



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05665/2017

THE IMMIGRATION ACTS

Heard at Field House
On 13 August 2018

Decision & Reasons Promulgated
On 04 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MS (JAMAICA)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person.
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of the First-tier Tribunal (Judge Keith sitting at Hatton Cross on 2 March 2018) dismissing on the papers her appeal against the decision of the respondent to refuse to grant her leave to remain as a person who had a well-founded fear of serious harm on return to Jamaica, having witnessed a murder there in 1988; or leave to remain on the alternative basis that she had accrued at least

20 years' continuous residence in the UK since entering the country under a false identity in 1995.

2. Although First-tier Tribunal Judge Keith did not make an anonymity direction, the First-tier Tribunal Judge who granted permission to appeal to the Upper Tribunal made such a direction, and I was not invited to discharge it.

The Reasons for the Grant of Permission to Appeal

3. Permission to appeal was granted by First-tier Tribunal Judge PJM Hollingworth, as he considered that it was arguable that the appellant had been deprived of a fair hearing in the First-tier Tribunal, albeit that it was the appellant's election to have her appeal decided on the papers, without a hearing. Judge Hollingworth's reasoning included the following: *"In the light of the material referred to in the permission application, it is arguable that the Judge was not in possession of the extent of the evidence provided by or on behalf of the Appellant."*

The Rule 24 Response

4. On 23 July 2018 Chris Howells of the Specialist Appeals Team settled the Rule 24 response opposing the appeal. He submitted that the First-tier Tribunal Judge had directed himself appropriately. He had considered the documentary evidence before him and had made properly reasoned findings on the various issues raised by the appeal. It was the appellant's choice that her appeal should be determined without an oral hearing.

The Hearing in the Upper Tribunal

5. At the hearing before me to determine whether an error of law was made out, the appellant appeared in person to present her case. I explained to her the ground on which the respondent opposed her appeal. She agreed that she had chosen to have her appeal determined on the papers. She explained that she thought that all the documentary evidence which she had provided to show at least 20 years' continuous residence would be enough - and that it would not be necessary for her to give oral evidence or for her to call her children or others as witnesses to confirm her continuous presence here since 1995. She agreed that she could have claimed asylum. But she had taken legal advice in the past, and the legal advice was to make a human rights claim under Articles 2, 3 and 8 ECHR, which is what she had done.

Discussion

6. The appellant's lengthy and articulate grounds of appeal to the Upper Tribunal are primarily an expression of disagreement with findings that were open to the Judge on the evidence that was before him. One notable exception to this is her complaint about the Judge's treatment of the medical records dating back to 1995, which the appellant relied on as establishing continuity of residence since that date.

7. At paragraph [18] of his decision, Judge Keith observed that while the appellant claimed to be in receipt of state benefits relating to her disabilities, she had not provided any detailed medical reports, or any detailed assessments that would have been undertaken for her to have received the disability-related state benefits. In her grounds of appeal to the Upper Tribunal, the appellant contended that this was not the case. She said that the findings of all her medical experts were in the medical file that was sent to the Tribunal, and the suggestion that some portion of "*my medical report*" was absent confirmed her belief that not all the evidence that she had sent to the Tribunal had actually been received by the Tribunal.
8. The appellant did not seek to make good this particular claim when presenting her case to me. In addition, the Judge's observation about the lack of supporting medical evidence for the alleged award to the appellant of disability-related state benefits was simply one of a number of adverse credibility points that the Judge identified in respect of the medical records relied upon by the appellant.
9. He accepted that the appellant had disclosed GP records in "*the assumed name*" of Marjory Morgan. However, correspondence from the GP dated 4 May 2017 stated that someone under this name had been registered with the practice since 5 February 1995, whereas the appellant only claimed to have entered the United Kingdom in March 1995. The appellant also referred to multiple people using the assumed identity of Margery Morgan. Those doing so were relatives of the "*real*" Ms Morgan, who travelled on a separate passport of hers under her maiden name: "*In the context of GP registration prior to the appellant entering the United Kingdom and multiple users of Ms Morgan's identity, I was concerned about the reliability of the GP records, specifically the extent to which they were related to the appellant, rather than others, or the appellant and others. The records were not even internally consistent. An entry of 9 April 2015 referred to the appellant never having smoking, whereas in 1999, the records refer to the appellant as smoking 5 cigarettes a day. The GP records were also not up to date, as they related to the period up to 14 April 2016.*"
10. The Judge's conclusion on the topic of the appellant's continuous presence in the United Kingdom was contained in paragraph [28] of his decision. The Judge stated as follows: "*I treated the tax records and other documentation claimed to show a continuing presence in the United Kingdom with a significant degree of caution. The documentation was under an assumed false identity, possibly also used by others. On the appellant's own evidence, Ms Morgan's other relatives also used Ms Morgan's identity, and even did so to travel back to Jamaica using her passport. While the appellant claims continual presence without interruption, she has not provided the statements of any others confirming this. Almost all of the documentation is under a false identity, shared with others, and those others have travelled backwards and forwards to Jamaica. In the circumstances, I do not find that there is sufficient evidence to show that the appellant has been continuously in the United Kingdom since 1995, or for what periods she has been present here.*"
11. As I explored with the appellant in oral argument, she laid herself open to such a finding by the Judge by not electing for an oral hearing, where she could be asked questions about aspects of the evidence which troubled the Judge, and at which she would have had the opportunity to tender oral evidence from supporting witnesses

to corroborate her claim that, unlike Ms Morgan's relatives, she had not travelled to and from Jamaica using Ms Morgan's passport.

12. The upshot is that the appellant has not shown that she has been deprived of a fair hearing in the First-tier Tribunal. Judge Keith carefully and conscientiously analysed the documentary evidence that the appellant provided for her appeal, and he gave comprehensive and fully sustainable reasons for finding that she had not made out her case.
13. It is understandable that as a litigant in person she believed that she could succeed in her appeal simply on the basis of the documentary evidence which she had provided to the First-tier Tribunal: in particular, continuous tax records since 1996, and continuous GP records since 1995. However, she did not have a legitimate expectation that this evidence would carry the day in circumstances where she admitted having engaged in fraudulent impersonation of a British national (Marjory Morgan), and indeed (as she confirmed to me) where she had pleaded guilty to related fraud offences at Snaresbrook Crown Court in February 2017. She said that she was convicted of using a false passport and claiming benefits to which she was not entitled.
14. Although the appellant's appeal to the Upper Tribunal must therefore be dismissed, she still has the option of making an asylum claim in person, and Mr Clarke gave her the necessary contact details to enable her to do this. If the asylum claim is refused, the appellant will have an in-country right of appeal against the refusal of her protection and human rights claims and she can elect for an oral hearing of such an appeal.

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.

Direction Regarding Anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 26 August 2018

Deputy Upper Tribunal Judge Monson