



**The Upper Tribunal
(Immigration and Asylum Chamber) Appeal number: OA/09203/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On March 18, 2015**

**Promulgated
On March 23, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MISS STACY CRYSTAL BAMANYA
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bobb (Solicitor)

For the Respondent: Mr Tarlow (Home Office Presenting Officer)

DECISIONS AND REASONS

1. The appellant is a national of Uganda. On December 12, 2012 she submitted an application to join the sponsor, Tracy Kavuma (her mother), under paragraph 352D HC 395. The respondent refused her application on February 19, 2013.
2. The appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on April 10, 2013 and the matter came before Judge of the First-tier Tribunal Lawrence (hereinafter referred to as the "FtTJ") initially on July 14, 2014. Having heard the evidence he reserved his decision and on July 23, 2014 he issued further directions because he felt

unable to properly determine the appeal without having sight of a copy of the sponsor's asylum determination. The notice of July 23, 2014 refers to the hearing of July 14, 2014 being adjourned and to be heard on August 26, 2014. Directions for further documents to be served on both the appellant's representatives and the Tribunal were attached to the notice. The appellant's solicitors requested an adjournment of that hearing by letter dated July 25, 2014 but this request was refused on July 30, 2014. An adjournment request was then renewed on August 1, 2014 but this was again refused on August 6, 2014 for the same reason namely an agent could be instructed.

3. On August 11, 2014 a letter before action was sent to the Tribunal threatening judicial review proceedings both in respect of the refusal to adjourn and the re-opening of the earlier hearing. The Tribunal agreed to re-fix the hearing date for October 8, 2014. On August 15, 2014 the appellant's solicitors sought an explanation for what they viewed as a "re-opening" of the case and on September 9, 2014 the Regional Adjudicator ruled the case was to stay as listed.
4. The hearing resumed on October 8, 2014 and following that hearing the FtTJ dismissed the appeal under both the Immigration Rules and Article 8 ECHR in a decision promulgated on October 20, 2014.
5. The appellant lodged lengthy grounds of appeal on December 8, 2014 and within those grounds she submitted the FtTJ had erred procedurally and by failing to make findings under Article 8.
6. Judge of the First-tier Tribunal Pooler granted permission to appeal on January 21, 2015 finding it arguable the FtTJ may have erred by obtaining evidence that in the manner he did and that this action may have played a part in his consideration of the other issues.
7. The appellant was present and was represented as set out above. My full record of Mr Bobb's submissions is recorded in the record of proceedings but were based as follows:
 - a. Procedural irregularity.
 - b. Inadequate findings under Article 8 ECHR.
8. Mr Bobb argued that the FtTJ had materially erred in reconvening a second hearing on October 8, 2014 because at the end of the hearing on July 14, 2014 evidence and submissions had been given and the FtTJ had reserved his decision. He submitted there was no legal basis to re-open the hearing. He referred me to the paragraphs [34] and [37] of R (Periasamy Mathialagan) v London Borough of Southwark [2004] EWCA Civ 1689 and paragraph [61] of R (Broxbourne Borough council) and North and East Hertfordshire Magistrates Court and Geoffrey Oliver [2009] EWHC 695. The FtTJ erred by investigating the matter himself and effectively was doing the respondent's job. Justice was not seen to be done and his findings were tainted with impropriety. Those findings were then used in his

assessment of the Article 8 claim and the FtTJ erred by not having regard to the fact the sponsor sent money and clothing and the appellant thanked her in cards as demonstrated in the appellant's bundle.

9. Mr Tarlow submitted Mr Bobb's submissions were meritless. The case was not concluded until a determination was promulgated and the FtTJ was entitled to call the matter back if there was something that concerned him. An example of this occurring was country guidance cases where parties were often recalled when issues arose that the Tribunal wanted their views on. If the FtTJ had called for the determination and dealt with the appeal without giving the parties an opportunity to address any issue raised then that would be a material error. Here the FtTJ directed that certain documents be provided and then listed the case for further evidence. He could have reconvened the court and then asked for the evidence and then reconvened for a further hearing. In either case the FtTJ did not act unlawfully. As regards Article 8 he submitted the FtTJ considered all the evidence and made a number of adverse findings that undermined the sponsor's credibility. The sponsor does not like the conclusions reached and is hoping for a second chance.
10. I reserved my decision.

