



IAC-AH-SAR-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-002761
[RP/00054/2020]**

THE IMMIGRATION ACTS

**Heard at Field House
On the 10 October 2022**

**Decision & Reasons Promulgated
On the 17 November 2022**

Before

**UPPER TRIBUNAL JUDGE KOPIECZEK
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS N EL HR
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer

For the Respondent: Ms A Jones, Counsel instructed by Optima Law Solicitors

DECISION AND REASONS

1. Although the appellant in these proceedings is the Secretary of State, for convenience we continue to refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a citizen of Algeria born in 1993. She arrived in the UK in May 2013. She was granted asylum on 18 February 2015. On 19 January 2020 she made a human rights claim under the settlement protection route for indefinite leave to remain (“ILR”) which was refused in a decision dated 8 September 2020.
3. The decision to refuse the human rights claim was made with reference to paragraphs 339R(ii) and (iii)(f) of the Immigration Rules on the basis that her refugee status was cancelled on 28 August 2020 because of deception, given that as part of her asylum claim she asserted that she was single whereas in fact she had married some eight months prior to the claim, on 26 May 2013. Thus, it was decided that she obtained refugee status by misrepresentation.
4. Her appeal to the First-tier Tribunal (“FtT”) was allowed by First-tier Tribunal Judge Farrelly (“the FtJ”) after a hearing on 24 March 2022.

The FtJ’s decision

5. The FtJ summarised the basis of the appellant’s asylum claim which resulted in the grant of refugee status. That was on the basis that she had a relationship with a man when unmarried and her children by him were born out of wedlock. She asserted that she would be at risk on return to Algeria as a result. However, when the application for indefinite leave to remain (“ILR”) was made, a marriage certificate dated 26 May 2013 was submitted. That contradicted the basis of the asylum claim, although the appellant asserted that the marriage certificate was fraudulent and submitted by her partner without her knowledge. They now have five children born between March 2014 and July 2021.
6. The appellant’s partner did not attend the hearing before the FtJ although he provided a witness statement. It appeared that he had recently been discharged from hospital after surgery which was said to have been the reason for his non-attendance.
7. At [10] the FtJ said this:

“I indicated to Mr Eaton that there were shortcomings in the respondent’s proofs, and I had been trying to piece the limited information together. Most notably, the contentious marriage certificate was not on file. Furthermore, I did not have documentation relating to the [appellant’s] asylum claim. He made contact with the case worker involved and towards the end of the hearing a copy of the document said to relate to a marriage was provided”.
8. The FtJ summarised the evidence given by the appellant at the hearing whereby she reiterated that she was not married at the time she made her asylum claim. Her account was that in 2015 her partner had been arrested in relation to his lack of legal status in the UK and he was detained for several hours. The appellant went to where he was being held and explained to officials that she was his partner and that they had children together. She said that she signed a document that she did not

read. The Ftj said that she “appeared to refer to the document Mr Eaton managed to obtain in the course of the proceedings”.

9. She further referred to her eldest child having been diagnosed with autism, attending a mainstream school and having one-to-one assistance.
10. There was an adjournment application on behalf of the respondent, seemingly after the oral evidence had been given and before submissions, and about which the Ftj said the following:

“Mr Eaton then made an adjournment application in relation to the absence of a clear history and proofs. I refused the application because of the stage the hearing was at and the reasons behind it, namely, the poor proofs. The respondent had adequate time to prepare for the appeal”.

11. The Ftj then summarised the submissions made on behalf of the parties, including submissions on behalf of the appellant in terms of the reliability of the document said to be the marriage certificate. Certain sections of the document are left blank, said on behalf of the appellant to be indicative of its lack of authenticity.
12. At [18] the Ftj said that there was “an absence of important information and proofs of evidence in the papers I have been sent electronically”. He said that he had gone through the numerous files and subfiles with limited success in finding substantive material, referring to the possibility that the “new systems” and the transfer of material from the old to the new meant that papers were incomplete due to administrative shortcomings.
13. In the following paragraph he referred to a Case Management Review on 25 November 2021 which included directions for the respondent to provide the refusal letter and any supporting documents by 15 December 2021, and in particular to provide the screening interview that took place on 30 January 2014 and all documents submitted with the (asylum) application form. The Ftj was unable to locate any of those documents. He indicated that the only material he had managed to find which was of assistance was the reasons for refusal letter and the appellant’s short bundle, as well as the disputed marriage certificate produced on the day of the hearing.
14. At [21] he said that he did not have details of the appellant’s asylum claim beyond her account in her witness statement that she met her partner in Algeria and that the relationship developed further, with her meeting him in the UK in 2013. Her account was that her parents became aware of her pregnancy with her partner and disowned her saying that she had brought shame on her family and her Muslim faith, which was the reason behind the asylum claim.
15. The Ftj said at [22] that if the appellant was married when she made her claim then she was deceiving the respondent in saying the opposite, the respondent granting her protection, presumably on the basis of that account. He again referred to the marriage certificate dated 26 May 2013 and the appellant’s partner stating that that was a sham certificate on

which, by deception, he obtained the appellant's signature. The Ftj said it was not clear why he was the one who was applying for settlement or why he needed to submit a marriage certificate, although he suggested that it may be that he needed to show cohabitation so he could also benefit.

