



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00928/2017

THE IMMIGRATION ACTS

Heard at Field House
On 25 July 2018

Decision & Reasons Promulgated
On 21 August 2018

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

LETICIA TIEKUBEA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative and no appearance

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Ghana who was born on 28 December 1984. She entered the United Kingdom on 7 February 2013 with leave to remain as a student valid until 30 October 2014. On 21 November 2014, the appellant was granted further leave to remain until 4 April 2016.
2. On 2 April 2016, the appellant applied for leave to remain as a partner on the basis of her marriage to a British Citizen, [FB], whom she had married on 8 March 2016.

3. On 26 September 2016, the Secretary of State refused the appellant's application for leave under Appendix FM of the Immigration Rules on the basis that the marriage was not "genuine" and that she and her husband did not intend to live together permanently as husband and wife.
4. The appellant appealed to the First-tier Tribunal. The appeal was heard by Judge Plumtre on 28 March 2018. She dismissed the appellant's appeal on the basis that she was also not satisfied on the evidence that the appellant's marriage was "genuine and subsisting". She concluded that it was, in fact, a "sham".
5. The appellant sought permission to appeal to the Upper Tribunal on the basis that her legal representatives had been incompetent in advising her (acted "improperly, recklessly and negligently") as to what evidence and witnesses to put before the judge, and in their preparation of her appeal.
6. On 14 May 2018, the First-tier Tribunal (Judge I D Boyes) granted the appellant permission to appeal.
7. The appeal was listed before me on 25 July 2018. The appellant is no longer represented and, despite putting her case back in the day's list, she did not appear at 12.40 at Field House.
8. Mr Tufan, who represented the Secretary of State, invited me to deal with the appeal in the appellant's absence under rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended). I was satisfied that the appellant had been given notice of the hearing dated 26 June 2018 and sent to the address on the Tribunal's file which Mr Tufan confirmed was also the last address given to the Home Office. I also considered it in the interests of justice to proceed with the hearing.
9. Mr Tufan submitted that the appellant's grounds were simply not made out. There was no challenge to the substance of the judge's decision; only that the legal representatives had incompetently prepared her appeal. The grounds made reference to there being an absence of witnesses to testify as to the genuineness of the relationship; a failure to prepare a proper bundle of documents; and that there were no witness statements at the hearing which had to be drafted by the appellant's barrister under immense pressure.
10. Mr Tufan submitted that there was no supporting witness statement from the appellant, nor any evidence that the allegations of misconduct by the appellant's representatives had been put to them and any response received. He referred me to the decision of the Immigration Appeal Tribunal in BT (Former solicitors' alleged misconduct) Nepal [2004] UKIAT 00311 where in the headnote it is stated:

"If an appeal is based in whole or in part on allegations about the conduct of former representatives, there must be evidence that those allegations have been put to the former representative, and the Tribunal must be shown either the response or correspondence indicating that there has been no response."

11. In the absence of any such evidence, Mr Tufan invited me to dismiss the appellant's appeal.
12. In my judgment, the appellant's appeal cannot succeed.
13. First, as Mr Tufan submitted, in accordance with BT (Nepal), there is no supporting evidence to corroborate or engaged with the allegation that the appellant's previous legal representatives advised the appellant "improperly, recklessly and negligently".
14. Secondly, in any event, it is plain that the allegations are not made out. The appellant was represented by Counsel at the hearing – no allegation of impropriety by her is made. She did not seek an adjournment at the hearing on the basis that the appellant's appeal could not be fairly dealt with on the material available. Further, a bundle of documents (running to some 141 pages) was provided at the hearing, together with two written witness statements from the appellant and her husband. They may only have been served on the morning of the hearing, but they were available and the judge made specific reference to them. It would appear from the judge's determination (at para 7) that the appellant's Counsel wished to add to those statements in order to deal more fully with the Secretary of State's criticism of the answers given by the appellant and her husband in their marriage interview. The judge gave the appellant and her legal representative time to provide further statements in manuscript which, as is readily seen in the file, were added to the typed witness statements themselves. There is no suggestion that the appellant's Counsel considered that this was other than an adequate adjournment in order that the appellant and her husband's evidence could be 'put in order' for the purposes of the hearing. Finally, the judge did make reference at para 28 of her determination to the absence of "friends and family members" attending to give evidence or provide letters of support. There is no evidence, however, that this was due to the incompetence of the appellant's legal representatives. Indeed, at para 27, the judge notes the evidence of both the appellant and her husband that:

"no friends know of our relationship although his friends are aware that he is married to someone and that his friends have not met or spoken to the appellant... as he has been busy and prefers to keep this relationship private and that his friends are not aware that he has had a long-term partner since October 2015."

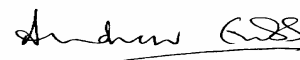
15. It is difficult, given this evidence, to see what supporting evidence the appellant claims she was unfairly deprived of presenting by the alleged incompetence of her legal representatives.
16. The grounds do not seek to challenge the substance of the judge's decision and her reasoning; only that the proceedings were unfair because of her legal representatives' incompetence or worse. That ground is not made out on the evidence.

Decision

17. For these reasons, the judge's decision to dismiss the appellant's appeal did not involve the making of any error of law. Her decision to dismiss the appellant's appeal stands.

18. The appellant's appeal to the Upper Tribunal is, accordingly, dismissed.

Signed

A handwritten signature in black ink that reads "Andrew Grubb". The signature is written in a cursive style and is underlined.

A Grubb
Judge of the Upper Tribunal

13 August 2018