



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

Appeal Number: IA/36354/2013

THE IMMIGRATION ACTS

Heard at Field House

On 3 July 2014

Determination

Promulgated

On 15 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

ROZITA AKBARZADEH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation

For the Respondent: Mr S Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran and her date of birth is 13 June 1984. She entered the UK on 19 February 2011 when she was aged 26 as a Tier 4 (Migrant) Student having been granted leave until 16 November 2011. On 15 November 2011 she made an application to extend her leave. She asked for a decision to be put on hold until December 2011 because she was waiting for the IELTS results. The application was refused with a right of appeal. Her appeal was dismissed by Judge of the First-tier Tribunal Pedro on 28 June 2012. The appellant appealed against this decision. Permission to appeal was granted on 8 November 2012.

2. On 11 February 2013 the appellant's appeal was dismissed by Upper Tribunal Judge Coker who found there to be no error of law in relation to the substantive decision. However, she went on to find that the Judge erred in relation to Section 47 of the Immigration, Asylum and Nationality Act 2006. As a result of Judge Coker's decision the appellant made further representations against removal and another decision was generated by the respondent of 13 August 2013. The Secretary of State made a decision under Section 10 of the 2006 Act and refused the application under paragraph 276ADE of the Immigration Rules relating to the appellant's private life. The appellant appealed against this decision. Her appeal was dismissed by Judge of the First-tier Tribunal North under the Immigration Rules and Article 8. Permission to appeal against this decision was granted by Judge of the First-tier Tribunal Molloy in a decision of 21 May 2014. Thus the matter came before me.

The Decision of the First-tier Tribunal

3. The matter came before Judge of the First-tier Tribunal North on 8 April 2014. The grounds of appeal before Judge North raised Article 8. The appellant's case was that she had a new student application pending. The appellant did not attend the hearing before Judge North. She had requested an oral hearing. Judge North refers to a letter of 7 April 2012 (it is obvious that this is a typographical error and the Judge should have recorded 2014). The letter was from Mr Fred Oboloje who refers to himself as a "host/family representative" of the appellant. In the letter it is asserted by Mr Oboloje that the appellant was very ill and undergoing medical treatment. The letter went on to say that the appellant has suffered a "massive reaction to a recent operation" and had been referred to hospital for further treatment. It was asserted by Mr Oboloje that the appellant had a hospital appointment on 8 April at 10:00am and that Mr Oboloje had a hospital appointment on the same day at 1:00pm and so would not be able to attend the hearing either.
4. There are two documents attached to the letter of 7 April 2014 which appear to be copies of appointment cards. One bears the appellant's name and is dated 1 April 2014. It indicates that the appellant has an appointment on 8 April 2014 at the GP surgery. The second bears the name of Mr Oboloje and is also dated 1 April 2014 indicating that he has an appointment on 8 April 2014 at 1.00pm at the GP surgery in order to see the phlebotomist.
5. In relation to the letter and attachments the Judge at [3] of the determination said as follows:

"I perused the attachments to that email and no hospital appointment was attached. There was a document which was headed 'appointment details' bearing the appellant's name and dated Tuesday 1/4/14 giving an appointment on 8/4/14; that appointment had therefore been arranged some seven days in advance. Further, it was not an appointment at a *hospital* as Mr Oboloje stated in his

letter, but was an appointment at the appellant's GP surgery in Arbury Road at 10am. I was not satisfied that the appointment could not have been rearranged and neither was I satisfied that, if the appellant was suffering a massive reaction to a recent operation, she would be required to wait one week before seeing her GP; it was more consistent that if that was the situation she would have been able to seek access to her recent surgeon urgently. Further, the notice of the hearing before me was sent to the appellant on 24/10/13; I am satisfied that the appellant could have made an alternative appointment with her GP so as to avoid the hearing of which she had been given ample notice. Further, the sponsor also said that he would be unable to attend the hearing, because he also had an appointment at hospital at 1:00pm on 8/4/14. He also supplied a document headed 'appointment details'. Again, that appointment had also been made on 1/4/2014 and appeared to have been deliberately arranged to coincide with the appeal hearing. Moreover, it was not an appointment to attend a hospital, but merely to attend a phlebotomist (a blood sample taker) at the GP's surgery. I was not satisfied that such an appointment was either urgent or immovable. I was not satisfied that the appellant had shown that she had good grounds for an adjournment. I resolved to refuse the adjournment application and deal with the matter in the appellant's absence. I heard submissions from the Presenting Officer and considered the evidence before me."