16. At [24] the Ftj said that the appellant's partner's statement differs from that of the appellant in that he does not refer to any relationship between them in Algeria, rather that they met through the internet and then in person in London when the appellant visited with her sister. He had also suggested a period of estrangement.
17. At [26] he referred to the grounds of appeal to the FtT and to the claim that the imam at the mosque who prepared it in January 2020 backdated it to 26 May 2013 in an attempt to legitimise the children. Given that the eldest child was born in March 2014 he considered that to be credible.
18. After referring to the decision in *R (on the application of Matusha) v Secretary of State for the Home Department (revocation of ILR policy)* [2021] UKUT 0175 (IAC) and the need for "clear and justifiable evidence of deception and evidence to show that the deception was material to the grant of leave" the Ftj noted at [31] that the appellant's marital status was central to the refugee claim. He went on to say the following at [32]:

"On the evidence before me I do not find the respondent has laid the foundations to establish clear and justifiable evidence of deception".

19. He then repeated the basis of the appellant's assertions in relation to the marriage certificate.
20. At [34] the Ftj said as follows:

"I acknowledge that there were questions for the appellant to answer. However, I find the respondent has not demonstrated the deception alleged. The making of such allegation with such serious consequences requires a sound foundation. It is for the respondent to demonstrate this to the higher standard of the balance of probabilities. I cannot determine an appeal based on suspicion but require evidence. On this basis the revocation of her status is not justified. Therefore, I would allow the appeal".

21. He then went on to consider the Article 8 aspect of the appeal stating that there was "substantial weight" in the Article 8 claim in relation to the children. He referred to the eldest child now having been in the UK for seven years. It is not apparent, however, that the Ftj actually expressed a concluded view on the Article 8 claim, stating that he did not find it necessary to reach a concluded view on the special needs of the eldest child in the light of his conclusions on the revocation issue.

The Grounds and Submissions

22. The grounds contend that the appeal before the Ftj was against the refusal of ILR and not against the revocation of protection status, which decision does not appear to have been appealed.

23. It is argued that the Ftj was wrong to refuse the application for an adjournment having identified shortcomings in the evidence available to him and having noted the fundamental importance of relevant documentation. The Ftj's brief reasons were insufficient, it is argued.
24. The grounds point out that there is no reference to the respondent's appeal bundle, notwithstanding that such a bundle had been sent to the FtT on 28 October 2020 and within that bundle there is a copy of the application form, a document which the Ftj said he was unable to locate.
25. Although the Ftj at [19] referred to a Case Management Review on 25 November 2021 and directions sent to the parties, the directions that were sent were not relevant to the appeal before the Ftj; they related to a different case.
26. In relation to Article 8, the grounds refer to it being briefly reasoned and the observations made by the Ftj were made on the basis of his findings as to the revocation issue.
27. In submissions Ms Cunha relied on the grounds. She reiterated that it was apparent that there were questions that the appellant needed to answer in relation to the revocation issue as stated at [34] of the Ftj's decision. Evidence had been provided by the respondent and was sent to the FtT.
28. Ms Jones submitted that the respondent appears to have taken a remarkably casual approach to the appeal in terms of providing documentation, a matter which the Ftj raised at the hearing. The Ftj was right to point out that the respondent had had sufficient time to prepare for the appeal. It was submitted that fairness does not demand that an adjournment application made halfway through a hearing in order to obtain the evidence that should already have been provided, should have succeeded.
29. Ms Jones submitted that there was nothing to suggest that the Ftj had applied an incorrect test in determining the adjournment application, which she also referred to as a case management decision.
30. In reply, Ms Cunha submitted that the Ftj had to decide whether there was a good reason for the hearing to be adjourned and whether it was in the interests of justice, having regard to rule 2 of the Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014 ("the Procedure Rules"). She submitted that the Ftj did not take account of the issue of fairness.

Assessment and Conclusions

31. The contention that the Ftj was wrong to consider the decision to revoke the appellant's protection status, as distinct from the decision to refuse ILR, on the basis that the revocation decision was not appealed to the FtT, has no basis. At section 5 of the notice of appeal to the FtT, the appellant specifically refers to the revocation of her refugee status as a basis for the

appeal, contending that there was no deliberate or intentional deception. However, we say more below about the timeliness of that aspect of the appeal before the FtT.

