



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: IA/07269/2015

THE IMMIGRATION ACTS

Heard at: Field House
on 4 July 2016

Decision and Reasons Promulgated
21 July 2016

Before

Deputy Upper Tribunal Judge Mailer

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS REGINA PILIKA JOHN KAPINGA
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer
For the Respondent: Mr D Bazini, counsel (instructed by Immigration Visa Services UK)

DETERMINATION AND REASONS

1. I shall refer to the appellant as the secretary of state and to the respondent as "the claimant."
2. The claimant is a national of Tanzania, born on 17 March 1978. Her appeal against the decision of the respondent dated 28 January 2015 to refuse her application for leave to remain in the UK under the Immigration Rules, was allowed by the First-

tier Tribunal Judge Coutts, under paragraph 276ADE(vi) of the Rules. He found that it was not necessary to go on to consider her appeal under Article 8 of the Human Rights Convention.

3. On 18 May 2016, First-tier Tribunal Judge Grimmitt granted the secretary of state permission to appeal. She stated that it was arguable that the Judge erred in failing to take into account all the evidence or to provide adequate reasons for concluding that the claimant had not received a letter from the secretary of state notifying her of the outcome of an application for leave to remain made in November 2001. The Judge referred only to the evidence from the post office and did not consider subsequent applications made by the claimant at a time when she says she believed the original application was still outstanding.
4. The second ground was also arguable as the Judge concluded that the claimant would have no support if removed from the UK, having overlooked the support that she had from family in the UK.
5. Mr Bazini, who represented the claimant before the First-tier Tribunal, produced certain documents, including part of the record of proceedings that he recorded; part of the claimant's witness statement before the First-tier Tribunal and also a letter sent to the claimant at an address in Brent Cross, NW2 1DA, dated 28 February 2003 in which the secretary was 'sorry' that she had not received an earlier reply to her letter dated 17 September 2002 regarding her application dated 14 November 2001.
6. The claimant's immigration history was summarised in the reasons for refusal. She entered the UK on 23 May 1999 with leave as a student until 23 May 2000. On 14 November 2001 she applied for leave to remain as a student which was approved and she was granted leave until 31 July 2002.
7. On 14 November 2003 her application for further leave to remain as a student was refused. Her subsequent application made on 19 December 2003 for further leave which was also refused on 9 January 2006 with no right of appeal.
8. On 10 January 2006 she was served with an IS151A notice as an overstayer. On 5 June 2007 she applied for leave to remain outside the Rules which was refused in August 2007. Her application dated 6 December 2012 for leave to remain under the Family and Private Life provisions of the Rules was refused on 21 November 2013.
9. She enclosed in her recent representations letters dated 19 May 2014 and 10 June 2014 a psychological assessment report and various other documents in support of her application.
10. The Judge considered the evidence from the claimant as well as her sister.

11. He was not satisfied from all the evidence that the claimant had been notified by the secretary of state of the outcome of an application that she made on 14 November 2001. The secretary of state's attendance note dated 28 February 2003 showed that the recorded delivery reference number that the Home Office had used was not recognised by the Post Office when they made further enquiries following the claimant's contact with them chasing up the result of her application [34].
12. In the circumstances, he found that the "purported grant of leave by [the secretary of state] until 31 July 2002 was not notified to the claimant as required and in consequence, her application dated 14 November 2001 remains outstanding. It followed that she was not an overstayer as asserted by the secretary of state and that she continued to have leave under s.3C of the Immigration Act 1971 [35].
13. He found that she had been living in the UK for about sixteen and a half years. She came here for the purpose of education and to follow her siblings. She now saw her life and future to be in the UK, given that her siblings are all settled here. She has been unable to flourish in her career as she had hoped. This has been in part assisted by the secretary of state who had wrongly declared her immigration status to be precarious [37].
14. The Judge found that she had not had contact with her mother in Tanzania since she left there. The evidence showed that she had a difficult relationship emotionally as well as an unloving one. It was credible therefore that no contact had been maintained between them. If, as asserted by the secretary of state, her mother has visited the UK to see one of her siblings, the claimant has had no contact with her when she did so [38].
15. The evidence in the round showed that the claimant is both financially and emotionally reliant on her siblings in the UK, and particularly on her sister with whom she lives. This is supported by a medical opinion of Dr Citron, which the Judge accepted, that the claimant's mental health was particularly poor owing to the situation in which she finds herself. She is likely to feel suicidal if removed to Tanzania, resulting in a forced separation from her family here [39].
16. Judge Coutts found that to expect her to integrate back into Tanzania would not be lawful. She has no knowledge of the country. She left there 16 and a half years ago when she was only 21. She migrated from a small and remote village, which was several hours' travel from Dar-es-Salaam and some distance from any transport links [40]. She lived a sheltered life there and when she migrated she experienced a different and more sophisticated life [41].
17. There is no real prospect of her being able to return to her village: there is no work there, people live on a subsistence basis and she is estranged from her mother. She

had lost contact with everyone else she knew in the village. That is not surprising as the nearest access to a telephone is two hours' walk away [41].

