



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001294

First-Tier Tribunal No: HU/55640/2021
IA/14056/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27th March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

NAJWA HASSAN KAMIS ADAM
(ANONYMITY ORDER NOT MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Forbes, Lifeline Options CIC

For the Respondent: Miss Rushforth, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 6 March 2024

DECISION AND REASONS

Introduction

1. The Appellant is a national of Sudan. She applied for entry clearance to join her claimed spouse in the UK on the basis of refugee reunion under paragraph 352 A of the Immigration Rules on 28 June 2021. The application was refused on 16 September 2021 and her appeal against the Respondent's decision was dismissed by First-tier Tribunal Judge Boyes in a decision uploaded on 20 January 2023.
2. Permission to appeal was granted on all grounds by Upper Tribunal Judge Sheridan on 18 May 2023.

3. The matter came before me to determine whether the First-tier Tribunal (FTT) had erred in law, and if so whether any such error was material such that the decision should be set aside.

Error of Law - Grounds of Appeal

4. The grounds of appeal assert that the FTT failed to have regard to material evidence and failed to make clear findings on whether the Appellant satisfied the requirements for leave to enter as the partner of a refugee as set out in paragraph 352A of the Immigration Rules. The Respondent in her refusal challenged the existence of a genuine and subsisting marriage and it was for the court to determine whether such a relationship existed. It is argued that the Judge erred in not referring to the plausible explanations put forward by the sponsor in relation to the alleged false documents, and that the responsibility for the deception lay not with the Appellant or sponsor but with a third party. It is further argued that the Judge gave no consideration to the evidence put forward by the sponsor about the Appellant's condition in the refugee camp and did not consider the sponsor's evidence that the Appellant was from a persecuted minority and there would be insurmountable obstacles to family reunion in a third country. Further, the Judge erred in assessing the child's best interests and disregarded the sponsor's statement that his wife and child had been living in poor conditions and was continuously targeted by government conditions.

The Rule 24 Response

5. There was no Response. Miss Rushforth maintained that the decision contained no error of law for the reasons below.

The hearing

6. Permission was granted on the grounds that it was arguable that the Judge needed to consider, and make findings in respect of, the Appellant's argument that she did not use deception, and that the fact that the Respondent's first decision alleging deception was not appealed did not mean that the issue became "not appealable or judiciable." As no case law had been cited, I referred the representatives to the case of R (on the application of Naidu) v SSHD [2016] EWCA Civ 156 which appeared to me to be on point. I invited submissions, giving the representatives time to read the case.
7. I invited submissions from Miss Rushforth first, as the Respondent had not filed a Rule 24 Response. She said that the Appellant's case was distinguishable from Naidu because Naidu was a judicial review application. In that case, new evidence had been submitted with the second application whereas in the Appellant's case, it had not. The Respondent's first refusal under paragraph 320 (7A) of the Immigration Rules invoked an entry ban and the Judge's approach was correct. The Judge was not hearing an appeal against the first refusal and was entitled to treat the matter as settled. Further, the findings on dishonesty were open to him and he had conducted an adequate Article 8 assessment. He had

addressed the Appellant's circumstances and he found that the public interest was not outweighed by those circumstances.

8. Mr Forbes relied on his grounds of appeal and said that the exculpatory evidence advanced by the Appellant should have been considered in relation to the allegation of deception and the principle in Naidu applied as it was a wider public law issue. He submitted that the Judge should have made a thorough assessment under paragraph 352A of the Immigration Rules and should have taken account of the evidence postdating the refusal.

Conclusions – Error of Law

9. The Appellant had previously applied for Entry Clearance in an application dated 25 February 2020. That application was refused on the basis that the Entry Clearance Officer was satisfied that the documents submitted in support of the application were not genuine. The Appellant did not appeal that decision. The application which is the subject of this appeal was made on 28 June 2021 and refused under paragraph 9.8.1 of Part 9 of the Immigration Rules. The Respondent stated in the reasons for the decision that records showed that the Appellant had previously applied for entry clearance on 25 February 2020 and that the application was refused as he had submitted Dahabshil money transfer receipts which were found to be not genuine. Therefore, any application made before 25 February 2030 must be refused because she had previously breached immigration laws. She had not addressed within her current application that she had previously submitted false documents nor had she provided an explanation. Further, given that the false documents were submitted as direct evidence of an ongoing relationship with her sponsor, the genuineness of her relationship was also questionable. The application was therefore refused under paragraph 352A (v).
10. The Appellant's appeal came before Judge Boyes. He concluded at paragraph 6 of his decision:

