



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

Appeal Number: HU/00928/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 10 January 2019**

**Decision & Reasons Promulgated
On 24 January 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**MRS LETICIA TIEKUBEA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Kathiva, counsel instructed by Jeff-Leonard Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Plumptre, promulgated on 20 April 2018. Permission to appeal was granted by First-tier Tribunal Judge ID Boyes.

Anonymity

2. No direction has been made previously, and there is no reason for one now

Background

3. On 7 February 2013, the appellant entered the United Kingdom with leave to enter as a student, valid until 30 October 2014. She was granted further leave to remain in the same capacity until 4 April 2016. Prior to her leave to remain expiring, the appellant sought further leave to remain as the partner of a British citizen.
4. The Secretary of State refused the appellant's application on 26 September 2016 primarily on the basis that the relationship was not genuine and subsisting. Furthermore, the respondent considered that the appellant had provided no evidence to show that she would have any problems reintegrating in Ghana. There were said to be no exceptional circumstances.

The hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the judge noted the absence of witness statements in the appellant's bundle and that the statements served at the hearing did not address the issues raised following the marriage interview. The judge put the matter back in the list for counsel for the appellant to handwrite further statements. Thereafter the appellant and her partner gave evidence. The judge dismissed the appeal, concluding that theirs was a marriage of convenience for a series of reasons, which included some of the inconsistencies highlighted in the refusal letter.

The grounds of appeal

6. The grounds of appeal argued that the judge ought to have adjourned the appeal on the basis that the appellant would not have a fair hearing. The reasons given included serious allegations regarding the appellant's legal representatives. It was said that the appellant was not advised that witnesses were required; that there had been a failure to prepare a "proper" bundle of documents; that there were no witness statements which could stand as evidence-in-chief and owing to these factors the appellant was in no state of mind to give evidence at her hearing.
7. Permission to appeal was granted on the basis sought.
8. The error of law hearing was initially heard on 25 July 2018 in the appellant's absence. That decision was set aside in a decision promulgated on 7 November 2018 because the appellant had not received the notice of hearing.

The hearing

9. Prior to the hearing, the appellant sought an adjournment for the purpose of awaiting a response to her complaint from her former solicitors, namely Adam Bernard Solicitors. Ultimately, the said firm responded by way of a letter dated 19 December 2018 and the application was not renewed.
10. Mr Duffy had yet to see the response from Adam Bernard and I gave him time to peruse it before inviting submissions.
11. Mr Kathiva relied on the grant of permission of First-tier Tribunal Judge Boyes and referred to the decision in BT (Former solicitors' alleged misconduct) Nepal [2004] UKIAT 00311. He submitted that the appellant received woefully inadequate representation; that the former solicitors appeared to accept that the appellant was not prepared for the hearing; the witness statements did not address the issues and, in any event, were not submitted; photographs and witnesses were available but the appellant was not advised as to their relevance. Mr Kathiva advised me that the current instructing solicitors had been unable to obtain information from counsel who represented the appellant previously because of legal privilege and the back-sheet referred to in Adam Bernards' response to the complaint had not been enclosed. He argued that the judge's assessment of the alleged inconsistencies did not take into account cultural difficulties and had the case been adequately prepared, a different view could have been taken. He reminded me that counsel had had to handwrite the statements at the hearing; the process was materially flawed and that the decision of the First-tier Tribunal should be set aside.
12. Mr Duffy firstly drew my attention to what was said at [16(xi)] in Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197(IAC) regarding the high threshold for complaints about the incompetence of previous representatives. He argued that witness statements were drafted, albeit which did not answer the points made by the Secretary of State. The appellant was not prevented from addressing points in her oral evidence, which she had. It did not seem that calling additional witnesses would address anything as the judge was concerned with a lack of familiarity between the appellant and her husband.
13. At the end of the hearing I announced that the decision of the First-tier Tribunal was unsafe, that the appellant had an unfair hearing and that had her appeal been professionally prepared it might have led to a different outcome. My reasons are set out below.

Decision on error of law

14. I have had regard to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 regarding the power the First-tier Tribunal has to adjourn or postpone a hearing under its case management powers. Regard should have been had to the overriding objective set out in Rule 2 requiring the Tribunal to deal with cases fairly and justly.

