test certificate issued after a test taken at Westlink College on 13 December 2011 on the ground that there was evidence to show that a proxy test taker was used. In any event, the appellant did not meet the 'Relationship' requirement of Appendix FM because she was no longer in a subsisting relationship with her partner. Her husband issued a statement to declare that the marriage was over and that divorce proceedings had been initiated.
11. The respondent found that the appellant did not meet the private life requirements contained in paragraph 276ADE(1) of the immigration rules. There was no evidence to show that she would face 'very significant obstacles' to integration in her country of nationality, where she spent her formative years and a significant portion of her adulthood. It was likely that she retained linguistic, cultural and familial connections in Bangladesh. The appellant had no leave to remain since the expiry of her last grant

of leave. There were no other exceptional circumstances that might justify a grant of leave to remain on human rights grounds.

12. The respondent noted her claim that her family was planning to kill her if she returned to Bangladesh because she married a Hindu. When given the opportunity to make a protection claim she did not attend the appointment. This cast doubt on her claim to be in fear on return to Bangladesh. The respondent asserted that the Bangladesh authorities would be able to provide sufficient protection.

Decision and reasons

Fraud allegation

13. The burden of proof is on the respondent to show on the balance of probabilities that the TOEIC English language certificate issued by ETS was obtained by fraud and that the use of deception in an earlier application for leave to remain justified refusal under paragraph S-LTR.4.2 of Appendix FM of the immigration rules.
14. The first thing to note is that the allegation made in the decision letter to justify refusal under the 'Suitability' requirement related solely to a test that was said to have been taken as long ago as 13 December 2011 at Westlink College. The decision letter went on to make a second allegation relating to a test taken at Synergy College on 19 October 2011 as a public interest consideration when assessing the case under the heading of 'Exceptional Circumstances'. There was no response from the respondent to the directions made by the Upper Tribunal on 16 June 2020 to clarify her position in relation to these tests. However, the original bundle that was filed and served by the respondent for the First-tier Tribunal hearing in 2019 included evidence relating to tests taken at Westlink College and Synergy College, which the 'Look-up tool' indicated were both deemed 'Invalid' by ETS. The appellant was on notice from the start that she would need to respond to allegations of fraud relating to tests taken at both colleges.
15. Although Mr Saini objected to Ms Cunha's late filing of evidence on the morning of the hearing, in fact, most of the documents were in the original Home Office bundle. The only new document was a printout of a Confirmation of Acceptance for Studies (CAS) assigned on 28 February 2012 to study at the London School of Business and Finance (LSBF). On closer inspection, a second printout was the same CAS appearing in a slightly different format. The CAS refers to the English language speaking score which corresponded with the test that was said to have been taken at Westlink College on 13 December 2011. The information in the CAS did not take the evidence that was already before the Upper Tribunal any further. Apart from a general objection to late service, Mr Saini was unable to give any reason why it might cause his client any difficulty. I found that there was no reason to refuse to admit the document.

16. Neither party has produced much detailed evidence about the course of events during the period in question at the end of 2011 and the beginning of 2012. The case put to the appellant by the respondent when questioned at the hearing was rather confused. Many of the questions were aimless and not rooted in the evidence that the respondent had produced. The appellant's responses were equally vague citing the passage of time as the reason for her lack of recollection of events. For this reason, it may be helpful to set out what can be gleaned from the documentary evidence.
17. The respondent's chronology indicates that the appellant was granted leave to remain as a Tier 4 student on 15 August 2011, which was valid until 30 October 2012. It is unclear from the respondent's evidence what college the appellant was granted leave to remain to attend or why she would need to make a further application for leave to remain on 29 February 2012 to study at the LSBF. The appellant's witness statement says that she was studying ACCA at the London College of Accountancy (LCA) at the time. LCA increased the fees so she along with other students transferred to LSBF which advised her that she would need a new English language certificate. The appellant says that she only had seven days to obtain a test certificate before the deadline to enrol at the college, but did not specify the date. On her own evidence she was under some time pressure to obtain a new test certificate.
18. The documentary evidence indicates that the appellant was issued with two TOEIC certificates. The first is said to have been a test taken at Synergy College on 19 October 2011 (Certificate no: 1000000227577592). The score for the speaking test was 150. The second is said to have been taken at Westlink College on 13 December 2011 (Certificate no: 1000000240280306). The score for the speaking test was 200.
19. The respondent has not produced copies of the test certificates. However, a copy of the test certificate that appears to relate to the speaking (150) and writing (160) parts of the TOEIC test taken at Synergy College on 19 October 2011 is included in the appellant's bundle [pg.25-26]. Another certificate with a different identification number relates to the listening (465) and reading (415) parts of the TOEIC test [pg.24]. The certificate indicates that those elements were taken on 24 October 2011 but it is unclear from the face of the document which college issued the certificate. The different identification number indicates that it might have been issued by Westlink College. The scores are consistent with other evidence suggesting that this certificate was likely to have been issued by Westlink College. It is unclear why the appellant has not been able to produce the certificate relating to the speaking and writing elements of the test taken at Westlink College on 13 December 2011.
20. The respondent has produced various printouts of Look-up tools which are documents created by the respondent that record information received from ETS as well as various other information about an applicant including their passport number: see *MA (ETS - TOEIC testing)* [2016] UKUR 00450 [15(ii)]. The evidence is produced to show what information the respondent received from ETS. The Look-

