



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04497/2017

THE IMMIGRATION ACTS

Heard at Field House
On 24 May 2018

Decision & Reasons Promulgated
On 6 June 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MS FAUSTINA SIAAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana. In a decision sent on 19 February 2018 Judge I Scott of the First-tier Tribunal (FtT) dismissed her appeal against the decision made on 1 February 2017 refusing her entry clearance as a spouse.
2. The appellant's grounds of appeal advanced three main contentions, that the judge had erred in (1) refusing to convert the hearing to an oral hearing despite the appellant's repeated requests; (2) wrongly stating that the appellant had not produced a marriage certificate; and (3) deciding the case without having a number of

documents which the ECO should have produced in the appeal bundle, namely the marriage certificate and a degree certificate from a recognised university in Ghana.

3. Before me there was no appearance on behalf of the appellant. In the absence of any communication from the sponsor or anyone representing the appellant, I decided to proceed with the hearing, receiving brief submissions from Mr Bramble. I note that the appellant has produced a number of documents to the Upper Tribunal under cover of a letter dated 7 March 2018.
4. I see no merit in ground (1). The full context in which the judge decided not to accede to the appellant's request to convert the case to an oral hearing was set out at paras 4-10:
 - "4. In her notice of appeal, the appellant opted for a decision on the papers without an oral hearing. The Tribunal then directed that any written evidence or submissions must be submitted by 18th September 2017.
 5. By letter dated 8th September 2017, the appellant's representatives requested an extension of time until 29th September 2017 for the stated purpose of submitting the appellant's degree certificates to the NARIC UK, to verify whether they were equivalent to the United Kingdom standard, and to obtain other relevant documents in support of her appeal.
 6. On 14th September 2017, the appellant and her representatives were notified that the Tribunal had allowed an extension until 15th October 2017 for further evidence to be submitted, after which the appeal would be decided on the papers.
 7. No evidence of any kind was submitted in support of the appeal before 15th October 2017, and none has been submitted since then.
 8. On 13th December 2017, the matter was allocated to me to decide the appeal on the papers.
 9. By letter dated 12th January 2018, the appellant's representatives requested that the appeal be converted from a paper case to an oral hearing for the purpose, it was said, of allowing the sponsor to appear before an Immigration Judge and a Home Office Presenting Officer to answer any questions they might have.
 10. In view of the history of the appeal, including the extension of time for the submission of evidence, the failure to submit any evidence at all and the notice given that, in the absence of additional evidence being submitted by 15th October 2017, there would be a paper decision, I decided to refuse the request to convert the appeal to an oral hearing."

5. From the above chronology, it is clear that on 14 September 2017 the appellant and her representatives were put on notice that if they did not produce by 15 October 2017 the documents they had undertaken to produce by 29 September 2017, the appeal would be determined on the papers (determination on the papers being what the appellant had requested in her notice of appeal). The October deadline was not met. After Judge Scott had been allocated the case to decide on the papers but before so deciding it, the appellant sent (on 12 January 2018) a request for an oral hearing so that the sponsor could attend and answer questions. That request did not address at all the appellant's continuing failure to produce any of the documents she had promised earlier. In such circumstances it was not incumbent on the judge to respond to the appellant's request. Nor was there any procedural unfairness on the part of the judge in proceeding to determine the appeal on the papers without further ado.
6. As regards grounds (2) and (3), they appear (although it is not spelt out in the grounds) to have in mind that at para 21 the judge wrote that "The respondent's bundle contains the appellant's application form, but none of the other items said by the appellant to have been submitted with it". I do not find grounds (2) and (3) are made out. The reason why that is so is because the appellant had simply failed to produce any documentary evidence to support her claim that she met key requirements of the Immigration Rules or could show she was entitled to succeed outside the Rules on Article 8 grounds. At para 22 the judge stated:

"22. No evidence of any kind has been submitted by the appellant in support of her appeal. There are no statements by the appellant and the sponsor, no evidence of communication between them or of remittances sent, no evidence of visits, no evidence of the sponsor's financial circumstances and no evidence that the appellant satisfies the English language requirement. In relation to the English language requirement in particular, no evidence from NARIC UK has been submitted, despite the extension of time granted by the Tribunal.

At para 24 the judge added:

"24. I find that the appellant has entirely failed to demonstrate that she satisfies the relevant requirements of Appendix FM. None of the matters raised in the refusal has been addressed. No documentary evidence of any kind has been submitted, without which the sponsor's oral evidence alone would be of negligible value. It has not been shown that the appellant is in a genuine and subsisting relationship with the sponsor, that they intend to live together permanently in the United Kingdom, that the financial threshold is satisfied or that the appellant meets the English language requirements."

7. As regards Article 8, the judge concluded that the appellant had failed to show that she had an existing family life with the sponsor, since, apart from the accepted fact that the sponsor had gone through a marriage ceremony, there was no other evidence of the relationship (see paras 26-31). At para 13 the judge had noted that the appellant had submitted a marriage certificate.

8. The assertions in grounds (2) and (3) that the judge did not have reference to the marriage certificate and the degree certificate wholly miss the point that the judge did not dismiss the appeal because they were lacking. The reason why the judge found that the appellant had not established she was in a genuine and subsisting relationship with the sponsor was not the lack of a marriage certificate but the lack of any evidence as regards communication between them or of visits or of the sponsor's financial circumstances. The reason why the judge concluded that the appellant did not meet the language requirement was because she had failed to produce evidence that NARIC UK recognised her Ghanaian academic qualifications.
9. Hence, even though it would appear from the judge's note at para 21 there were missing items in the respondent's bundle, their absence had no material impact on the outcome of the appeal.
10. I would observe that the bundle produced by the appellant on 7 March 2018 was sent after the date on which the judge promulgated his decision (19 February 2018). As it was not before the judge he cannot be criticised for not taking it into account. In any event, even if it had been produced to the judge in time, it still failed to include evidence relating to the couple's communications and history of visits and there was still no NARIC UK documentation. At best it established that the sponsor has been in employment since 2015 and earns a salary in excess of the minimum income requirement.

Notice of Decision

11. For the above reasons, the decision of FtT Judge Scott is free of legal error. Accordingly it must stand.

No anonymity direction is made.

Signed:

Date: 5 June 2018



Dr H H Storey
Judge of the Upper Tribunal