



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/16033/2016

THE IMMIGRATION ACTS

Heard at Field House
On 15 June 2018

Decision & Reasons Promulgated
On 29 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MRS FADUMA SAYID OSMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Ofei-Kwatia, Counsel instructed by Push Legal Services
For the Respondent: Ms Julie Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals on procedural fairness grounds from the decision of the First-tier Tribunal dismissing her appeal against the decision of an Immigration Officer at Heathrow Airport on 13 June 2016 to cancel her previous grant of ILR, pursuant to paragraph 321A of the Immigration Rules, and to refuse her leave to enter the UK in accordance with paragraph 2A(8) and (9) of Schedule 2 to the Immigration Act 1971.

The Reasons for the Grant of Permission to Appeal

2. On 23 April 2018, Designated Judge McDonald granted permission to appeal for the following reasons: *“The appellant is a citizen of Somalia whose appeal was dismissed by First-tier Tribunal Judge Beg in a decision promulgated on 28 November 2017. The grounds of application contend that the appellant was not present at the hearing due to a lack of*

understanding and mental health breakdown on the day of the hearing. The grounds identified various actions taken to inform the Tribunal of the position. While no fault is attached to the Judge, the grounds indicate that it is arguable that the appellant was a victim of procedural unfairness."

Relevant Background

3. The appellant is a national of Somalia. She has operated under two different identities, according to the respondent. In her identity as Faduma Sayid Osman, her date of birth is 1 December 1974. She claimed asylum in this identity in 2001, and she was granted indefinite leave to enter in this claimed identity on 12 November 2010.
4. The Immigration Officer cancelled the appellant's ILR for two reasons. The first was that there had been a material change of circumstances since the grant had been made. This arose from the fact that on 23 February 2013 the appellant had entered the UK using a Dutch Identity Card which was not hers, and she was subsequently convicted of an offence of fraud in connection with this conduct, and she received a term of imprisonment of 12 months which was suspended for two years.
5. The second reason for cancelling the appellant's ILR that it had been obtained on a fraudulent basis. The evidence for this was that the appellant had applied for entry clearance to the UK in Abu Dhabi in 2011, relying on a Somali passport which had been issued to her in Abu Dhabi on 28 November 2010 in the name of Fatima Osman Abdi, whose date of birth was 1 January 1965. Her (unsuccessful) application for entry clearance in this alternative identity was supported *inter alia* by a copy of her husband's UAE passport, issued to him on 16 May 2010, copies of bank statements from a bank account which she had with the National Bank of Abu Dhabi, and a United Arab Emirates residence permit for her as the wife of her husband. The representations which had been made in her application included the fact that she had lived in Abu Dhabi for most of her life, and she had been working in Abu Dhabi since 2006.
6. The Immigration Officer was satisfied that Faduma Osman Abdi was the same person as Faduma Sayid Osman, because the photographs and fingerprints taken for the respective applications were a complete match. It was therefore evident that the two identities were "*the same person.*"
7. The appellant was interviewed about the alleged frauds in October 2013 (Appendix F). She said that she had been suffering from depression for 2-3 years and was taking anti-depressant medication prescribed by her GP. She confirmed that she was happy to continue with the interview despite her condition. She admitted that she had entered the UK from Belgium using an identity card which she knew did not belong to her. She said she was married with two children aged 14 and 16. They were with her husband. They were not in Somalia, but they might be in Ethiopia. She denied that she had ever lived in Abu Dhabi, or that she had been fingerprinted in Abu Dhabi. She denied that she had held herself out as being Fatima Osman Abdi, and in effect denied that the fingerprints given by a person of this name were her fingerprints,
8. The appellant was given a further interview on 13 June 2016 (Appendix G). She confirmed that she was fit and happy to be interviewed. She said she was living alone

in a rented flat in London W10. She said she was now separated from her husband. She identified her health problems as being asthma, depression, allergies and hearing problems.