up tool entitled 'ETS SELT Source Data' records details of the speaking and writing tests taken at both colleges with the relevant scores. The Look-up tool shows that the respondent received information from ETS to say that both speaking and writing tests were deemed 'Invalid'.

21. There is no direct information from ETS to show how the test result in this case was assessed or why it was then cancelled as 'Invalid' because of evidence of a proxy test taker. The respondent relies on generic evidence in the form of witness statements from Home Office officials, Rebecca Collings and Peter Millington, which were considered in some detail by the Tribunal in *SM & Qadir (ETS – Evidence – Burden of Proof)* [2016] UKUT 229. They outline general information about the investigation of widespread fraud following a Panorama programme aired in February 2014. Whilst the Tribunal outlined weaknesses in the evidence it concluded that the combination of evidence contained in the Look-up tool and the 'generic statements' was sufficient to discharge the initial evidential burden of proof [67-68]. The Court of Appeal in *SSHD v Shehzad & Chowdhury* [2016] EWCA Civ 615 found the rejection by a First-tier Tribunal of the same combination of evidence as insufficient to discharge the initial evidential burden of proof amounted to an error of law [26].
22. The respondent has produced an expert report by Professor Peter French dated 20 April 2016. He was instructed by the respondent following the Tribunal's decision in *SM & Qadir*. The report is 'generic' in the sense that it does not deal specifically with information or analysis relating to this case. Professor French is an expert in forensic speech science. He was asked to give an opinion on the reliability of the methodology used by ETS, and in particular, the likelihood of false positives being reported on voice analysis of test results. He considered the report produced by Dr Harrison, which had been considered by the Tribunal in *SM & Qadir*. Much of the report is quite technical, but Professor French concluded that the methods used would have resulted in substantially more false negative results than false positive results. It was not possible to establish a closely specified percentage of false positives. He estimated that the rate of false positive results was likely to be "substantially less than 1% after the process of assessment by trained listeners had been applied". This evidence forms part of a body of evidence, including Dr Harrison's evidence as outlined in *SM & Qadir*. It shows that the possibility of false positive results in assessing the use of a proxy test taker cannot be discounted. The number of false positives is difficult to assess, but it seems likely that the number of false positive results in the ETS assessment process is low.
23. The respondent has also produced information relating to the colleges where the appellant took the tests. The statistics held by the respondent show that ETS had records of 104 speaking and writing tests taken at Synergy College on 19 October 2011. Of those 96 were deemed 'Invalid' and 8 were deemed 'Questionable' i.e. ETS deemed none of the tests taken that day reliable enough to stand. Another Look-up tool print out states that out of a total of 4894 tests taken at Synergy College 2410 were deemed 'Invalid' and 2484 were deemed 'Questionable'. While the printout

also indicates that none of the tests recorded at Synergy College were deemed reliable the evidential value of the document is weakened because it does not provide any context. It does not outline the period of time the statistics covered nor indicate whether there were any other test results outside a set period that might have been deemed reliable.

