



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-002418
First-tier Tribunal No: HU/03073/2021

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On the 10 March 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

NAJA BASHER IBRAHIM MOHAMMED
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fazli, Counsel instructed by Gerald UK Immigration and Legal

For the Respondent: Ms Nolan, Senior Home Office Presenting Officer

Heard at Field House on 9 January 2023

DECISION AND REASONS

1. Mr Fazli attended the hearing remotely; Ms Nolan appeared in person. No difficulties or concerns arose as a consequence of this.
2. The appellant is appealing against a decision of Judge of the First-tier Tribunal Parkes ("the judge") promulgated on 11 March 2022.

Background

3. The appellant is a citizen of Sudan born in January 1995 who has twice been refused entry clearance under the family reunion provisions of the Immigration Rules. Her sponsor is a citizen of Sudan who entered the UK in September 2016 and was granted asylum in February 2017. The appellant and sponsor claim that they married in Sudan on 20 September 2015.
4. The appellant's first application for entry clearance was refused in a decision dated 20 January 2021 ("the first decision"). The reason the application was refused was that the respondent considered that money transfer receipts submitted with the application were false documents. The respondent referred to a document verification report ("the DVR") which was said to establish that the money transfer receipts were not genuine. On the basis of this, the respondent concluded that the application fell to be refused under Paragraph 9.7.1(a) of Part 9 of the Immigration Rules. Paragraph 9.7.1(a) provides:
 - 9.7.1. An application for entry clearance, permission to enter or permission to stay may be refused where, in relation to the application, or in order to obtain documents from the Secretary of State or a third party provided in support of the application:
 - (a) false representations are made, or false documents or false information submitted (whether or not relevant to the application, and whether or not to the applicant's knowledge)
5. The appellant did not appeal against this decision. She instead, on 10 February 2021, applied again for entry clearance. In a decision dated 17 April 2021 ("the second decision") the second entry clearance application was refused. Two reasons were given by the respondent. Firstly, the respondent stated that because deception had been used in a previous application, the application was being refused under Paragraph 9.8.1 of Part 9. This provision provides:
 - 9.8.1. An application for entry clearance or permission to enter must be refused if:
 - (a) the applicant has previously breached immigration laws; and
 - (b) the application is for entry clearance or permission to enter and it was made within the relevant time period in paragraph 9.8.7.
6. The second reason given by the respondent was that she was not satisfied that the conditions of Paragraph 352A of the Immigration Rules (which sets out the requirements to be met for a grant of leave to enter on the basis of family reunion) were satisfied because it was not accepted that the relationship between the appellant and sponsor existed before the sponsor left Sudan (as required by Paragraph 352A(iii)) or that the appellant and sponsor intended to live permanently together (as required by Paragraph 352A(v)).

Decision of the First-tier Tribunal

7. The judge noted that the DVR that underpinned the respondent's finding that false documents had been used was not made available to the appellant's representatives until the day of the hearing. It is apparent from paragraph 11 of the decision that the question of whether the hearing should be adjourned in order to enable the appellant to contact Altras (the company named on the money transfer receipts) was considered but that an adjournment was not sought. The judge stated in paragraph 11:

“There is no further evidence from Altras regard to the rates used or quoted and there was no application for an adjournment to obtain anything from the company. Both representatives indicated that this was not the first time that this issue had arisen with Altras transfers and it was agreed that the case turned on transfers”

