



IAC-AH-LEM-V1

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

Appeal Number: IA/44281/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 13 November 2015**

**Decision & Reasons Promulgated
On 25 November 2015**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

**MRS SOHINIBEN NIRAVBHAI BAROT
(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 appellant

For the Respondent: Mr S Staunton, HOPO

DECISION AND REASONS

1. The appellant is a citizen of India born on 25 October 1985. On 27 October 2014 she applied for entry clearance to enter the UK as a visitor to visit her husband, Mr Niravbhai Baharatkumar Barot. Entry clearance was subsequently granted from Mumbai on 10 November 2014, valid until 10 May 2015.
2. On 15 November 2014 leave to enter was refused and entry clearance was cancelled. This was on the basis that either false representations were employed or material facts were not disclosed for the purposes of

obtaining entry clearance, or there was a change of circumstances. Home Office records demonstrated that the sponsor had no valid leave to remain in the UK and was expected to be removed.

3. First-tier Tribunal Judge Lloyd proceeded with the hearing in the absence of the appellant or her representative. He dismissed the appeal

4. Permission to appeal the judge's decision was given on the following basis.

“The substance of the grounds relate to a procedural irregularity. The hearing took place on 23 February 2015. I read the file and the appellant's representatives Marks and Marks Solicitors went on record on 24 November 2014. However the correspondence on the file records that in answer to a further letter from the said solicitors on 5 December, a letter was sent to them stating that the records would be updated to show them as acting and stating that they would be notified of the hearing 'in due course'. The date of that letter was 13 January 2015. The notice of hearing was sent the following day on 14 January 2015 to the previous solicitors which lent some support to the account given in the grounds that the file was not updated until 30 January 2015. However there is a notice on file which was sent to the solicitors ten days later on 23 January 2015 for the hearing. There is no reason to believe that the solicitors would assert that they had not received the notice.

On the basis of the above I consider it is arguable that there may have been a procedural irregularity and this is particularly so as the appellant was detained but there was no evidence that there was ever any consideration given to her production, even if she was not to be represented. However in view of the lack of evidence attached to the grounds, the appellant's representatives will be expected to provide evidence from their files concerning the assertions made in the grounds as to the non-service and the preparation they had done on the appellant's basis for the hearing.”

5. On 11 November 2015 a fax was received from Marks and Marks Solicitors informing the Upper Tribunal that they had been unable to take instructions from Mrs Barot in relation to today's hearing. They were specifically asked by the Tribunal to clarify whether as a result they were no longer representing Mrs Barot and there has been no response from Marks and Marks. In any event, they failed to attend the hearing.

6. Although the appellant was in immigration detention when her appeal came before the judge on 23 February 2015, notice of today's hearing was sent to her at 3 [-], which suggests that the appellant is no longer held in immigration detention. She failed to appear at today's hearing. I had no explanation for her non-appearance.

7. The sole issue in this case is procedural irregularity, in that, did the judge act fairly in proceeding with the hearing in her absence of the appellant. As her current solicitors Marks and Marks have not had instructions from

her and did not appear at the hearing, I had no evidence from them as to whether or not they received the notice for the hearing on 23 February 2015 which was sent to them on 23 January 2015. It was claimed that the appellant did not receive notification of the hearing when she was at the detention centre. The appellant did not attend today's hearing to confirm this claim.

8. In the absence of evidence to confirm that there was indeed procedural irregularity, I find that the judge did not err in law in proceeding with the hearing in the absence of the appellant and her representatives.
9. The judge's decision shall stand.

Signed

Date

Upper Tribunal Judge Eshun