24. Other documents produced by the respondent include two documents entitled 'ETS Test Analysis' which appear to be self-generated documents summarising basic details relating to the appellant as well as records of what information is held relating to the test certificates in question. The Home Office records indicate that the test certificate from Westlink College was used to support the application for leave to remain made on 29 February 2012. The test certificate issued by Synergy College was not used in any application.
25. The respondent has also produced a report entitled 'Synergy Business College' dated December 2016. Again, the document appears to be self-generated by the respondent. It is not clear what expertise the author has to analyse the data provided by ETS. Ms Cunha did not refer to the report or assist me to understand the various graphs and illustrations. The report appears to conduct a comparison between data from TOEIC certificates issued by ETS and similar qualifications conducted by Pearson. In so far as the report indicates, in general terms, that there were concerns about the over-inflation of test results that might indicate the use of proxy-test takers, it is broadly consistent with the statistics received from ETS relating to Synergy College.
26. The same set of evidence was produced in relation to Westlink College. The test centre Look-up tool states that 114 speaking and writing tests were taken on 13 December 2011. Of these 99 were deemed 'Invalid' and 15 were deemed 'Questionable' i.e. ETS deemed none of the tests taken that day reliable enough to stand. The second Look-up tool relating to general statistics suffers from the same weakness. It states that out of a total of 915 tests taken at Westlink College over an unspecified period of time 661 were deemed 'Invalid' and 254 were deemed 'Questionable'. Similarly, the self-generated statistical analysis report relating to Westlink College dated January 2017 is at least broadly consistent with the reasons why ETS was likely to have cancelled a large number of test certificates from Westlink College due to concerns over the false inflation of test results.
27. In light of the decision in *SM & Qadir* and *Shehzad* I find that the combination of the ETS 'Look-up tool' and the 'generic statements' is sufficient to shift the burden of proof to the appellant to provide an innocent explanation to the allegation.
28. Unfortunately, those who helped the appellant to prepare her witness statement did not assist her to address the evidence produced by the respondent, which should have disclosed a rough chronology of where and when she took the tests. There was a contrast between the appellant's oral evidence, where she repeatedly said that she could not remember the details, and the seemingly more detailed recollection of what happened outlined in her statement. Although her statement

was superficially more detailed, it clearly did not accord with the ETS records. The appellant asserted that she took the test at Westlink College on 19 October 2011, which is in fact the date when she took the test at Synergy College. Her statement does not address the test taken on 13 December 2011, which the ETS records show was done at Westlink College. When she wrote to ETS on 26 August 2020 to ask for the test recordings the appellant also seemed confused, stating that she did not think that she did a test at Westlink College on 13 December 2011 as stated by the Home Office.

29. I bear in mind that it has been 10 years since the appellant took the tests. She also took more than one test. There is some evidence to indicate that the appellant has sought psychological support for issues arising from domestic abuse. The most recent correspondence from her local mental health team to her GP dated 22 December 2020 stated that she had been diagnosed with Emotionally Unstable Personality Disorder, Mixed Anxiety and Depressive Disorder. Other similar letters have the same practical function of informing her GP of the outcome of her appointments. None of this evidence explains the nature or extent of her conditions. Nor does it specifically address the possibility of difficulties with memory or concentration although I find that I can take judicial notice of the fact that it is generally known that depressive disorders might affect concentration.
30. Mr Saini referred me to the appellant's educational certificates from Bangladesh, which indicated that she was likely to have been taught in English. Although the appellant spoke English to a good enough standard to give evidence at a hearing in 2021 her current level of spoken English tells me nothing about her level of English at the end of 2011 and whether there might have been a motivation to cheat. I bear in mind that even on the appellant's own evidence she was under time pressure to provide LSBF with an English language certificate so it is possible that she may have had other motivations for obtaining a certificate quickly through fraudulent means.
31. Overall, the appellant's evidence was vague and confused. It was insufficiently reliable for me to be satisfied, having heard from her, that she did genuinely take the test. However, I bear in mind that she was being asked to recall events that took place 10 years ago. Whilst only the appellant knows for sure whether she cheated in the test or not, the confusion in the details of her evidence relating to matters that seem quite clear from the ETS records, such as when and where she took various tests, indicated that some of the inconsistencies in her evidence arose more from a lack of recollection rather than deliberate evasion.
32. While I did not find the appellant's evidence of much assistance, I bear in mind that the overall legal burden of proof is still on the respondent.
33. I have weighed the evidence as a whole to assess whether the respondent has discharged the overall legal burden of proof. I have taken into account that, aside from the fact that ETS recorded both tests as 'Invalid' due to evidence of a proxy test taker, there is no direct evidence from ETS to show how or why the company

