



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09271/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 17 October 2018

Decision & Reasons Promulgated
On 23 October 2018

Before

Deputy Upper Tribunal Judge Pickup

Between

Paula Omoede Omoregie
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr C Timson, instructed by Latitude Law
For the respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge O'Hagan promulgated 11.7.18, dismissing his appeal against the decision of the Secretary of State, dated 23.3.18, to refuse his human rights application for LTR on the basis of family life with his mother.
2. First-tier Tribunal Judge Maller granted permission to appeal on 6.8.18.

Error of Law

3. For the reasons set out below, I find that there was no error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside.
4. In lodging his Notice and Grounds of appeal against the decision of the respondent, the appellant asked for his appeal to be decided on the basis of the papers without an oral hearing and it was listed accordingly. On 23.4.18 he was issued with a notice requiring the payment of the reduced fee of £80 for a paper appeal. In due course the fee was paid and on 15.5.18 the tribunal confirmed the appellant's appeal would be decided on the papers without a hearing.
5. However, by letter dated 30.5.18, the appellant's representatives wrote to the tribunal asking to change the listing to an oral hearing. In consequence of the request, on 4.6.18 the tribunal issued directions requiring the representatives to confirm within 7 calendar days (a) the appellant's address, and (b) whether it is a suitable address to receive correspondence. The directions concluded, "The Tribunal will consider the application upon receipt of a response."
6. There was no response to the directions and no additional fee for an oral hearing was paid. In consequence, the tribunal continued to treat the appeal as a paper hearing. In June 2018 it was allocated to Judge O'Hagan who dealt with it on 14.6.18, with the appeal formally promulgated 11.7.18. Contrary to the assertion in the grounds, in the light of the history set out above, there was not material error of law in the judge stating at [2] that each party had consented to the appeal being decided on the papers. The appellant had failed to comply with directions and thus her application for the matter to be dealt with as an oral hearing was never considered or accepted by the Tribunal.
7. I further note that on the basis of the initial directions for the appeal as a paper case, issued on 15.5.18, the appellant and her representatives were notified that any written evidence and submissions she/they wanted to be considered in the making of the decision had to be sent to the tribunal and served on the respondent by 12.6.18. No such evidence or submissions were ever submitted.
8. It is asserted that the appellant's representatives responded to the directions by letter dated 25.6.18. The evidence the appellant now adduced shows that the letter was delivered on 27.6.18. By that stage the appeal had already been allocated to and dealt with by Judge O'Hagan sitting in Manchester on 14.6.18, even though the decision was not formally promulgated until 11.7.18. The letter was sent to the IAC Birmingham and did not make its way to Manchester until 28.6.18, by which time it was far too late.
9. Mr Timson argued that the judge dealing with the case failed to properly apply Rule 25. However, even if the judge was aware that the appellant changed her mind and wanted the appeal to be dealt with at an oral hearing, which is not clear, the directions issued in relation to the application for change had not been complied with. Pursuant to Rule 25(e), the tribunal is entitled to dispense with a hearing where

the party has “failed to comply with a provision of these Rules, a practice direction or a direction and the Tribunal is satisfied that in all the circumstances, including the extent of the failure and any reasons for it, it is appropriate to determine the appeal without a hearing.” No reason had been provided for failure to comply with the directions within the 7 days allowed and not until some three weeks had elapsed and no additional fee had been paid. In the circumstances, even if the judge was aware of the request for a change, there was no proper basis on which the tribunal should have adjourned for an oral hearing.

10. In the circumstances, I find no procedural irregularity or unfairness, and no error of law requiring the decision to be set aside. The appellant failed to comply with directions and in consequence the appeal was decided on the papers on the basis of the limited information in the Tribunal’s case file. No error of law is disclosed.
11. It remains open to the appellant to make a fresh application for Leave to Remain.

Decision

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

A handwritten signature in black ink, appearing to read 'J. Pickup', is centered on the page.

Signed

Deputy Upper Tribunal Judge Pickup

Dated