



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/21729/2014

THE IMMIGRATION ACTS

Heard at Field House
On 2 February 2015

Decision & Reasons Promulgated
On 12 February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MR SANMI ADEMOLA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance by or on behalf of the appellant
For the Respondent: Mr N Bramble, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Grant-Hutchison sitting at North Shields on 1 July 2014) dismissing his appeal on the papers against the decision by the Secretary of State to refuse to grant the appellant ILR as the spouse of a person present and settled here. The First-

tier Tribunal did not make an anonymity direction, and I did not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

2. The appellant is a national of Nigeria, whose date of birth is 9 September 1981. He entered the United Kingdom on 14 October 2007 with valid entry clearance as a student. Following a successful appeal, he was granted leave to remain as a Tier 4 (General) Student on 19 January 2011 with leave valid until 31 October 2011. While the student leave was current, the appellant made a successful application for limited leave to remain as a spouse of a settled person. He was granted limited leave to remain in this capacity from 30 August 2011 until 30 August 2013.
3. On 16 August 2013 the appellant applied for ILR. On 23 December 2013 the appellant and his spouse were requested to attend an interview on 21 January 2014 in Liverpool. In the invitation letter from the permanent migration interview team he was told that if he was unable to attend the interview, this should be indicated on the interview reply form. The interview would only be rearranged in the most serious of circumstances (for example, certified sickness of either him or his spouse or serious transport disruption). If he failed to attend for any other reason other than medical, without prior agreement, this might result in his application being refused as provided for in paragraph 322 of the Immigration Rules. If he was unable to attend due to a medical reason, then he should inform the team prior to interview. A medical certificate stating the full nature of the illness had to be provided within five days of the interview date.
4. On the day scheduled for the interview, the appellant's solicitors apparently provided a psychological report in respect of the sponsor dated 13 January 2014. In an e-mail sent just before midday on 21 January 2014 Chancery CS Solicitors said they were attaching a medical report for "Sinmi Ademola". They said they were also attaching photographs and other documents as proof of their client's continuous relationship. The team were invited to take a decision based on the information provided "as our clients are unable to attend because of this medical condition".
5. The respondent did not proceed to take a decision on the application, but gave the appellant and his spouse another opportunity to attend a marriage interview. A letter of invitation was sent on 19 March 2014 requesting the appellant and his spouse to attend a marriage interview in Liverpool on 2 April 2014. On the day scheduled for the interview, or the day before, the appellant's solicitors apparently sent an updated report from Dr Tony Ogefere of Lighthouse Holistic Community Services, a registered charity. He described himself as emeritus clinician-in-chief. He referred to his earlier psychological report on the mental wellbeing of the sponsor. He said that her mental and physical health concerns have recently become very fragile and exacerbated by "your continued demand for the couple to attend for interview". Coincidentally, a follow up therapeutic session had been scheduled for Wednesday 2 April 2014. So he prayed that they would kindly excuse the couple's attendance at the Liverpool offices tomorrow "in the hope of forestalling inpatient hospitalisation".

6. On 11 April 2014 the Secretary of State gave her reasons for refusing the appellant's application for ILR. The application was refused on two grounds. Firstly, the application was refused under paragraph 322(10) of the Rules because the appellant had failed, without providing a reasonable explanation, to comply with a request made on behalf of the Secretary of State to attend for interview. Secondly, as a result of failing to attend the marriage interview on 21 January 2014 and 2 April 2014 to support the application, the appellant had failed to show that he was still in a subsisting relationship, and that the parties intended to live together permanently as husband and wife.

The Decision of the First-tier Tribunal

7. The appellant elected for his appeal to be determined on the papers. His solicitors compiled an appellant's bundle which included an unsigned witness statement from the sponsor, and the communications from Dr Tony Ogefere to which I have referred earlier.
8. In his subsequent decision, the judge observed that the grounds of appeal did not specifically explain why the appellant had not attended the interviews. He referred to the report of Dr Ogefere dated 13 January 2014, and said the report did not explain why the appellant did not attend another interview himself without his spouse. He also observed that the report itself was an unusual document. The preamble referred to the author in the third person, and yet he appeared to be the originator of the report. The report had many unusual usages of syntax and grammar. The judge further found that the report did not specifically state why the sponsor could not attend a marriage interview.

The Application for Permission to Appeal

9. The appellant's solicitors applied on the appellant's behalf for permission to appeal to the Upper Tribunal on the grounds that the decision was vitiated by a material error of law. The only issue before the judge was whether or not the appellant attended the marriage interview; and if not, whether any reason was given for not attending. Pages 28 to 32 of the appellant's bundle contained correspondence between the appellant's representatives and the respondent in relation to the reasons why the appellant could not attend the interview. Page 31 contained an e-mail in which the respondent confirmed receipt of the appellant's medical report as being the reason for not attending the interview. So the judge made an error of law in not accepting the evidence provided by the appellant.
10. Further, the non-expert opinion given by the judge for not accepting the letter and report from Dr Ogefere amounted to making perverse or irrational findings. The judge appeared not to have read the medical report before concluding the report did not specifically state why the appellant could not attend the interview.

The Initial Refusal of Permission

11. On 14 August 2014 Judge P J M Hollingworth refused to grant permission. The judge had made findings of fact open to him. No error of law was disclosed which would lead to a different outcome.