8. The judge considered the DVR in detail. He noted that it identified several money transfer receipts from Altras, concerning transfers from the sponsor to the appellant, where the exchange rate used was significantly different to the official/standard rate given by OANDA (“the OANDA rate”). In paragraph 10 of the decision the judge gave an example of a transfer (dated 3 April 2020) where the rate given by Altras more than double the official rate.
9. The judge found (in paragraph 16) that the respondent had discharged the burden of establishing that deception had been used and that the money transfer receipts were false documents. He gave the following reasons:
 - a. There was a “huge difference” between the Altras and the OANDA rate which did not make commercial sense and the appellant did not dispute that the rates set out in the DVR were correct (paragraph 14);
 - b. Following the second decision, the appellant failed to obtain any evidence from Altras to explain the difference in the exchange rate (paragraph 15); and
 - c. Not all sums purportedly sent through Altras were reflected in the bank statements submitted and there were no receipts showing the money was collected (paragraph 12).
10. The judge stated in paragraph 17 that in the light of his finding about the use of false documents it was not necessary to consider whether the conditions of Paragraph 352A were met. With respect to article 8 ECHR, the judge found:

“The use of false documents fundamentally undermined the system and even taking the appellant’s case at its highest there are no features that would outweigh the public interest in the maintenance of the integrity of the system is in play”

Grounds of Appeal

11. The appellant has advanced four grounds of appeal. These are:
 - (1) The judge failed to give adequate reasons for finding that the money transfer receipts were not genuine.
 - (2) The judge failed to give reasons for treating the DVR as conclusive rather than indicative.
 - (3) The judge failed to make findings regarding the relationship between the appellant and sponsor for the purposes of Paragraph 352(iii).
 - (4) The judge failed to consider whether *Hameed v The Secretary of State for the Home Department* [2019] EWCA Civ 1324 should be followed in the light of the Northern Ireland Court of Appeal case *LLD v The Secretary of State for the Home Department* [2020] NICA 38.

Analysis

12. Grounds (1) and (2) concern the judge's assessment of whether the money transfer receipts were false documents and of whether the appellant and/or sponsor engaged in deception. We consider it convenient to evaluate these together. We will then turn to grounds (3) and (4).

Grounds (1) and (2): Insufficient or inadequate reasons for finding deception and false documents

13. This is a "reasons" challenge and, as the higher courts have made clear, judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined: see paragraph 25 of *Jones v First Tier Tribunal & Anor* [2013] UKSC 19.
14. The judge gave three clear reasons (as set out in paragraph 9 above) explaining why he concluded that the money transfer receipts were false documents and there had been deception. The first reason was that there was a very substantial difference between the Altras and the OANDA rate which did not make commercial sense and the appellant did not dispute that the OANDA rate was correct. Mr Fazli argued that it does not necessarily follow from there being different rates that fraud took place and it may be that a mistake occurred. In the grounds it is stated that a difference in rates is "not necessarily conclusive that [the documents] were not genuine". The difficulty with these submissions is that the standard of proof is balance of probabilities, not conclusivity. The fact that there might be an innocent explanation for the discrepant rates does not mean that it was not open to the judge to conclude that it is more likely than not that the presence of an incorrect rate (that was incorrect by a substantial amount) on several Altras documents is a strong indicator that these documents are false and obtained by deception. Mr Fazli has not identified why this reason is in any way improper or was not reasonably open to the judge.
15. The second reason given by the judge was the absence of an explanation for the difference in exchange rate despite the appellant having an opportunity to obtain an explanation (eg by contacting Altras). Mr Fazli challenged this reason on the basis that the appellant was only provided the DVR on the date of the hearing and therefore did not have an opportunity to obtain evidence to refute the DVR. The difficulty with this argument is that the judge recorded in paragraph 11 that the appellant did not seek an adjournment in order to obtain evidence from Altras and that this was not the first time the issue had arisen. It was not argued before us that paragraph 11 inaccurately recorded what was said at the First-tier Tribunal hearing. In circumstances where the appellant's representatives did not seek an adjournment and indicated that the issue raised in the DVR was not new to them, it was plainly open to the judge to draw an adverse inference from their failure to take steps to obtain an explanation for the discrepant exchange rates.
16. The third reason given by the judge was that not all sums purportedly sent through Altras were reflected in the bank statements submitted and there were no receipts showing the money was collected. This reason was not challenged in the grounds or in the hearing before us.
17. Mr Fazli submitted that the DVR was deficient because of a failure by the respondent to contact Altras. He referred to the respondent's guidance in respect of false representations and false documents where it is stated:

If you suspect a false document has been submitted you should consider whether to take steps to verify it. For example, you may be able to check with the issuer of the document at source or the specialist teams within BICS to verify the document.