18. He also found that she would not be able to successfully integrate into Dar es Salaam, a large city of which she has no current or prior knowledge of when she left Tanzania. She will return there as a single woman without the support of her family and without obtaining the qualifications she had hoped for from the UK, which would have assisted her to find better employment. It is likely that she would have to take work that was available, which would be menial and low paid [42].
19. He stated that the unchallenged medical opinion of Dr Citron is unequivocal; that states that she would be suicidal if returned to Tanzania. The resulting risk to her mental health would be profound and this would also have a significant effect on her ability to cope and thrive [43] and [44].
20. He accordingly found that there would be very significant obstacles to the claimant's integration back in Tanzania. She had accordingly met the provisions of the requirements of paragraph 276ADE(vi) of the rules. [45-46]
21. Mr Duffy relied on the grounds presented. He contends that the Judge failed to provide adequate reasons for concluding that the claimant had not been given a notice that further leave had been granted until 31 July 2002. The Home Office records showed that she had submitted an application on 14 November 2001. Her address was given. According to their records, the refusal decision was sent to her home address by recorded delivery.
22. It did not appear from the determination that the claimant disputes that this was the correct residential address. What is said is that the recorded delivery number was not recognised by the Post Office [34]. No further reasoning is provided. The source of that information is unclear. The Post Office was not able to say with any degree of cogency that they had not received a document from the Home Office with the relevant recorded delivery number.
23. Further, as noted in paragraph 3 of the grounds, if the claimant truly thought her application for leave was pending "it begs the question" why she sought to make two further applications for leave to remain in November and December 2003; the claimant would have been wholly aware of her historical application. Those are matters which were not explored by the Judge, although raised in the decision.
24. The finding that there were very significant obstacles to integration is also disputed. The assessment was "misguided". Very significant obstacles to integration constitutes a high threshold and entails something which would prevent or seriously inhibit her from integrating and establishing a private life, or those

obstacles which would cause very serious hardship. The relevant standard is determined by the standards of Tanzania and not by the UK.

25. The submission from the grounds is that the Judge relied on her period of absence from Tanzania and the mental health conditions from which she is said to suffer. However, the claimant spent the first 20 years of her life in Tanzania and would have a familiarity and knowledge of that country. While there may be a period of unfamiliarity in the new city, she has a cultural nexus to that country and thus re-integration would not cause such severe hardship. Many people successfully migrate to countries where they have no ties.
26. The conclusion that the extent of her health issues meant that she would face obstacles to integration, was reached without the Judge engaging with objective evidence cited by the secretary of state's decision as to the availability of mental health facilities and treatment. Ms Citron's report speculates that she will feel suicidal on any proposed removal. There was however no reference to the available treatment plans in Tanzania. The Judge failed to explore how this transition could be managed.
27. Finally, the Judge ignored evidence that the claimant is financially supported by her sister in the UK. As such, the same financial arrangement could be replicated if she resides in Tanzania.
28. On behalf of the claimant, Mr Bazini submitted that the contention in ground 1 as to whether or not the claimant had been given notice that further leave had been granted until 31 July 2002, was not relevant to the Judge's finding that there would be very significant obstacles to the claimant's re-integrating in Tanzania. Whether she had s.3(c) leave or knew about the earlier decision does not impact on those findings under paragraph 276ADE.
29. In any event, Mr Bazini referred to an extract from the claimant's witness statement: which was sent to the secretary of state at the date of her application.
30. There she stated that she did not hear anything back from the Home Office after she sent her passport and documents to the secretary of state when applying for further leave to remain as a student in November 2001.
31. She tried to contact the Home Office but the lines were always busy. She managed to get through to speak to someone in February 2003 who advised her that her passport had been sent back to her. She was given a reference number to check with the local post office, which she did. At that time she was living in [] Battersea.
32. The Post Office claimed that they had no record of it and that she should contact the Home Office, if they can provide a certificate of posting. She then called the Home

Office but was told to put it in writing and fax it to them, which she did in May 2003.