The Eventual Grant of Permission

12. Following a renewed application for permission to appeal to the Upper Tribunal, Upper Tribunal Judge Clive Lane granted permission to appeal on 16 December 2014 for the following reasons:

The appellant did not attend two interviews on 21 January and 2 April respectively. The First-tier Tribunal at [8] considers (and rejects) the reasons given for not attending the first interview but is silent as to the second. It is arguable that the judge has overlooked the evidence at pages 28-32 of the appellant's First-tier Tribunal bundle which includes an e-mail from the permanent migration interview team noting the appellant's reason for not attending the 2 April interview. All grounds may be argued.

The Hearing in the Upper Tribunal

13. The appeal was listed for an oral hearing, but on 30 January 2015 the appellant's solicitors wrote to the Upper Tribunal asking for the appeal to be determined on the papers. Accordingly I proceeded to hear the appeal in the absence of representation from the appellant. I reviewed with Mr Bramble the correspondence that had passed between the appellant's solicitors and the permanent migration interview team, and the contents of Dr Ogefere's report dated 13 January 2014.

Discussion

14. Mr Bramble voiced concern that the refusal letter was problematic. The problem as he saw it was that the respondent had not specifically engaged with the excuse given by the sponsor for not attending either marriage interview; or with the psychological report from Dr Tony Ogefere. He drew my attention to the fact that paragraph 322(10) is not a mandatory ground of refusal, but a discretionary ground.
15. On the other hand, Mr Bramble submitted that it was not clear from the disclosed e-mail correspondence that the psychological report had actually been received. Moreover, even if it had been received, there were legitimate concerns about its status and probative value.
16. Although I take Mr Bramble's concerns into account, it is necessary to keep in mind that the issue before me is whether the First-tier Tribunal Judge erred in law in his disposal of the appeal, having regard to the evidence that was before him and the way in which the appeal was presented.
17. It was not part of the appellant's case before the First-tier Tribunal that the appeal should be allowed on the limited ground the decision appealed against was not in accordance with the law, and that the application should be remitted to the Secretary

of State for a lawful decision. The stance taken by way of appeal was the same as the stance taken when failing to attend for the marriage interviews; namely, that the Secretary of State/judge should find that the marriage was genuine and subsisting *solely on the basis of documentary evidence of continuing cohabitation*, and that the appellant and the sponsor had a good excuse for not submitting themselves for questioning.

18. It is apparent from the contents of paragraph [8] of his decision that the judge recognised that the issue before him was not a complete failure to give an explanation for the non-attendance at the marriage interviews, but whether the excuse proffered was a reasonable one.
19. It was not suggested that the appellant had any psychological problems. The report only related to the sponsor's mental health. So it was clearly open to the judge to find that the psychological report in respect of the sponsor did not explain why the appellant had not attended on his own. While his attendance without his spouse would have been far from satisfactory, it would have not been futile. It would have been an opportunity for the appellant to be questioned about his relationship with his wife and about the alleged mental health problem which prevented her from attending with him. So the fact that the appellant had used the excuse of his wife's illness not to attend himself was a factor reasonably relied upon by the judge as damaging his credibility.
20. With regard to the explanation for the non-attendance of the sponsor, the ultimate issue for the judge was whether the appellant had discharged the burden of proving that the excuse proffered was a reasonable one. Although the judge's reasoning on this question could have been better expressed, it is tolerably clear that his answer to this question was in the negative.
21. It was open to the judge to find that Dr Ogefere did not specifically explain why the sponsor could not attend the marriage interview on 21 January 2013. Apparently, the trigger for Dr Ogefere being asked to prepare a report was the sponsor having a panic attack when the letter inviting the couple to attend the marriage interview arrived in December. The family doctor prescribed her with citalopram at ten mg, and the doctor had increased the daily dosage to 25mg by the time that the couple were seen by Dr Ogefere on 13 January 2014. Dr Ogefere did not attempt to explain why the medication which the sponsor had received, and would continue to receive, would not enable her to attend the marriage interview which was scheduled to take place over a week later.
22. Moreover, Dr Ogefere described the sponsor as suffering from a number of life threatening traumas, of which the invitation to an interview was the final straw. But nowhere in his report is any other "life threatening trauma" actually identified. So, on the face of it, Dr Ogefere was purporting to diagnose the sponsor as suffering from severe PTSD simply on account of her receiving a letter asking her to attend a marriage interview with her husband. Dr Ogefere did not include in his report an acknowledgement of his duty to the Tribunal to be impartial.

23. For all the above reasons, it was open to the judge not to treat Dr Ogefere's evidence as being probative of a serious medical condition on the part of the sponsor which genuinely prevented her from attending either the marriage interview on 21 January 2014 or the rescheduled interview on 2 April 2014.
24. Although the judge does not address the explanation proffered by Dr Ogefere for the sponsor's non-attendance at the second interview, this is not material as the underlying excuse remained the same; and the underlying excuse remained wholly unsatisfactory.
25. Furthermore, even if the judge failed to give adequate reasons for finding that paragraph 322(10) applied, it is clear from the judge's discussion of the alternative Article 8 claim that the judge also found that the appellant had not shown that his marriage to the sponsor was genuine and subsisting as at the date of the hearing before him. This was clearly a finding that was open to him on the evidence, and in the light of the fact that the appellant had elected not to give oral evidence in support of his appeal. So any error of law was not material to the outcome.

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.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Monson