32. Rule 2 of the Procedure Rules provides as follows:

“Overriding objective and parties’ obligation to co-operate with the Tribunal

2. (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes –
 - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) using any special expertise of the Tribunal effectively; and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it –
 - (a) exercises any power under these Rules; or
 - (b) interprets any rule or practice direction.
- (4) Parties must –
 - (a) help the Tribunal to further the overriding objective; and
 - (b) co-operate with the Tribunal generally”.

33. It is readily apparent that rule 2 contains a number of features designed to ensure that cases before the FtT are dealt with fairly and justly. Rule 4(3) (h) concerns the FtT’s power to adjourn a hearing. It is clear that the “overriding objective” referred to in rule 2 applies to a decision on an adjournment application.

34. The grounds of appeal to the Upper Tribunal make reference to a bundle apparently submitted to the FtT on 28 October 2020, the grounds indicating that that bundle is attached to the grounds of appeal. That bundle does not in fact appear to have been attached to the application for permission to appeal to the Upper Tribunal and is not apparent in the

electronic documents before the Upper Tribunal. It has not, however, been disputed on behalf of the appellant that there was such a bundle submitted to the FtT.

35. In any event, the FtJ said in his decision, more than once, that there was an absence of documentation provided by the respondent and that that documentation was important. It was the absence of relevant documentation that apparently led him to conclude that the respondent had not established that there was evidence of deception in the appellant's asylum claim.
36. Similarly, although the grounds refer to directions sent to the respondent by the FtT prior to the hearing, on 25 November 2021, relating to a different case, the email said to evidence that is not attached to the grounds of appeal to the Upper Tribunal, despite the grounds suggesting that it is. Again, however, this is not a matter that the appellant disputes. In any event, that complaint in the grounds is not central to our decision in this appeal.
37. It is apparent from the FtJ's decision that he was not in possession of relevant documentation in relation to the appellant's asylum claim. From [13] of his decision it is equally apparent that he refused the application for an adjournment for the respondent to provide that documentation on two bases: because of the stage of the hearing that the application was made, and secondly because the respondent had had adequate time to prepare for the appeal.
38. We do not consider that the very brief reasons given by the FtJ for refusing the adjournment application are legally sustainable. It is not apparent from the FtJ's decision that he applied his mind to the overriding objective to deal with the case "fairly and justly". It is true that the parties, in particular the respondent in this case, had a duty to help the FtT further the overriding objective, and that the FtJ was entitled to take into account the need to avoid delay. However, the avoidance of delay is a matter to be considered in the context of a "proper consideration of the issues" (rule 2)(2)(e)).
39. We do take the view that the respondent ought to have been able, at the hearing, to direct the FtJ's attention, in paper or electronic form, to all relevant evidence. Nevertheless, the FtJ had a duty to consider whether he could justly and fairly determine the appeal without that evidence. In our view he failed to undertake that consideration. We are not satisfied that the FtJ's apparent limiting of his consideration of the adjournment application to the stage of the hearing at which the application was made and to the fact that the respondent had had sufficient time to provide the necessary evidence, constitutes adequate consideration of the adjournment issue.
40. Furthermore, if it be the case, and there is no basis upon which to doubt it, the respondent did provide to the FtT a bundle of documents that the FtJ

did not have before him, that in itself in the context of this case amounts to a procedural failure that compromised the fairness of the proceedings.

41. In the circumstances, we conclude that the FtJ's decision must be set aside for error of law. In accordance with the Senior President's Practice Statement at paragraph 7.2, the appropriate course is for the appeal to be remitted to the FtT for a hearing *de novo* before a differently constituted Tribunal.
42. We indicated that we would say something further in relation to the appeal to the FtT against the decision to revoke the appellant's refugee status. As we have indicated, it is apparent that the notice of appeal to the FtT included an appeal against the decision to revoke her refugee status. However, it *appears* that the appeal to the FtT in relation to that distinct aspect of the respondent's decision-making may be out of time, a matter that we mentioned to the parties at the hearing before us.
43. The reason we indicate that provisional view is because the revocation decision is dated 28 August 2020. According to rule 19(2) of the Procedure Rules the appellant had 14 days to appeal after being sent the notice of the decision. The appeal needed to have been received by the FtT no later than that 14 days. The notice of appeal to the FtT is dated 12 September 2020. It is not clear when the notice of appeal was received by the FtT. On the basis of the dates we have referred to, it may be that the appeal to the FtT in relation to the revocation of refugee status was out of time. That would have required the FtT to decide whether to extend time for appealing pursuant to rule 20, and, on the face of it, would have required the appellant to apply for an extension of time.
44. We stress however, that these are only observations and it will be for the FtT to decide whether the notice of appeal in relation to the revocation of refugee status was or was not in time, and if not, what course to take.

Decision

45. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-Tribunal Judge Farrelly.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A. M. Kopieczek

Upper Tribunal Judge Kopieczek

1/11/2022