18. The difficulty with this argument is that the guidance does not require the respondent to check with the issuer of the document; it merely gives this as an example of a way to check a document. In any event, even if the DVR was deficient as claimed by Mr Fazli, it does not mean that the judge was not entitled to take into account the discrepancy in the exchange rates given that the appellant's representatives accepted there was a discrepancy and that the OANDA rate was the correct rate.

19. As the judge gave several sustainable reasons the "reasons" challenge in grounds (1) and (2) cannot succeed.

Ground (3): Failure to make findings about the relationship under Paragraph 352A(iii)

20. In the light of the finding that the appellant had used a false document and engaged in deception his application could not succeed under the Immigration Rules even if all of the conditions of Paragraph 352A were satisfied. It was therefore not necessary for the judge to assess the relationship between the appellant and sponsor for the purposes of Paragraph 352A(iii). The judge therefore did not err as claimed in ground 3.

21. At the hearing, brief submissions were made about the adequacy of the judge's Article 8 ECHR assessment. It was submitted that the relationship between the appellant and sponsor needed to be considered by the judge in order for a proper Article 8 proportionality assessment to be made. However, the judge's Article 8 ECHR assessment is not challenged in the grounds: ground 3 is explicitly limited to Paragraph 352A(iii) and makes no reference to Article 8 ECHR. Nor is Article 8 mentioned elsewhere in the grounds. As no application was made to amend the grounds to encompass a challenge to the judge's article 8 proportionality assessment we have not considered this issue.

Ground (4): Failure to consider the Northern Ireland Court of Appeal case *LLD v The Secretary of State for the Home Department* [2020] NICA 38.

22. In *Hameed v The Secretary of State for the Home Department* [2019] EWCA Civ 1324 the Court of Appeal distinguished "false representations" from "false documents", finding that whilst there must be dishonesty for the former, there need not be dishonesty for the latter. In reaching this conclusion, the Court of Appeal purported to follow *Adedoyin v Secretary of State for the Home Department* [2010] EWCA Civ 773.

23. In *LLD v The Secretary of State for the Home Department* [2020] NICA 38 the Court of Appeal of Northern Ireland found that the Court of Appeal in *Hameed* misunderstood *Adedoyin* and that *Hameed* and *Adedoyin* are irreconcilable; and it was stated that *Adedoyin*, properly understood, requires there to be dishonesty in respect of false documents as well as false representations.

24. If this was a case in which there was a false document but no dishonesty or deception by (or on behalf of) the appellant or sponsor (as, for example, was the case in *Hameed*) the judge would have needed to address the question of whether *Hameed* and *Adedoyin* are irreconcilable and, if so, which ought to be followed. However, the judge found both that false documents were submitted

and that deception was used. In these circumstances, the outcome would be the same for the appellant even if *Adedoyin* were to be interpreted in accordance with *LLD*. The fourth ground of appeal is therefore without merit because it raises an issue that is irrelevant in the light of the sustainable findings of fact made by the judge.

Procedural unfairness

25. During the course of the hearing, the question was raised as to whether it was procedurally unfair for the judge to not adjourn the hearing when the appellant only received the DVR on the morning of the hearing. We refused to consider this issue because it was not raised in the grounds of appeal and an application to amend the grounds was not made. Mr Fazli submitted that we should consider the issue because it is "*Robinson obvious*". We rejected this argument because it is far from obvious that it was procedurally unfair to not adjourn the hearing when neither party sought an adjournment.

Notice of Decision

26. The grounds of appeal fail to identify an arguable error of law.

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

D. Sheridan
Upper Tribunal Judge Sheridan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 16 January 2023