came to the conclusion that this particular appellant obtained a fraudulent test certificate. The evidence produced by the respondent is self-generated and relies heavily on information received from ETS relating to the cancellation of her test results and those of other people who took tests at the same colleges. It seems clear that ETS carried out an investigation into a large number of test results, which included assessment of recordings of the speaking tests, in which proxy test takers were found to have been used. Although the evidence relating to the reliability of the ETS process is difficult to assess with any accuracy, expert evidence suggests that the likelihood of a 'false positive' result arising from the ETS process of verification is low. The categorisation of a test result as 'Invalid' suggests that ETS considered that there was evidence of fraud or deception involved in the test as opposed to a categorisation of 'Questionable', which only suggests administrative irregularities were identified. The evidence relating to the numbers of test results deemed 'Invalid' or 'Questionable' indicates that there were likely to be legitimate concerns about the possibility of widespread fraud at both colleges.

34. If the respondent relied on only one test, I may have found that the evidence was sufficient to discharge the burden of proof. The evidence relies almost exclusively on information and statistics provided by ETS, but when one steps back from those statistics, the respondent had failed to provide any coherent explanation as to why the appellant would cheat in two tests at two colleges within such a short period of time.
35. Neither party produced evidence to show what level of English language ability was required by the immigration rules in February 2012 when the appellant applied to vary her leave to remain. Mr Saini said that he thought that the test score of 150 for the speaking test taken at Synergy College may have been insufficient to meet the requirements at the time. He said that it was plausible that she would take the test again to obtain a better result.
36. It is not necessary for the tribunal to spend time scouring through archived records of lengthy and complicated immigration rules to ascertain whether the first test result was likely to meet the English language requirement of the immigration rules at the relevant time because the respondent has offered no clear case theory or plausible explanation for the dual assertions of fraud that have been made. Three points give me cause for concern:
 - (i) If the appellant failed the first test it undermines the respondent's allegation of fraud. It is reasonable to infer that those conducting the fraud would have given her the required pass mark if the test result was fraudulently obtained because that would be the whole purpose of the fraud.
 - (ii) If the appellant failed the first test it may have given her an incentive to cheat on the second to secure the result she needed, but it is equally plausible that she may have worked harder to get the relevant pass mark on the second occasion.

(iii) Even if a score of 150 on the first speaking test was sufficient to meet the requirements of the immigration rules, the respondent has offered no plausible explanation as to why, even if the first test result was fraudulently obtained, she would then seek to obtain a second fraudulent test certificate less than four weeks later.

37. I cannot discount the possibility that the appellant may have cheated on at least one of the tests. The evidence produced by the respondent indicates that there were likely to be serious concerns about fraud at both colleges. The fact that all the test results on each day the appellant took tests were cancelled as either 'Invalid' or 'Questionable' does raise serious questions about what happened at those colleges. The appellant's evidence in response to the allegations was vague and confused. The evidence relating to the reliability of the ETS procedures does leave room for a margin of error, however slight. When one steps back from the statistics to look at the course of events, the assertion made by the respondent that the appellant obtained both certificates by fraud does not make sense and no plausible theory was put forward in the decision letter or in submissions at the hearing to explain what possible reason the appellant might have to obtain two fraudulent test results within such a short space of time. Although the evidence does raise doubts about the reliability of the test results, the overall burden is on the respondent to make out such a serious allegation. For the reasons given above, I conclude that the evidence, when considered as a whole, is insufficient to show that it is more likely than not that the appellant obtained both or even one of the test results by fraud. It follows that the respondent has failed to show that refusal under the 'Suitability' requirement of the immigration rules was justified.
38. Mr Saini sought to rely on the report of the All-Party Parliamentary Group (APPG) on TOEIC dated 22 July 2019. He did not give the respondent notice of this before the start of the hearing. It was not reasonable for the respondent to anticipate this potential argument when no copy of the report was provided, even if it is known to be in the public domain. This was surprising given Mr Saini's objection to the respondent's late evidence. Rather than having to make a decision as to whether he could rely on a document that had not even been filed, which could have derailed the hearing, the issue was 'parked'. It was agreed that I would invite further submissions if, after having considered the other evidence in detail, I considered that the APPG report might be relevant to my decision. In view of my conclusion relating to the allegations of fraud, it is not necessary to consider the APPG report. In any event, it would only have the character of opinion evidence in light of the recent decision in *DK and RK (Parliamentary privilege, evidence)* [2021] UKUT 61.

