



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/04820/2018

THE IMMIGRATION ACT

Heard at Field House

On 10th December 2018

**Decision & Reasons
Promulgated**

On 11th January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Ms Mary Khey Mogato

(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Griffiths of Counsel instructed by Legal Rights Partnership

For the Respondent: Ms Isherwood, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge M A Khan promulgated on the 22nd May 2018 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on human rights

specifically Article 8 of the ECHR. The appeal was dealt with by the judge as a paper case.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.
3. Leave to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Coker on 30th October 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. The material part of the grant of leave provides:-

It is arguable the judge made contradictory findings, failed to consider relevant documentation that was before him and failed to make adequate findings on whether the appellant met the requirements of the Immigration Rules and thus failed to consider proportionality adequately.

Factual background

5. The appellant is a citizen of the Philippines born on 12 May 1987. She entered the United Kingdom on 5 September 2010 as a student. The visa was valid until 6 November 2012. On 3 October 2012 she applied for leave to remain as the partner of an EEA national. She was granted a residence card which was valid from 4 February 2014 until 4 February 2019. The appellant's marriage to the EEA national ended in divorce, when the appellant discovered that her husband was in a relationship with another woman. It does not appear that the appellant pursued EEA rights further.
6. On 6 September 2017 the appellant made an application based on human rights for leave to remain in the United Kingdom. On 25 January 2018 a decision was made to refuse the appellant's application. It is against that decision that the appellant has appealed. The appellant paid for a paper appeal.
7. In the appeal the appellant was seeking to rely upon her relationship with her partner, Mr Maco Minxelle Meguell G Benwell, a British Citizen. It was claimed by reason of her relationship she was eligible to make an application under section R-LTRP of Appendix FM.
8. Whilst the letter of refusal examines in detail whether appellant qualified under the rules, it was accepted before me that the only ground for refusing the application under the Immigration Rules was that the appellant had failed to produce an A 1 IELTS Certificate. In principle it was accepted that if the appellant had produced a valid certificate the application would have succeeded under the rules. Further as the Immigration Rules were the government's response to the obligations under Article 8 if the appellant qualified under the

rules, that would be a significant factor in assessing the proportionality issue under Article 8. It was accepted that no other issue was being taken by the respondent.

9. With regard to the grounds of appeal the only issue pursued before me was whether the appellant had submitted a valid A1 IELTS certificate to the Tribunal within the time limits set by the Tribunal and before the decision was promulgated. That raised the questions was the certificate genuine; was the certificate lodged with the Tribunal; and when was the certificate lodged with the Tribunal
10. The timings for various emails are important. The appellant claims that she had by email lodged with the Tribunal the required certificate on the 15th February 2018. She had attached a copy of the certificate with the email. The appellant in her grounds of appeal notes that at the time that she lodged the certificate her appeal had not been given an Appeal Reference Number and she had therefore used her Home Office Reference Number.
11. The appellant in her grounds acknowledges that the Appeal Notice, itself, required that once she, the appellant, had received an appeal number she had at that stage to lodge all her documents with the Tribunal using the appeal number. The appellant accepts that at the time of lodging the appeal she did not re-submit her evidence, the certificate.
12. However subsequent to that the appellant received a notification that she should lodge her evidence by the 1st May 2018. On the 30th April by email the appellant re-sent her certificate by email.
13. There is on the file email correspondence to verify that the document was sent. It is unclear as to when exactly the emails were connected to the file, but they are stamped as received at Hatton Cross on the 15th May. It may be that the emails were only connected to the file after the case had been issued to Judge Khan and he had returned the decision for promulgation.
14. The appeal was dealt with on the papers. Ostensibly it was issued for paper hearing on 2 May 2018 and the decision in the case was promulgated on 22 May 2018.
15. Stamps on the emails indicate that the emails were received at Hatton Cross on the 15th May 2018. However the emails are dated 30th April 2018 and therefore confirm the appellant's account that she had sent the email and the certificate to the Tribunal on that date, within the time set by the notices.
16. It was accepted before me that the emails did prove that the Tribunal was in possession of the emails and certificates before the paper case was issued to Judge Khan but it appears that they were only put

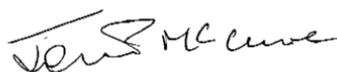
on the file after the case had been issued to and the decision returned by Judge Khan.

17. Judge Khan in dealing with the appeal, through no fault on his part, states that no documents in support of the appeal have been received by the Tribunal. That in the circumstances is wrong.
18. On behalf of the respondent Ms Isherwood required time to check whether the certificate was genuine. It was accepted that if the certificate was genuine and not tainted in any way the appellant met the requirements of the rules. If there was a challenge to genuineness of the certificate, that would have to be determined in a hearing in the First-tier. I therefore gave Ms Isherwood one week to notify the Tribunal as to whether the certificate was accepted as genuine.
19. By email dated 12th December Ms Isherwood has confirmed that the certificate is accepted as genuine. The email also confirms that in light of the facts the appeal stands to be allowed. For the reasons set out I allow the appeal of the appellant against the decision of Judge Khan and substitute a decision allowing the appeal.

Notice of Decision

20. I allow the appeal of the appellant and set the decision of Judge Khan aside.
21. I substitute a decision allowing the appeal of the appellant.

Signed



Deputy Upper Tribunal Judge McClure
December 2018

Date 12th