



IAC-AH-KRL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/19817/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 7th November 2014**

**Determination Promulgated
On 13th Nov 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**MELVINA ELFREDA GAGE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Jacobs of Counsel, instructed by J McCarthy Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal Gordon.
2. That the Appellant is a female Nigerian citizen, born 6th July 1960 who applied for leave to remain in the United Kingdom, relying upon Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention).

3. The application was refused on 16th April 2014 and the Appellant lodged an appeal against that decision with the First-tier Tribunal.
4. The Appellant in her Notice of Appeal indicated that she wished to have her appeal determined on the papers and paid the appropriate fee. The Tribunal on 29th May 2014 issued a notice to the parties indicating that the appeal would be determined without a hearing and if there was any further evidence or submissions, this must be received by the Tribunal no later than 26th June 2014.
5. Thereafter the appeal was allocated to Judge Gordon who in a determination promulgated on 7th July 2014 indicated that a hearing had taken place at North Shields Hearing Centre on 25th June 2014. The determination records that both the Appellant and her daughter attended the hearing and gave evidence. The judge records that the Appellant appeared to be very deaf, and the hearing was put back to enable the Appellant's daughter to attend. During the recess the Appellant was observed on the telephone, which led the judge to the conclusion that the Appellant was not as deaf as claimed. The determination records that the Appellant's daughter attended the hearing which recommenced at 11:50am and after hearing evidence, the judge dismissed the appeal.
6. The Appellant applied for permission to appeal to the Upper Tribunal. In summary it was contended that the judge had made mistakes of fact which caused unfairness, and amounted to errors of law. It was contended that neither the Appellant nor her daughter attended the hearing in North Shields, and that the Appellant had requested that the appeal be determined on the papers. The judge had recorded that the Appellant had only recently started living with her daughter, and that previously the daughter was claiming NASS support. It was contended that the Appellant had always lived with her daughter and that the daughter had never received NASS support. The judge recorded that the Appellant was working as a nanny, whereas the Appellant had never been in a position where she could work in the United Kingdom, and had never had any such employment.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Frankish who recorded in paragraph 3 of his decision;
 - “3. If the application is correct, something has gone very wrong in this case. The application asserts that this was a paper appeal and the daughter has never claimed NASS support. The determination (paragraph 4) records:
 - (a) putting the case back to give the daughter time to arrive, which she did;
 - (b) the Appellant pretending to be deaf but being caught out by the usher who observed her on the telephone;
 - (c) the daughter being in receipt of NASS support before the Appellant recently moved in with her. The discrepancies indicate an arguable error of law.”
8. Following the grant of permission the Respondent lodged a response pursuant to Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 indicating that the application for permission to appeal was not opposed.

9. The Tribunal issued directions that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

The Respondent's Submissions

10. Mr Melvin relied upon the rule 24 response, and stated that the Respondent's file indicated that there had been no oral hearing. If the decision was set aside, Mr Melvin did not object if the appeal was remitted to be heard afresh by the First-tier Tribunal.

The Appellant's Submissions

11. Mr Jacobs submitted that it was clear that a material error of law had occurred. Both the Appellant and her daughter attended the Upper Tribunal hearing and had confirmed to Mr Jacobs that they did not attend any hearing before the First-tier Tribunal at the North Shields Hearing Centre.
12. Mr Jacobs submitted that the judge was therefore clearly in error in making reference to the Appellant and her daughter giving evidence as neither had done so, and the evidence did not relate to this Appellant's case.
13. Mr Jacobs submitted that the decision of the First-tier Tribunal should be set aside and remitted to be heard afresh by the First-tier Tribunal.

My Conclusions and Reasons

14. I conclude that Judge Gordon has made a mistake of fact in stating that the Appellant and her daughter attended North Shields Hearing Centre to give evidence, and the evidence given did not relate to this Appellant's case. I am satisfied that this amounts to an error of law.
15. My reasons for reaching this conclusion are that there is no Record of Proceedings on the Tribunal file to indicate that an oral hearing took place. The Tribunal records indicate that the appeal was to be determined on the papers. The Tribunal did not send out a notice of hearing to the Appellant and therefore there is no way that the Appellant could have known when a hearing was to take place. The Tribunal sent a notice to the parties dated 29th May 2014 stating that the appeal would be determined on the papers as requested by the Appellant. The Appellant paid the fee appropriate for an appeal to be determined on the papers and did not pay a fee for an oral hearing.
16. I am therefore satisfied that the Appellant did request that her appeal be determined on the papers, and that neither the Appellant nor her daughter attended a hearing at North Shields Hearing Centre on 25th June 2014.
17. I set aside the decision of the First-tier Tribunal with no findings preserved.

18. I decided that it was appropriate to remit this appeal back to the First-tier Tribunal to be determined afresh. In making this decision I took into account the Senior President's Practice Statement 7.2 which states;

"7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal unless the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact-finding which is necessary in order for the decision and the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

19. In my view the requirements of paragraph 7.2(a) are met. The Appellant's case has not been properly considered by the First-tier Tribunal.

20. Mr Jacobs indicated that the Appellant wished to have her appeal determined at an oral hearing, and a hearing date was allocated at Taylor House Hearing Centre on 16th April 2015 at 10am. This is on the understanding that the Appellant pays the appropriate fee for an oral hearing. This should be done by the Appellant forthwith. If the appropriate fee is not paid, then the appeal will be determined on the papers. The appeal is to be heard by a First-tier Tribunal Judge other than Judge Gordon.

Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal.

Anonymity

No anonymity order was made in the First-tier Tribunal. There has been no request to the Upper Tribunal for anonymity and no anonymity order is made.

Signed
Deputy Upper Tribunal Judge M A Hall

Date 10th November 2014

**TO THE RESPONDENT
FEE AWARD**

No fee award is made by the Upper Tribunal. This must be considered by the First-tier Tribunal.

Signed
Deputy Upper Tribunal Judge M A Hall

Date 10th November 2014