33. She did not receive a reply from the Home Office until about November 2003. She then received a letter stating that she was granted leave to remain but that it had expired in July 2002. The Home Office wanted to know what she was doing. She sent them in return in December 2003, her new passport, school letters and other documents, advising them that she was still studying.
34. All this information was before the Home Office. She called several times to check on her application. They said it was under consideration. She did not hear anything back from them until January 2006, where it was stated that she had overstayed, which she had not, because they had misplaced her passport. She did not know that they had granted her an extension of leave to remain until 2 July 2002. She had been waiting for a reply which took ages.
35. Mr Bazini referred to a document dated 28 February 2003, reference K1035772, constituting a note asking for a check to be made as to whether the claimant's documents were sent out by them correctly. It is noted that nothing has been received as yet. The Post Office claimed that they have no record. RD is set out. The request was made 'to deal with this accordingly and to inform of the outcome'.
36. Mr Bazini produced a further document dated 14 May 2003 with reference K1035772 which stated that the claimant was granted leave to remain as a student until 31 July 2002. However, her passport was lost after being returned to her home address. The document goes on to state that "despite an extensive search, N/T has been found."
37. She was advised that her current leave to remain expired on 31 July 2002 and an application form dated 28 February 2003 was enclosed. It is stated that no further application appears to have been made to date.
38. He referred to a letter dated 28 February 2003 to the claimant at an address in Brent Cross. The integrated case worker directorate representative stated that he was "sorry" that she had not had an earlier reply to her letter dated 17 September 2002 regarding her application of 14 November 2001.
39. As she was aware, a decision had already been made on her application. She was granted leave to remain until July 2002. The Home Office records confirmed that her completed application was sent to her home address at Battersea Park, London SW11. It was under recorded delivery on 5 December 2001.

40. It is stated that as her application was completed and served correctly by them, the onus was on her to contact her local Post Office regarding the whereabouts of her document as this does not fall within their remit.
41. She was advised that her current leave had expired on 31 July 2002 and no further application had been forthcoming from her. She was therefore required to make arrangements to leave the UK or to complete an enclosed application form to regularise her stay.
42. Mr Bazini submitted that the claimant *did* then contact the Post Office. It subsequently turned out however that her application had been granted without her knowledge.
43. Mr Bazini submitted that the secretary of state's officer's attendance note showed that the recorded delivery reference number that was used by the Home Office had not been recognised by the Post Office when further enquiries were made following the claimant's contact with them, when she was 'chasing up' her application.
44. Accordingly, the Judge concluded that she had not been notified as required of the outcome of the grant of leave until 31 July 2002; she was accordingly not an overstayer as her application dated 14 November 2001 remained outstanding.
45. The question raised by the Home Office in the grounds seeking permission as to why the claimant would have made further applications when she was unaware of the outcome of the decision is accordingly misplaced. The claimant did, for the reasons already referred to, know about it. Accordingly there was no evidence that the decision granting the leave had been served on her.
46. The Judge accordingly was entitled to reach the conclusion at [35].
47. He submitted with regard to ground 2 that the permission granted was limited. The Judge found the second ground to be arguable as the Judge had concluded that the claimant would have no support if removed. That however overlooked the support that she has from family in the UK.
48. However, the Judge has given extensive reasons as to why paragraph 276ADE (vi) applied. These are set out from paragraphs 36-45. These reasons had been set out and explained in detail by the claimant as well as her sister who gave evidence. There was moreover a medical report which was relevant and to which the Judge had regard. The Judge was entitled to take into account the prevailing conditions with regard to the lack of electricity and the like that awaited her in Tanzania.
49. Mr Bazini produced an extract from his note of the record of proceedings regarding the claimant's sister who gave evidence. She stated that if the claimant were

returned to Tanzania tomorrow, this would have devastating consequences for her and her son. She would have to work part time. She cannot afford that. Moreover, the claimant assists her son who attends various classes. He is 12 years old and cannot go on his own. It would not be safe to let him go alone, especially in the dark. The claimant had brought up her son. She would accordingly have to give up her full time job.

50. The suggestion that her sister would be able to fund her in Tanzania 'has disappeared'. There was no basis for that assertion.
51. There were no submissions made on behalf of the secretary of state 'that were not insurmountable obstacles that would face the claimant in Tanzania'.
52. He submitted that in effect the secretary of state sought to re-argue the case. However, adequate reasons had been given by the Judge justifying his finding under paragraph 276ADE(vi).

Assessment

53. I find from the foregoing analysis that the conclusion that the appellant had not been notified as required of the outcome of the grant of leave until 31 July 2002 was justified on the evidence produced including the appellant's own evidence. The Judge was thus entitled to conclude that the appellant was accordingly not an overstayer as her application dated 14 November 2001 remained outstanding.
54. Furthermore, the Judge considered in some detail whether there would be very significant obstacles relating to her integration in Tanzania. He has set the factors out from paragraphs [37] – [45]. In particular he found that she had left the country more than 16 and a half years ago when she was only twenty years old. He also relied on the evidence of Dr Citron as to her mental health, including suicidal ideation. He also noted that the medical opinion of Dr Citron was unchallenged by the respondent [43].
55. Whilst he has not expressly referred to the availability of treatment in Tanzania the Judge had regard to the cumulative effect of all the factors leading him to conclude that there would be very significant obstacles to her successful integration.
56. Whilst another Tribunal may have come to a different conclusion, the findings and conclusions are sustainable on the evidence produced and are neither irrational or perverse. The grounds amount to a disagreement with the conclusions reached by the Judge and seek to re-argue the case.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any material error of law and the decision shall stand.

No anonymity direction is made.

Signed

Date 18 July 2016

Deputy Upper Tribunal Judge C R Mailer