



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

Appeal Number: HU/12779/2018

THE IMMIGRATION ACTS

Heard at Field House

On 11 March 2019

Decision & Reasons

Promulgated

On 29 March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**SAMANTHA [S]
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms C Cunha, Senior Presenting Officer

For the Respondent: Ms S Akinbolu, counsel instructed by Rashid & Rashid Solicitors

DECISION AND REASONS

1. In this decision the Respondent is referred to as the Claimant and the Appellant is referred to as the Secretary of State for the Home Department.
2. The Claimant, a national of Trinidad and Tobago, appealed against the Secretary of State's decision, dated 29 May 2018, to refuse her

application, which the Secretary of State recorded as being made on 30 January 2014, albeit the Claimant refers to the application as made at the middle or end of 2013. The application was based on her relationship with her husband who she had met in 2012 and married in 2013.

3. Her appeal against the Secretary of State's decision came before First-tier Tribunal Judge Freer (the Judge) who, on 18 January 2019, allowed the appeal on Article 8 ECHR grounds. The Judge's hearing, on 8 January 2019 was followed by a letter, dated 9 January 2019, which it was said was addressed to the Judge, by the Presenting Officer, Mr I Briant. The latter set out with reference to the Claimant's bundle various criticisms of the Claimant's evidence in terms of her relationship with her husband, a friend, and the extent to which the Claimant had presented herself as having no material family ties left in Trinidad and Tobago.
4. Other minor points were raised by Mr Briant which somewhat ironically arose from parts of the Claimant's bundle to which Mr Briant had objected to the Judge considering, because it referred to a new matter, which had not been considered by the Secretary of State. Therefore it was inappropriate to consider the matter or time to be spent presumably on this matter, which the Judge accepted
5. The case file does not show any copy of that letter having been received at all or around the 9 January 2019 nor was there anything to indicate that it was forwarded to the Judge to consider. It was common ground I think that the points raised by Mr Briant in his letter were not raised at the hearing before the Judge. Ms Akinbolu did not appear for the Appellant. The position was therefore that these criticisms for what they be worth were not aired before the Judge and when he was considering his decision his attention was not drawn to reading the documents, if he chose to do so, on those issues by the parties.
6. What was clear, before the Judge was that the Claimant's claim was that she had no relatives and family ties left in Trinidad and Tobago: A complete contradiction to the documents which asserted fact that her

mother was still alive in Trinidad as was her stepfather. In other material there was an assertion by the Claimant of regular contact being maintained by the Claimant with her family in Trinidad. The Judge plainly took at face value the assertion that the Claimant had no close family in Trinidad [D30] and similarly that her principal contact with family related to that within the United Kingdom [D30].

7. The Judge also had a considerable amount of evidence from the Claimant's husband and accepted the relationship to be as claimed. What the Judge did not have his attention taken to was correspondence emanating from the South West London and St George's NHS Mental Health Trust, dated 1 September 2017 (AB 130- 135) which adverted to the Claimant but made no reference whatsoever to the existence of a husband nor indeed other than to a friend of the Claimant's by the name of (Kieran) Ciaran who was playing a significant part in the Claimant's wellbeing, was a close friend with whom the Claimant had close and regular contact and Ciaran (Kieran) stayed overnight with the Claimant (AB128). Equally in the letter of 2 October 2017 (AB127-129) written from the same mental health trust there was a complete absence of reference to the Claimant's spouse or any significance of the uncertainties about her immigration status impacting on that relationship. Rather, the correspondence particularly addressed the wellbeing of the Claimant and referred to the daily contact the Claimant had with her mother in Trinidad. Ciaran attended the Claimant's health review on 27 September 2017
8. In a further letter from the Trust, following a review on 20 November 2017 (AB 136-139) again there was reference to the facetime contact the Claimant has with her mother several times a day and contact which the Claimant has on a regular basis with Ciaran (AB137). The letter if it was founded upon further investigations suggested that Ciaran was staying overnight with the Claimant in order to provide emotional support. There was no reference to her husband or partner's absence Ms Cunha essentially argued that the Judge, even though he did not have these matters taken to his attention, had proceeded, in the findings made on the

relationships, was misled and that errors of fact have led to an error of law even though the Judge was not aware of it. And it was concealed from him. It will be recalled the Claimant's statement said she did not have "... any memory or relationship with my parents ..." (AB2 para 3), "... My grandmother has raised me since birth ... as my own mother." (AB4 para 13) and had "... lost all ... family ties there." (AB7 para 27) The claimant signed a statement of truth that the contents were true to the best of her own knowledge and true, on 24 December 2018.

9. Ms Cunha relied upon the case of MM (Sudan) [2014] UKUT 00105 to argue in effect that the error was not so much an error of the Judge but the Judge proceeded in ignorance of material issues which affected the general credibility of the claim and could arguably have affected the outcome of the appeal. The argument was not particularly attractive, not least because the material was before the Judge in the sense in the Appellant's bundle, but the Judge was not taken to the issues or the conflict by either her representative or Mr Briant. The question I have to ask is whether those omissions and conflicting material are material to the outcome of the appeal and was the Judge's decision made under errors of fact which amounted to an error of law. It was difficult to form a view, without any criticism of the Judge, whether or not it would have made a material difference.
10. Having considered this matter there was the underlying difficulty that the Appellant's statement made for the purposes of the appeal was unequivocally asserting the absence of family and support from family in Trinidad whereas other evidence contradicted that. There was an unpleasant sense that the Judge was plainly and intentionally misled as to the Claimant's circumstances in Trinidad as well as the part her husband played in her life in the UK as opposed to Ciaran (Kieran) (AB 99) or others. On the other hand taking that for what it was worth the basis of the claim was ultimately driven by the issue of the relationship between the Claimant and her husband and the significance of his inability to return to Trinidad and Tobago. Inevitably part of that consideration was the extent

to which he and she could make a life for themselves together on a return there.

11. On balance I concluded, without certainty that a different decision could well be arrived at by another Tribunal, hearing the evidence and then making an informed choice as to whose claim was believed in terms of the material impact of return and Article 8 ECHR. To this end therefore I conclude with considerable reluctance that this is a case where there was material which had it been drawn to the Judge's attention could have led to a different decision in terms of the proportionality of returning to Trinidad and Tobago, the relationship between the Claimant and her husband and whether or not he could not return there with her as her spouse.
12. For these reasons with reluctance as I have identified it seemed to me that this was a case where there was at least an arguable material error of law. Accordingly the Original Tribunal's decision cannot stand. No findings of fact to stand unless otherwise agreed between the parties before the resumed hearing in the First-tier Tribunal.

NOTICE OF DECISION

13. The appeal of the Secretary of State is allowed to the extent that it needs to be remade in the First-tier Tribunal.

DIRECTIONS

- (1) List for hearing at Taylor House.
- (2) Not before First-tier Tribunal Judge Freer.
- (3) No interpreter required.
- (4) List for hearing two hours.

- (5) List with reference to Ms S Akinbolu's (Counsel) availability on 020 7797 7788.
- (6) List for a CMRH unless by correspondence it becomes unnecessary. The Respondent to indicate whether the new matter of the Appellant's health can be taken into account and if so whether the Respondent intends to produce a supplementary reasons for refusal letter.
- (7) The CMRH should be listed not earlier than six weeks from 11 March 2019.
- (8) No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Davey

Date 26 March 2019