15. I have also considered the decision in Nwaigwe (Adjournment: Fairness) [2014] UKUT 00418 (IAC). The crucial question being whether the refusal of an adjournment deprived the affected party of a right to a fair hearing and not whether it was reasonable of the judge to have proceeded with the hearing.
16. I have also taken into consideration the Presidential Guidance note no. 1 of 2014 and note that factors weighing against adjourning an appeal include where a party seeks *“more time to prepare the appeal when adequate time has already been given.”* At the same time the Guidance states that a failure to comply with directions will not be sufficient of itself to refuse an adjournment.
17. In this case, there is no indication that an adjournment application was made. Perhaps it ought to have been. The former solicitors did not provide the back-sheet from counsel who attended the hearing despite indicating that it had been enclosed in their response to the appellant’s complaint.
18. Mr Duffy’s submissions rested on what was said at [16(xi)] of Azimi-Moayed;
- “Although we do not rule out that unfairness could be established through the incompetence of the advocate, there is a high threshold to establish. ... there must be demonstrated incompetence such as a course of action that no reasonable advocate would have taken.”*
19. Those representing the appellant have acted in accordance with what was said in the headnote in BT (former solicitors alleged misconduct) Nepal UKIAT 00311; that being; *“If an appeal is based in whole or in part on allegations about the conduct of former representatives, there must be evidence that those allegations have been put to the former representative, and the Tribunal must be shown either the response or correspondence indicating that there has been no response.”*
20. In this case, the appellant criticises her former solicitors rather than the advocate. Those criticisms include that she attended appointments at the offices of Adam Bernard on several occasions prior to the hearing date without being seen. She further complains that as late as the day prior to the hearing, no witness statement nor bundle had been prepared, whereas she had provided the solicitors with documents a month earlier. While a statement was taken from the appellant late into the evening prior to the hearing, the appellant did not see it until the day of the hearing. She was also expected to produce photocopies for her counsel and for the Tribunal. Mr Qamar Bilal Hashmi replied to the appellant’s complaint on behalf of Adam Bernard Solicitors. The response admits that the witness statements were drafted the day before the hearing, that no copies were provided, that there were difficulties in making

photocopies on the morning of the hearing and that the judge had permitted 3 hours for the drafting of further statements. The response also questions the relevance of calling witnesses. There is no recognition in this response that witness statements fully addressing the reasons for refusal were necessary and that the appellant's evidence was required to be served on the Tribunal in advance of the hearing, in accordance with directions.

21. As rightly stated by the judge at [7] of the decision and reasons, the witness statements did not address even one of the numerous issues identified by the respondent in the reasons for refusal letter.
22. Where the judge erred was to decide that the omissions in the refusal letter could be addressed by counsel handwriting statements on the day of the hearing under pressure of time. Perhaps counsel ought to have resisted this pressure.
23. As explained by the appellant in her complaint, most of which is inadvertently admitted by Adam Bernard, she had spent an hour roaming the streets of Hatton Cross prior to the hearing looking for photocopying facilities and the barrister was forced to hurriedly prepare a statement for the appellant and one for her partner so that the appeal could proceed at 2pm. The reasons for refusal letter did not list the issues but merely referred to a substantial number of question and answers by number. Fairness in this case required that an adjournment should have been granted for the purpose of allowing the appellant and her husband to give detailed instructions which addressed the respondent's many concerns, rather than the rushed attempt which was made on the day. I have considered whether this course of action could have led to a different outcome and I find that it could. Many of the alleged inconsistencies upon which the respondent and judge focused concerned the appellant's knowledge of her partner's finances. There was some weight in Mr Kathiva's submissions that cultural differences were not taken into account. It also might well have assisted the appellant if witness and photographic evidence was before the judge.
24. Having regard to the case law and the 2014 Rules, I find that the decision to proceed with the appeal was unfair in the circumstances. I accordingly set aside the decision of the First-tier Tribunal.
25. I have had regard to the Senior President's Practice Statement regarding remitting an appeal to the First-tier Tribunal for a fresh decision. However, I am satisfied that the effect of the error has been to deprive the appellant of an opportunity to have her case properly put and considered by the First-tier Tribunal. This is accordingly an appropriate case for remittal to the First-tier Tribunal for a fresh decision to be made.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Plumtre.

Signed

Date 18 February 2019

Upper Tribunal Judge Kamara