6. Later that morning the Judge received a fax from Mr Oboloje of 8 April 2014 stating that the appellant was unable to attend because she was seriously ill and had been diagnosed with an appendicitis and referred to Addenbrooke's Hospital with immediate effect. Attached to this letter was a note headed "consultation confirmation sheet" showing that the appellant had been diagnosed by a GP registrar at the GP surgery on 8 April with an appendicitis as a result of having severe abdominal pain and that she had been referred to a surgeon.
7. In relation to this further evidence the Judge made the following findings:

"Mr Oboloje attached to that letter a note headed "consultation information sheet" purportedly showing that the appellant had attended an appointment with a Dr Mohammad (GP registrar) a trainee, on 8/4/2014 at 10:15. The timing of that appointment was entirely inconsistent with a statement made by Mr Oboloje in his letter of 7 April that the appellant had an appointment at 10:00am on that date *at hospital*. The note from the trainee GP gave a history of the appellant's condition, he apparently made a diagnosis of appendicitis and the appellant was offered analgesia and, after discussion with the GP liaison sister, was to be referred to a surgeon at Addenbrooke's Hospital. What is significant about that GP consultation information sheet is that it makes no reference at all to the appellant having 'suffered a massive reaction to a recent operation' as mentioned by Mr Oboloje in his letter of 7 April, or to the fact that the appellant, according to him, already had a hospital

appointment for Tuesday 8 April at 10:00am. I do not accept that if the appellant's history had been as Mr Oboloje set out in his letter of 7/4/14, it would not have been mentioned at least in passing by Dr Mohammad when he saw her on 8 April. Further, I note that although the appellant complained of being feverish the previous night, Dr Mohammad did not observe fever when he saw the appellant on the morning of 8 April 2014. I conclude that there are significant inconsistencies in the documents placed before me in support of the adjournment request. I was not satisfied prior to the hearing, and I am still not satisfied prior to promulgating my determination, that neither the appellant nor the sponsor had a medical condition which prevented either from attending the hearing before me."

The Grounds Seeking Leave to Appeal and Submissions

8. The permission application appears to have been drafted by Mr Oboloje and it can be summarised. The appellant was not given the opportunity to give evidence. She had to have emergency treatment on the day of the hearing. It is argued that she suffered a massive reaction to a root canal treatment and she had been given medication by her dentist and advised that if the condition did not improve she should attend the doctor's surgery. That was the reason why an appointment was made at 10:00am on 8 April. It was her intention to re-schedule this appointment to 7 April so that she could attend the hearing. The appellant recovered from this condition but started to complain about a sharp pain in her abdomen and this led to the appendicitis diagnosis. It is argued that the appellant should be granted exceptional leave in order to continue her studies in the United Kingdom.
9. The respondent submitted a response pursuant to Rule 24 of the 2008 Procedure Rules. Paragraph 3 of the response reads as follows:

"It was clear that the Judge was concerned with the inconsistencies within the evidence before him, and that he was not prepared to accept that the appellant was suffering from appendicitis as claimed. It may be that the appellant is in a position to demonstrate that she required emergency treatment on that day, and that the Judge has procedurally erred in law. However without having this evidence before me, I would not be prepared at this stage to accept that the Judge has materially erred as claimed."
10. Neither the appellant nor Mr Oboloje attended the hearing before me. I was satisfied that a notice of the hearing had been sent to the appellant. There had been no attempt to submit further evidence in accordance with the directions of the Tribunal issued on 27 May 2014.

Conclusions

11. Crucially what the Judge found is that the evidence before him did not provide a consistent picture of the appellant's circumstances and for this

reason he found it unreliable. In my view, the evidence before the Judge relating to the appellant's health was inconsistent and unreliable. It failed to provide a coherent picture of the appellant's circumstances. Mr Oboloje attempted to resolve this in the permission application in which he raises issues that were not before the First-tier Tribunal. In particular he referred to the appellant having had a root canal operation. There was no attempt by the appellant to submit further evidence (including that the appellant had attended Addenbooke's Hospital and was operated upon) and the appellant did not attend the hearing before me. The Judge did not find that the appellant needed emergency treatment on the day of the hearing which was a finding that was open to him. There is no procedural irregularity in the decision to refuse to adjourn the proceedings.

12. The grounds seeking leave to appeal attack the merits of the substantive decision (under Article 8). I note that there was no witness statement before the First-tier Tribunal. There are assertions made by Mr Oboloje in the permission application relating to the appellant's private life, but there was no cogent evidence of such before Judge North. There was no persuasive evidence that the appellant was studying or that she had made an application to study. The Judge found at paragraph 4 as follows:

"The respondent issued a decision to remove the appellant under Section 10 of the Immigration and Asylum Act 1999. In the decision dated 4/2/2013, Judge Pedro dismissed the appeal against refusal to vary the appellant's leave to remain in the United Kingdom. He had considered human rights grounds and was satisfied at that time that Article 8 was not engaged and found no reasons why the appellant should not be expected to return to Iran where she could resume living with her immediate family in the family home in which she had resided prior to coming to the UK. That decision must be the starting point of my deliberations. The appellant has not raised any additional human rights grounds or issues relating to either her private or family life either by way of further submissions to the respondent or in the grounds of appeal. I conclude that the appellant has not demonstrated that the respondent's decision is contrary to the UK's obligations under the ECHR."

13. In my view it was open to the Judge to dismiss the appellant's appeal under Article 8 of the 1950 Convention on human rights. The grounds amount to an attempt to re-argue the appellant's case and a disagreement with the findings as made by the First-tier Tribunal. The decision to dismiss the appellant's appeal under Article 8 stands.

Signed Joanna McWilliam

Date 15 July 2014

Deputy Upper Tribunal Judge McWilliam