



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/04624/2014

THE IMMIGRATION ACTS

Heard at Field House
On 13 January 2016

Decision Promulgated
On 14 January 2016

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

ROHINI CHENGUTUVAN

Appellant

and

ENTRY CLEARANCE OFFICER (CHENNAI)

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr C. Avery, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant appealed against the respondent's decision dated 26 March 2014 to refuse entry clearance as the spouse of Points Based System Migrant (her husband is a Tier 1 (General) Migrant with leave to remain until 23/01/17). The only reason given for refusing the application was the fact that the sponsor's bank statement did not show the requisite level of £600 for a continuous period of three months prior to the application.

2. The appeal was listed for hearing on 16 January 2015. On 14 January 2015 the Tribunal sent a notice to inform the appellant and the sponsor that the hearing had been adjourned. The notice of adjourned hearing stated that the appeal was listed for hearing on Thursday 28 May 2015 instead. It appears that the notice was sent to the appellant's address in Chennai and to the sponsor's address in the UK.
3. There was no appearance by or on behalf of the appellant at the hearing on 28 May 2015. First-tier Tribunal Judge Beg ("the judge") proceeded to determine the appeal because she was satisfied that the hearing notice had been properly served. She went on to dismiss the appeal in a decision promulgated on 04 June 2015. She considered the bank statement produced with the application, and the explanation provided in the grounds of appeal as to why the funds had fallen short, but concluded that it was still the case that the evidence did not meet the requirements of Appendix E of the immigration rules.
4. The appellant appealed the decision on the ground that she was told two days before the hearing on 16 January 2015 not to attend. They did not receive any further communication from the Tribunal and were unaware of the further hearing that took place. First-tier Tribunal Judge Colyer granted permission to appeal to the Upper Tribunal on the ground that it was arguable that there wasn't a fair hearing if they did not receive the hearing notice.

Decision and reasons

5. There was no appearance by or on behalf of the appellant at the hearing today. No explanation was provided for the sponsor's absence. I was satisfied that the file showed that a hearing notice was sent to the address given on the appeal form (the appellant's correspondence address now being the sponsor's address).
6. The notice of adjourned hearing dated 14 January 2015 is on the Tribunal file. The date is consistent with the short notice that the appellant said she received of the adjourned hearing because it is dated two days before the scheduled hearing. It is unclear whether a member of staff also telephoned the appellant or her sponsor on 14 January 2015 to inform them that the hearing on 16 January 2015 had been adjourned. The notice was sent to the appellant's and the sponsor's addresses. There is nothing on the file to indicate that it wasn't sent out in accordance with the usual Tribunal procedure. It is of course possible that there could have been an error and, for whatever reason, the hearing notice might not have been sent out. Less likely is the possibility that neither the appellant nor the sponsor received the notice due to a postal issue.
7. If there was any evidence to show that the appellant was likely to have been prejudiced by lack of notification of the hearing on 28 May 2015 I might have taken a view. However, in this case there is no evidence to show that the appellant had been preparing for the appeal hearing on 16 January 2015. No further evidence was sent to the Tribunal in preparation for the hearing. The appellant's grounds of appeal explained that her husband had recent expenses that meant that the balance in his account had dropped below £600 during the specified period but that merely served

to explain why the evidence was inadequate. Nothing in the grounds of appeal or the evidence showed that the respondent had been wrong to refuse the application for the reasons that she did. While it was unfortunate that the balance in the sponsor's account dropped below the specified level of funds for a short period in three months preceding the date of the application, because the account usually maintained a healthy balance, it is nevertheless the case that the evidence simply didn't meet the requirements of the immigration rules.

8. There was no appearance on behalf of the appellant at the hearing and no further arguments have been put forward that disclose any other material error of law in the First-tier Tribunal decision. Given the passage of time it might well be the case that the appellant made a further application for entry clearance rather than wait for the outcome of the appeal, in which case she should have withdrawn this appeal.
9. For the reasons given above I conclude that, even if the appellant was unaware of the further hearing date, it is difficult to see what the sponsor could have added in terms of evidence if he had attended the hearing. Even if there is a perceived unfairness I find that it is not material to the outcome of the appeal. The bank statement simply didn't meet the requirements of the immigration rules and the appeal would have been dismissed in any event.
10. I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law. The decision shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The First-tier Tribunal decision shall stand

Signed 

Date 13 January 2016

Upper Tribunal Judge Canavan