Human rights claim

39. I turn to consider the appellant's substantive human rights claim. Although the appellant expressed concerns about her safety if returned to Bangladesh it was not

argued that she would be at risk of ill-treatment that would reach the threshold of Article 3 of the European Convention.

40. The claim based on her family life with a settled person has fallen away since the breakdown of her marriage. At the hearing, the claim was put forward solely with reference to her private life in the UK and the proportionality of removal.

Article 8(1) – private and family life

41. The appellant is a 37-year-old woman from Bangladesh. At the date of the hearing she had lived in the UK for a period of 10 years. The evidence shows that she was awarded a Bachelor of Commerce degree in accounting in Bangladesh in 2009. She came to the UK to study and obtained a Degree in Business Management in 2013. There is little evidence of any studies, work or other activities since then. Her marriage broke down shortly after her husband obtained settled status. The appellant’s bundle contains letters of support from friends and references from other people who have known her in the UK. While the evidence does not show significant ties, I accept that the appellant is likely to have established a private life in the UK over the last 10 years and that her removal is likely to interfere with that right in a sufficiently grave way to engage the operation of Article 8(1) of the European Convention.

Article 8(2) – proportionality

42. Article 8 of the European Convention protects the right to private and family life. However, it is not an absolute right and can be interfered with by the state in certain circumstances. It is trite law that the state has a right to control immigration and that rules governing the entry and residence of people into the country are “in accordance with the law” for the purpose of Article 8. Any interference with the right to private or family life must be for a legitimate reason and should be reasonable and proportionate.
43. Part 5A of the Nationality, Immigration and Asylum Act 2002 (‘NIAA 2002’) applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person’s right to respect for private and family life under Article 8 of the European Convention. The ‘public interest question’ means the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2).
44. The appellant does not meet the long residence requirements of paragraph 276B of the immigration rules. The immigration history set out above shows that her lawful leave to remain came to an end in 2014. The fact that she made a further application for leave to remain within the 28 day ‘grace period’ then provided for in the immigration rules did not operate to extend her leave to remain: see *R (Masum Ahmed) v SSHD* [2019] EWCA Civ 1070. Thereafter any application was made at a time when she was an overstayer. The appellant also falls far short of the 20 year

private life requirement for long residence under paragraph 276ADE(1)(iii) of the immigration rules.

45. The appellant needs to show that she would face ‘very significant obstacles’ to integration in Bangladesh to meet the private life requirement of paragraph 276ADE(1)(vi) of the immigration rules. In *Kamara v SSHD* [2016] 4 WLR 152 the Court of Appeal outlined the key elements of the test, which is also found in section 117C(4) NIAA 2002.

“14. In my view, the concept of a foreign criminal's “integration” into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of “integration” calls for a broad evaluative judgment to be made as to whether the individual will be enough of an 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.”

46. It is clear that the appellant would prefer to remain in the UK rather than return to Bangladesh. She says that her family has disowned her and expressed a general fear of them if returned to Bangladesh because she entered into a mixed religion marriage in the UK. However, the appellant has not put forward a protection claim, no argument was put forward to suggest that she would be at risk of Article 3 ill-treatment, no evidence was highlighted to support such an argument at the hearing.
47. The appellant told me that her family lives in Mymensingh, which publicly available maps indicate is a town about 120km north of Dhaka. The evidence shows that the appellant studied in Dhaka and that she was awarded a degree in accountancy in Bangladesh. A reference letter from GMark Consulting Limited dated 15 November 2009 certified that the appellant worked for the company as a finance and administration officer from January 2008. The appellant was born and brought up in Bangladesh. She came to the UK when she was 26 years old. She has spent her most of her life in Bangladesh and is likely to retain linguistic, cultural and familial connections there. The evidence shows that she was able to study and work in Dhaka away from her family home before she came to the UK. Since arriving in the UK the appellant has been awarded a degree in Business Management. No doubt she would face some initial challenges to re-establishing herself in Bangladesh, but she is an educated woman who has qualifications that would assist her to find work to support herself as she has done before. Mr Saini asserted that her mental health might also pose an obstacle, but for the reasons given above, the medical evidence is not sufficiently detailed to disclose a serious mental health condition that might affect the appellant’s ability to re-establish herself. I conclude that the evidence falls far short of showing that she is likely to