“6. As the decision which resulted in the determination of the existence and proffering of false documents was not appealed, that is a fact and determination which is extant and which is not appealable or judiciable in these current proceedings.”
11. Upper Tribunal Judge Sheridan concluded in the grant of permission that it was arguable that Judge Boyes erred in concluding that the issue of deception was a matter in respect of which he did not need to make findings.
12. In consequence of this finding, Judge Boyes concluded that the only avenue open to the Appellant in the appeal was Article 8 outside the Rules. He dismissed the appeal finding that the Appellant had previously attempted to deceive the UK Government by proffering false money transfer receipts; as a consequence of the fraud she was barred from entering the UK for a period of 10 years. She had made no challenge to this or appealed the original decision. The current application was within the 10 year ban period. There was significant public interest in refusing

entry to those who had offended in such a manner and there was nothing exceptional or compelling about the circumstances of the spouse and child. They were not in immediate danger and had access to funds and could communicate with the sponsor. They could meet in a safe third country and there was no evidence of imminent danger to the child.

13. It is clear that the findings that the Appellant could not meet the Immigration Rules and the findings in relation to the public interest in the proportionality assessment all flowed from an acceptance that the deception was established by the previous unappealed decision.
14. According to the sponsor's witness statement, he arrived in the UK on 3 July 2015 and claimed asylum. He was granted 5 years refugee leave and subsequently indefinite leave. He says he has always declared his relationship with the Appellant including in his asylum interview and he married her in February 2014. With regard to the deception, he states that he has been sending money to the Appellant in Sudan via a man named 'Adam' who he was introduced to by friends in the UK. After he received the refusal letter, he contacted Adam and explained that the application was refused because the money receipts were false. Adam said that he would provide a supporting letter confirming that the sponsor had been sending money through his company. However, no statement had been provided and the sponsor had been unable to get in contact with him. He says they had provided a lot of evidence confirming their relationship and it would not make sense for them to risk the outcome of the application via the production of non-genuine case receipts.
15. In R (on the application of Naidu) v SSHD [2016] EWCA Civ 156 the applicant had made a second application for a visa. The first had been refused because the Entry Clearance Officer concluded that he had submitted a false document relating to his business. The first application was refused under paragraph 320 (7A). His second application was refused under paragraph 320 (7B) because of the use of deception and the consequent 10 year bar on further applications. The Appellant had placed further material before the Entry Clearance Officer when making the second application. The notice of decision in relation to the second application referred to none of the additional documentation but reiterated that an earlier decision was made the deception was used in a previous application. Beatson LJ concluded at paragraphs 50 and 51:
16. The Appellant the appeal before me did not submit any evidence to the Respondent with her second application in relation to the question of deception. She was asked in her application (p12) whether she had given false information when applying for a visa and she answered 'no'. She provided information about the previous refusal but not the allegation of deception. It is unclear from the form whether she was represented at the time.
17. It appears that the Appellant was only provided with the document verification report (DVR) on the day of the hearing before Judge Boyes as the representatives

confirmed that it was uploaded on 19 January 2023. It is unclear whether it was sent to the Appellant with previous refusal. In any event, the Respondent did not have an explanation from the Appellant for the deception when the second decision was made.

18. However, the Tribunal did have an explanation for the alleged deception. The Court of Appeal held in Naidu that the Respondent's decision was flawed on public law grounds for failure to take into account relevant considerations. I find that the same principle applies to the consideration of evidence in relation to deception before the Tribunal in a statutory appeal, particularly in light of what Beatson LJ identified as the "draconian" effect of circumstances where it was not possible for a court to find that there had been no deception even where it is conclusively shown at a later state that there had been none at the time of the first decision. The issue of whether the Appellant had used deception had not been the subject of a judicial decision and the FTT should not have considered itself to be bound by the Secretary of State's unappealed decision.
19. I therefore find that the Judge was required to make a finding on whether the Appellant had used deception in her previous application and whether the Respondent had demonstrated that the grounds for refusal under Part 9 were made out. It follows from this that the Judge's findings in relation to the Appellant's inability to meet the Immigration Rules and the public interest assessment under Article 8 can also not stand as the finding on deception led to adverse conclusions in relation to these matters.
20. I have considered whether to remit or retain the case within the Upper Tribunal with regard to the recent decisions of Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) and AEB v Secretary of State for the Home Department [2022] EWCA Civ 1512. In light of the extent of fact finding I find that the appeal should be remitted for rehearing de novo in the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal with no findings of fact preserved.

L Murray

Dated: 19 March 2024

Deputy Upper Tribunal Judge
Immigration and Asylum Chamber