9. The decision to cancel her existing leave and to refuse her entry was served on her in person.
10. The appellant instructed legal representatives, MAAS in Southall, who filed grounds of appeal that were purely formulaic. They asserted that the decision was unlawful, without any giving any particulars as to why it was unlawful.
11. In response to the appellant's purely formulaic grounds of appeal against the decision to cancel her ILR, a Chief Immigration Officer prepared an explanatory statement dated 18 April 2017.
12. By a notice issued on 22 June 2017, which was posted to the appellant at her last known address (and also posted to her nominated legal representatives, MAAS), the Tribunal notified the appellant and her nominated legal representatives that the hearing of her appeal would take place on 13 November 2017 at 10am at Taylor House.
13. The notice of hearing contained directions that the appellant should send to the Tribunal and to the Presenting Officer's Unit all documents on which she wished to rely in support of her appeal, as soon as they were available, as the respondent would review all the evidence that she submitted before the hearing of her appeal.
14. No documents were filed by MAAS or the appellant in response to the directions.
15. On 17 August 2017, Dr Dhanjal of the Coleville Health Centre in London W11, prepared a medical report on the appellant addressed: "*To Whom it may Concern*". He said that he was writing the report to provide some medical information for the appellant. She suffered from a severe mental illness for which she was under the care of the Mental Health Team. She had been allocated a Care Coordinator who assisted her in the community with her social and housing issues. She was taking anti-psychotic medication and medication for her depression on a daily basis in order to help control her symptoms. "*In the past*", when she had become unwell, she had presented with paranoid delusions, hearing voices and not eating. She had reported suicidal ideation in the past, although currently she had no plans or intent to harm herself. She had also had extensive psychotherapy for her mental health in the past.

The Hearing Before, and the Decision of, the First-tier Tribunal

16. The Judge's record of proceedings shows that, so far as the Tribunal was concerned, MAAS was still the appellant's nominated representative. There was no appearance by or on behalf of the appellant, but there was an appearance by Ms Lambert on behalf of the respondent. The Judge noted that the appellant had not attended the hearing, but that the notice of hearing dated 22 June 2017 had been properly served. So she proceeded to determine the appeal "*upon the available evidence in the file.*"

17. In her subsequent decision, Judge Beg held that the notice of hearing had been properly served, but that the appellant had chosen not to attend the hearing of the appeal to provide further evidence.
18. The Judge treated the appeal as one to which the old statutory regime applied, which was the stance taken by the representatives who had pleaded the grounds of appeal on behalf of the appellant. She found that the case for the respondent was made out. She found that the cancellation of the appellant's leave under paragraph 321A of the Immigration Rules was in accordance with the law.

The Hearing in the Upper Tribunal

19. At the hearing before me to determine whether an error of law was made out on procedural fairness grounds, Ms Ofei-Kwatia relied on the documents exhibited to the application for permission. These included the medical report of 17 August 2017 and a letter from the North Kensington Law Centre (NKLC), which had apparently been faxed to the Tribunal at 16:22 on 13 November 2017. (The hearing before Judge Beg had taken place at 11:00am earlier that day.)
20. NKLC said that they had received instructions from the appellant via her Support Worker at the Daeihye Somali Development Organisation that she had not attended her hearing today, and that the Support Worker had called the Tribunal to advise them of this fact.
21. NKLC had been approached by her on 26 October 2017 with regard to her appeal. It was apparent that she suffered from mental health issues. They advised that they would apply for exceptional case funding for the appeal, but they needed the refusal decision, and once they had received that they could apply for funding and go on record with the Tribunal. They said that they had not received the refusal letter, and so they had not gone on record.
22. They asked for an adjournment of the hearing that was listed for that morning, and for the Judge not to determine the appeal. Although they had advised that she attend the Tribunal that afternoon, she had been unable to do so alone. They were attaching a medical report outlining her mental health problems. (This was the medical report to which I have previously referred.)
23. They confirmed that they would represent the appellant if they were successful in obtaining exceptional case funding from the LAA.
24. The appellant was present at the hearing before me. I established that the person sitting next to her was not a Support Worker, but a friend. She was present for most of the hearing, but she left towards the end as she wished (so she told me) to smoke a cigarette.
25. Ms Isherwood submitted that the appellant had not been deprived of a fair hearing, because she had had plenty of opportunity to put forward the medical report which had been obtained in August 2017, either to support an application for an adjournment in advance of the hearing, or for the purposes of supporting a human rights claim on medical grounds. On analysis, there was in fact no evidence that the appellant was too

ill to attend the hearing on the day in question, and there was also no satisfactory explanation as to why she had not attended the hearing with her Support Worker, if the presence of that Support Worker was required.