ASSESSMENT OF ERROR OF LAW

11. Mr Bobb did not initially appear at the July hearing but following the issuing of directions he has taken over conduct of the appellant's appeal. His position since August 2014 is that the FtTJ acted outside of his power. Mr Tarlow's response to this submission is simply that the case is not concluded until a determination is issued.
12. Mr Bobb submitted that the FtTJ had no power to reconvene the hearing after submissions had been concluded but Rule 45(1) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 confirms that "The Tribunal may give directions to the parties relating to the conduct of any appeal or application." Rule 45 then sets out how the Tribunal should deal with matters. Rule 51 of the 2005 Rules makes clear that "The Tribunal may allow oral, documentary or other evidence to be given of any fact which appears to be relevant to an appeal or an application for bail, even if that evidence would be inadmissible in a court of law."
13. Mr Bobb has referred me to two cases but I do not find they have any bearing on how the FtTJ should approach the case. The case of R (Periasamy Mathialagan) v London Borough of Southwark [2004] EWCA Civ 1689 involved the making of liability orders against the applicant in his absence. An application was submitted to quash the liability orders and to invite the magistrates to exercise judicial discretion and to re-open the case. The Court of Appeal refused the application and Mr Bobb argues that this is authority to support his submission that the FtTJ had no power to re-open this case in October 2014. The second case of R (Broxbourne Borough council) and North and East Hertfordshire Magistrates Court and

Geoffrey Oliver [2009] EWHC 695 is also relied on and concerned an abatement notice and what happened at court.

14. The appellant was given permission to appeal on this issue but I do not find any merit to this ground of appeal. This is not a case for instance where the FtTJ indicated in court in July he was allowing an appeal and then changed his mind in October. He heard the evidence and reserved his decision and whilst reviewing the evidence he concluded that he needed further information before he could reach a final conclusion. He issued directions, which he is entitled to do and invited further submissions. Neither of the cases produced by Mr Bobb have any similarity to the case before me. The events that occurred in court are different but more importantly the hearing before the FtTJ is not concluded until he issued a written determination as set out in Rule 22 of the 2005 Rules.
15. Mr Tarlow made the point that there are many instances where cases are called back for further submissions and this case was no different. The FtTJ issued directions that he believed would enable him to reach the right conclusion. There was no unfairness in the procedure and the parties were both given an opportunity to call evidence and make submissions.
16. I am satisfied that the main ground advanced did not demonstrate any error of law.
17. The second ground challenged the FtTJ's approach to Article 8. The FtTJ's considered the evidence and found in paragraph [22] that not only did the sponsor never have any responsibility for the appellant but he also found the appellant was not part of the sponsor's family unit when the sponsor left Uganda. The FtTJ had serious concerns about the sponsor's credibility and these findings were no doubt in his mind when he approached the Article 8 claim. Although the FtTJ accepted the sponsor and appellant were related as claimed he was not satisfied there was family life. The sending of money and clothing do not in themselves create a family life and the FtTJ's findings on Article 8, whilst brief, were open to him.
18. In the circumstances there is no material error in law.

DECISION

19. The decision of the First-tier Tribunal did not disclose an error in law. I uphold the original determination.
20. The First-tier Tribunal did not make an anonymity direction pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to alter that order.

Signed: Dated: **March 23, 2015**

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

No fee award is made because none was requested. If a request had been made I would not have made an award because documents supporting the appeal were submitted after the application had been submitted.

Signed:

Dated: **March 23, 2015**

Deputy Upper Tribunal Judge Alis