



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

Appeal Number: IA/07007/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 November 2014**

**Decision & Reasons
Promulgated
On 8 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE D G ZUCKER

Between

SYEDA TAYAB

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of the United States of America. Her date of birth is recorded as 7 December 1981. On 28 December 2012 application was made on the Appellant's behalf for further leave to remain in the United Kingdom on the basis of her relationship with her partner and children. On 17 January 2014 a decision was made to refuse the application and to remove her by way of directions pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006. On 8 August 2014

Judge of the First-tier Tribunal Lobo considered the appeal and wrote a determination which at paragraph 21 said as follows:

“The Appellant has failed to provide any response to the detailed points made in the reasons for refusal letter. The Appellant has also failed to provide any evidence or documents to support her application. The determination is dated 15 August 2014.”

2. There is, however, within the file a bundle of papers sent to the Tribunal under cover of letter dated 6 August 2014. The letter makes reference to the “Hearing” for 8 August 2014. The bundle however is date stamped as having been received by the Tribunal on the 11 August 2014.
3. There is an endorsement at the end of the determination signed by Judge Lobo which reads as follows:

“The appeal was listed for consideration and determined on the 8 August 2014. On the 11 August 2014 the Tribunal received a bundle, under cover of a letter dated 6 August, with no explanation as to the late delivery. In these circumstances I refuse to accept the Appellant’s bundle.”

4. That endorsement of 19 August 2014 post dates the draft Decision of the Judge which was not promulgated however until 20 August 2014. It is to be borne in mind that the Decision was not final until it was promulgated.
5. Not content with the Decision of the First-tier Tribunal, by Notice dated 1 September 2014 the Appellant made application for permission to appeal to the Upper Tribunal making reference to the fact that the further evidence was sent to the Tribunal by recorded delivery and that the Judge should have considered the bundle which was submitted. The grounds then went on to join issue with the approach of the Judge to the appeal generally.
6. On 8 October 2014 Judge of the First-tier Tribunal Judge Brunnen granted permission stating:

“The grounds on which permission to appeal is sought submit that a procedural error amounting to an error of law has occurred in that, whereas her bundle of documents was sent to the Tribunal by recorded delivery on 6 August (and is in the file stamped as having been received at Taylor House on 11 August), when the judge prepared his determination on 15 August he did so on the basis that the Appellant had filed no evidence. This ground is arguable.”

Was there an error of law?

7. Although this was the Appellant’s appeal, Mr Nath, for the Respondent agreed that this appeal albeit a paper appeal, when before the First-tier should be remitted to the First-tier Tribunal with a view to the determination being set aside and dealt with again by the Tribunal having

regard to Rule 60 of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

8. Since both parties were present at the hearing in the Upper Tribunal and agreed that that was the proper course, I find that that is the course that should be followed.
9. A simple visit to the Post Office Track and Trace service, on-line, using the reference number attached to the letter of 6 August 2014, would have demonstrated that the document was sent by recorded delivery with delivery on 8 August 2014, and not on 11 August 2014 as the Judge believed was the case.
10. I bear in mind that there were directions given in this case issued as long ago as 6 March 2014 stating:

“If you have not already done so, you must send to the Tribunal and to the other party a bundle of all documents you wish to rely on in support of the appeal, to arrive no later than three weeks from the date of this letter.”
11. On 4 August 2014 the Appellant’s solicitors had written to the Tribunal requesting that the appeal be decided on the papers without a hearing. Clearly the Tribunal had decided to follow that course but if there were any concerns about documents that had been served late, or might be served late, or which the Secretary of State might not have had the opportunity to consider then consideration should have been given to whether or not to accede to that request.
12. As matters stand there appears to be and I find procedural unfairness in that having agreed to consider the appeal without a hearing the only basis upon which the bundle appears to have been rejected was because they were filed after the date upon which the matter was to be considered with no reasonable explanation when in fact the documents did arrive on the date when the appeal was to be considered, albeit in the afternoon. It was open to the Judge to reject the bundle having regard to the overriding objective if thought appropriate but the Appellants were entitled to a more reasoned Decision for the rejection of the documents than the one given. Whilst the case of BO and Others (Extension of time for appealing) Nigeria [2006] 00035, is concerned with extension of time, there is helpful guidance in that still one must have some regard to the merits of the case, which in this case the Judge appears simply not to have done; he seems to have taken exception to the late service of documents which in the event, because of administrative error, gave the impression that they arrived later than they did.
13. Consideration was given as to whether or not I should deal with this matter in the Upper Tribunal and remake the decision particularly because there had been a clear administrative error on the part of the Tribunal or its staff. However I am concerned that whilst there has been an error of law

there was a request by the Appellant's solicitors for the appeal to be dealt with without a hearing made close to the date when there was to be a hearing followed by submission of documents. Those acting for the Appellant must have known or ought to have known that there was the real risk that the Respondent would not have had the opportunity to consider those papers.

14. In all the circumstances I find an error of law. It matters not whether I set aside the determination pursuant to Rule 60 or otherwise, the effect is the same. I have decided however that the matter will be remitted to the First-tier Tribunal but direct that without further order there shall be a hearing and that any request for the appeal to be decided on the papers shall be referred to the Resident Upper Tribunal Judge.
15. In summary, I would observe that the Appellant was late in the submission of the documents and in breach of directions. However regard is to be had to the overriding objective if evidence submitted is simply to be rejected out of hand. In this case there is the real risk of the perception that the appeal was dismissed without consideration of the further documents simply because it had not been received when indeed they had.
16. This is a case in which the Presidential direction relating to cases being remitted applies.

Decision

There was an error of law in the determination of the First-tier Tribunal. The decision is set aside to be decided afresh **at a hearing** by a Judge other than Judge Lobo.

Signed

Date

Judge Zucker
Deputy Judge of the Upper Tribunal