26. In reply, Ms Ofei-Kwatia pointed out that there had been a time-lag between the hearing of the appeal and the promulgation of the Judge's decision, which was dated 22 November 2017. The Judge had, nonetheless, made no reference to the adjournment application which had been made after the event. She submitted that the Judge might have changed her mind if she had seen the medical report.

Discussion

27. On the particular facts of this case, I am not persuaded that the appellant has been a victim of procedural unfairness.
28. In the build-up to her appeal hearing, the appellant had access to legal advice from MAAS and she also had a consultation with NKLC in October 2017. Notwithstanding this, no application was made in advance of the hearing for an adjournment on the grounds that (a) the appellant lacked capacity, or (b) that she was too ill to appear as a witness; or (c) because more time was required to explore whether the appellant was eligible for exceptional case funding; or (d) more time was required to explore the possibility of the appellant advancing an Article 3 claim on mental health grounds.
29. Email correspondence between NKLC and MAAS following the hearing reveals that the reason why MAAS had not prepared and served on the Tribunal and the respondent a detailed statement from the appellant containing her account of the facts was that, "*she had repeatedly missed her appointments for this purpose*" (email of 20 November 2017).
30. The evidence seen by the Judge showed that the appellant had presented as suffering from severe depression in 2013, for which she took a tablet during the interview. The same evidence showed that the appellant nonetheless had capacity and that she was able to understand the questions put to her in both the 2013 and 2016 interviews, and to give lucid and intelligible responses to these questions. The medical report of August 2017 contains a diagnosis of the appellant suffering from a long-standing "Schizoaffective Disorder-depressive type" illness for which she is prescribed anti-psychotic medication to help control her symptoms. The implication is that her symptoms are well-controlled, and that her episodes of paranoid delusions and suicidal ideation lie in the past. The report does not show that the appellant was unfit from a mental health perspective to attend the hearing of her appeal in the First-tier Tribunal, and nor does it show that a likely reason for her not attending was a lack of understanding on her part.
31. The situation which confronted the Judge was one in which the appellant had not advanced any case at all by way of appeal. Moreover, even now, the appellant has not, through her current representatives, formulated the case which hypothetically she would have wished to put to the First-tier Tribunal.
32. In the circumstances, it cannot reasonably be contended that the appellant was deprived of a fair opportunity to present her case to the First-tier Tribunal, or that, by

the appeal proceeding in her absence, the appellant was deprived of a fair hearing in the First-tier Tribunal.

33. This is particularly so in circumstances where all that Judge Beg purported to do was to address the specific issues raised in the notice of refusal of leave to enter. Judge Beg did not make any finding on the question of whether the appellant's removal to Somalia or the United Arab Emirates would be an infringement of her human rights, as this was not an issue that was before her.
34. It is open to the appellant to obtain an up-to-date medical report in support of a new human rights claim based upon her mental ill-health. I emphasise the word "*new*" because such a claim was not intimated in the interview which was conducted with the appellant in June 2016 (when she said she was living alone - and hence by implication independently); or in the grounds of appeal to the First-tier Tribunal, or indeed in the retrospective application for an adjournment of a hearing which had already taken place. For the medical report of August 2017 was solely relied upon by NKLC as providing an excuse for the appellant's non-attendance.
35. For the above reasons, it has not been shown that there has been a procedural irregularity or that the appellant has been deprived of a fair hearing in the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

I make no anonymity direction.

Signed

Date 26 June 2018

Judge Monson
Deputy Upper Tribunal Judge