face 'very significant obstacles' to integration in her country of nationality within the meaning outlined in *Kamara*.

48. In conducting the overall balancing exercise under Article 8(2) I have considered the factors outlined in section 117B NIAA 2002. The appellant has been an overstayer since 2014 and does not meet the requirements of the immigration rules. Weight must be given to the need to maintain an effective system of immigration control. The appellant speaks English and is capable of supporting herself financially if she had permission to work but these factors are at best only neutral in the assessment. The appellant has lived in the UK for a period of 10 years. I accept that there are letters of support from various friends and acquaintances and that the appellant is likely to have made some connections in the UK, but there no evidence to show that she has significant ties. The appellant entered the UK as a student and should have had no expectation of settlement. She has remained without leave since 2014. Little weight should be given to the appellant's private life when it was established at a time when her position was precarious or unlawful.
49. Mr Saini referred to the decision in *Khan v SSHD* [2018] EWCA Civ 1684 at [37] and argued in general and unparticularised terms that the appellant should be put in the position that she was before the decision to refuse the application on 'Suitability' grounds was made. He failed to outline how what was said in *Khan* might apply to the facts of this particular case. The underlying application for leave to remain was made on 01 November 2017. At the time the appellant was an overstayer. The exact nature of the application is unclear on the evidence currently before the Upper Tribunal, but it appears that the appellant applied for leave to remain with her husband outside the rules. Her husband was granted ILR in early 2018 and a subsequent application was made to vary her leave to remain to that of a partner. However, the marriage broke down shortly after. The claim to remain on the basis of her marriage is no longer pursued. In these circumstances it is difficult to see how my finding that the respondent has failed to discharge the burden of proving the allegations of fraud should put the appellant back in a particular position when the reason for the original application has fallen away and the appellant does not meet any of the other requirements of the immigration rules relating to family or private life in the UK.
50. Mr Saini also made a vague submission relating to the application for leave on grounds of domestic abuse, which appeared to amount to nothing more than an assertion that it was unfortunate that she did not meet the requirements at the time because her husband refused to co-operate with the application for leave to remain as a partner. The appellant made an application for leave to remain on this basis on 30 August 2018. The application was refused on 08 November 2018 because she did not meet the requirement to have previously been granted leave to enter or remain as a partner, amongst other issues. Given that her marriage broke down soon after her husband was granted ILR this was just a consequence of events. The provision is designed to enable those who have been granted leave to remain as a partner to leave an abusive relationship without fear of jeopardising their position in the UK.

In this case the appellant did not meet the requirements because she had never been granted leave to remain as a partner. Whilst the medical evidence suggests that the historic abuse she suffered during her marriage has affected her in a negative way, it is difficult to see how the mere fact of such abuse might be seen as a factor that should be given any significant weight when the appellant did not meet the requirements for leave to remain on that basis.

51. Having weighed all the circumstances of this case I find that the appellant fails to meet the requirements of any of the immigration rules relating to family or private life in the UK. If a person does not meet the requirements of the immigration rules a person is usually expected to leave the UK. No other compelling or compassionate circumstances have been highlighted that might render the appellant's removal disproportionate. The appellant might prefer to remain in the UK, but her understandable desire to do so does not equate to a right to remain on human rights grounds.
52. I conclude that removal in consequence of the decision would not be unlawful under section 6 of the Human Rights Act 1998.

DECISION

The appeal is DISMISSED on human rights grounds

Signed *M. Canavan* Date 20 April 2021
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
 2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
 3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
 4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email