



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

Appeal Numbers: IA/42305/2013  
IA/42312/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 June 2014**

**Determination Promulgated  
On 27 June 2014**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**MAHAMED HASSAN SHEIKH OSMAN  
and  
KALTUM OMAR**

**Appellants**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellants: Ms A Ntephe, Counsel instructed by Forward & Yussuf,  
Solicitors

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. These are appeals by a citizen of the Netherlands and her husband, a citizen of Somalia, against a decision of the First-tier Tribunal dismissing their appeal against the decision of the respondent to refuse them residence cards to show that they are in the United Kingdom as an EEA national exercising treaty rights, or the dependent relative of the same, as the case may be.
2. The second appellant is a national of the Netherlands. She is self-employed in the United Kingdom working regularly earning a modest living as a car attendant supervising children taken by taxi to special schools.

3. There is a lot about the evidence which is far from satisfactory, for example, the application letter refers to her dealing with Capital Cars, but Capital Cars does not appear in any of the papers emanating from the appellants relating to the appeal before the First-tier Tribunal and before me.
4. It is well known that taxi businesses can appear and disappear quite quickly and there is nothing necessarily sinister but it is an oddity in the evidence which the appellants have made no attempt to resolve.
5. The First-tier Tribunal was unsatisfied that the evidence before it dismissed the appeals. However, I have to say that it clearly erred.
6. The difficulty is that the appellants arrived at the hearing with a bundle of documents which are before me. They are not particularly well-presented but they are a paginated bundle with an index and a contents page. The copy before me shows that it was actually sent by facsimile on 26 February for a case to be heard on 27 February.
7. I will say now, as I have said on many occasions, and I will go on saying in the vague hope that somebody might eventually listen to me, that solicitors who for whatever reason cannot comply with directions about producing documents should not send them by facsimile after the ordered date and hope that by some magical process they will turn up in the right place at the right time. The Tribunal administration is, in my experience, generally efficient and placing on the files documents that have been served in accordance with Directions. There is not enough staff to reliably file documents that are served late. Parties should bring such documents to the hearing and explain why they are late. This means that the judge will know that the papers were not where they ought to be at the right time. He will listen to the explanation and decide what to do with them. Sending them by facsimile creates the false illusion, I do not say cynically, but sometimes it has that result, that they were sent in time, and more typically it means they are not placed on the judge's bundle until after the hearing. Late service of documents is a time-wasting exercise that causes a great deal of vexation.
8. There are Rules that deal with the late service of documents, particularly Rule 51(4) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. This states:

“Where the Tribunal has given directions setting time limits in the filing and serving of written evidence, it must not consider any written evidence which is not filed or served in accordance with those directions unless satisfied that there are good reasons to do so.”
9. It is a fundamental guide in common law that cases are to be tried on their merits and not on Procedure Rule points. Of course, there are occasions when people so disregard Procedure Rules that the need to get on with the case means that making a decision on an imperfectly prepared case is more important than giving even more time to rectify deficiencies.
10. The meaning of the rule was tested before the Tribunal in the case reported as **AK (Admission of Evidence - Time limits) Iran [2004] UKIAT 00103** where it was pointed out that the reference in the Rules to there being “good reasons”

means a good reason to admit the documents, not a good reason for being late. I do not think I can avoid concluding that on this occasion the First-tier Tribunal Judge misdirected himself. This is the only way I can make sense of paragraph 8 of the determination where the judge said that:

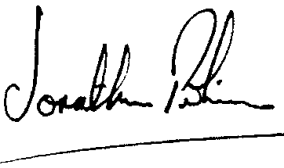
“Mr Bassi [the Presenting Officer] submitted that good reason was one thing but just ‘difficulties’ was different. I asked Mr Yussuf [for the appellants] if he would elaborate on these difficulties if he could and he told me he was unable to do so.”

11. It is quite clear to me that the judge was looking for reasons for being late, not looking for reasons that may or may not amount to good reasons for admitting the evidence.
12. Before me Ms Ntephe submitted that there were good reasons for admitting the documents. The fact is they were highly pertinent to the case. They added significantly to the credibility of the claim.
13. I accept, having looked at the bundle, that the original documents might very well do that. There is for example what purports to be the badge of the main customer of the second appellant, Access Mobility Transport, on an identity document which on the original shown to me does appear to be the person sitting in front of me, although the photocopy provided is just a blob of photocopying ink and it could have been almost anybody.
14. It is also possible to go through the bank statements provided and see quite regular payments of about £95 which matches with the alleged payment due for the work done, although the one document provided in the nature of a bill cannot be traced in the statements provided. There is also clearly reference in the bank statements to a tax credit being paid on a regular basis prompting Ms Ntephe to ask rhetorically where the tax credits come from if it is not payments made by a self-employed person. None of these prove conclusively that the claimant was working but they are evidence of considerable assistance and ought to have been looked at by the First-tier Tribunal if that could have been done fairly.
15. Although there is, what I am tempted to describe as “faux outrage” on the part of the Presenting Officer in the First-tier, there is no structured argument about what the Secretary of State would actually have done with the information if it had been disclosed at the proper time, or any reason to think that the Secretary of State had been unfairly disadvantaged by the late production of the documents. That the appellants seem to want to rely on photocopies was a matter for comment. That is something which, given that she has succeeded in obtaining a further opportunity of having the case heard, she may very well want to address.
16. It seems to me that this is the sort of case where disclosing original documents well in advance of the hearing to let everybody have a proper look at them would be a very good idea. It is my suggestion that they are sent to the Secretary of State and copies to the Tribunal, but I am not going to give directions about how the appellant must prepare her case, that is a matter for her. My comments will be noted by the First-tier Tribunal Judge.
17. The appellants have not endeared themselves to anybody by what appears to be casual, late, and rather reluctant preparation, but they are entitled to a fair

hearing and I am quite satisfied that the First-tier Tribunal misapplied the appropriate Procedure Rule, and I have no alternative in the circumstances but to say the case has to be heard again in the First-tier because there has not been a proper first hearing.

18. I have decided not to make any directions about the future progress of the case. That is a matter for the First-tier Tribunal. I have made comments about the late production of documents and indicated that relying on poor copies of the originals would not be a good idea.
19. For all the reasons given, I find the First-tier Tribunal erred in law and the remedy is the case is reheard in the First-tier.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 25 June 2014