Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/49062/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 7 July 2014	**On 9th July 2014**

Before
UPPER TRIBUNAL JUDGE JORDAN

Between

Huma Sadiq

Appellant

and

The Secretary Of State For The Home Department

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Mr L. Tarlow, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan who was born on 5 June 1986. She appeals against the determination of First-tier Tribunal Judge Broe promulgated on 24 April 2014 dismissing her appeal against the decision of the Secretary of State refusing her leave to remain as a Tier 4 (General) student. The application was refused under paragraph 322 (1A) because it was supported by a false bank statement. The appellant came to the attention of the authorities on 20 November 2013 at which point removal directions were made which provided her with an in-country right of appeal which she exercised.

2. Paragraph 322 (1A) is one of the mandatory grounds on which leave to remain or variation of leave to enter or remain in the United Kingdom must be refused:

> where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts has not been disclosed, in relation to the application…

3. The substance of her claim, notwithstanding the fact that she accepted that a forged document had been submitted, was that she was innocent of any wrongdoing and that she was entitled to asylum because of a fear of the consequences of a return to Pakistan.

4. The First-tier Tribunal Judge rejected the appellant's claim in its entirety. He was satisfied that she overstayed her leave and her asylum claim was no more than a last ditch attempt to remain in the United Kingdom when she was facing removal. He went on to consider her Article 8 rights and concluded that it was proportionate to remove her, given there were no arguable grounds for the grant of leave to remain outside the Immigration Rules.

5. No specific challenge is made to those findings. Given the fact that the Judge did not accept she was innocent of the events that resulted in the use of a false statement or that she was a genuine asylum seeker, any residual Article 8 claim based on proportionality was bound to be assessed against a public interest heavily stacked against her.

6. The grounds seeking permission to appeal to the Upper Tribunal are directed towards the fairness of the appeal process. The appellant refers to the fact that the Tribunal made reference in its determination to documentary evidence which was not available to the appellant or her representatives and this amounted to a procedural irregularity. General grounds of fairness are raised. Fairness must be viewed in the context of the case as a whole, including the fact of an Article 8 claim heavily stacked against her.

7. In paragraph 2.5 of the Grounds, further mention is made to the fact that no reference had been made in the determination to a consideration of the claim for humanitarian protection or discretionary leave. This ground is without foundation since, on the basis of the unchallenged findings of fact made by the Tribunal that the appellant's claim had been fabricated, this left no room for a sustainable finding that the appellant was a risk of serious harm or entitled to any subsidiary form of relief.

8. I am satisfied that if there had been a procedural irregularity leading to unfairness, this would be a proper ground of appeal to the Upper Tribunal. I am, however, entirely satisfied that no such procedural irregularity took place for the reasons I now give.

9. The respondent refused the application because the appellant had submitted a false bank statement. As recorded in paragraph 5 of the

determination, the appellant accepted that a forged document had indeed been submitted. In paragraph 6 of the determination, the Judge summarises the appellant's statement to the effect that the respondent had sent her a letter refusing her application but she stated that she did not receive it, nor the removal decision that was made in relation to her. However, she accepted a removal decision was served upon her when she was detained at Becket house. The substance of her claim was, however, not directed towards documentary evidence but to establish she was not to blame for any deception because what had happened was the fault of her mother, the agent or her lawyer.

10. At the hearing before the Judge, he records in paragraph 22 that he had not been provided with a copy of the refusal decision but noted from correspondence that the relevant decision was made on 17 February 2012. It was not disputed that the application was refused because a forged bank statement had been submitted. The documentary evidence referred to by the Judge included a letter written by the appellant's representatives Gill Law Chambers dated 7 March 2012 asking that the respondent reconsider the refusal, which was taken by the Judge as an indication the appellant was aware at that stage of the fact that the statement had been found to be a forgery. The respondent responded to Gill Law Chambers on 11 April 2012.

11. On the basis of this material, there is no arguable case that the appellant was not supplied with the relevant documentary material necessary to determine the appeal.

12. At the hearing of the appeal on 19 March 2014, the appellant was represented by Mr Gill. Reference is made in paragraph 1 to the application of 7 March 2012 for a reconsideration and the respondent's response of 11 April 2012. There is no suggestion in the determination that Mr Gill had not been provided with the respondent's bundle, referred to in paragraph 3. Had there been documentary evidence that Mr Gill had not seen, he would have referred to it and asked for a copy. He was plainly aware of the evidence that the appellant herself had submitted or he had submitted on her behalf. The Judge himself referred to the absence of a refusal decision but it was not disputed such a decision was made and refused because a forged bank statement had been submitted. Accordingly, the grounds of appeal wholly failed to identify what documents were produced of which the appellant was unaware in circumstances that amounted to a procedural unfairness.

13. There was before the Judge the letter dated 7 March 2012 from Gill Law Chambers (headed by Mr Khalid Gill and signed by him) in which, on behalf of the appellant, he reiterated the appellant's earlier claim that the letter and bank statements submitted with the application were genuine. That stance is, of course, no longer adopted by the appellant. The letter also asserted that enquiries made with Allied Bank

were defective and this may have caused doubts as to the authenticity of letters and bank statements. Accordingly, the writer requested to have details of the enquiries which led the respondent to believe that the letter and bank statements submitted were not genuine. The letter continues:

> "We would appreciate if you could send us a copy of enquiry report giving our client a fair opportunity to know why her bank statements were considered to be not genuine. On receiving the full information on alleged false bank statements she would be able to address this issue and provide evidence to refute the allegation of submitting false documents."

The letter was accompanied by a document, signed by the appellant, giving Gill Law Chambers authority to act on her behalf.

14. The response to Gill Law Chambers dated 11 April 2012 included correspondence confirming the bank statements were fraudulent. The letter ended by stating that it was open to the appellant to apply in person in order to arrange an interview in Sheffield but if the Border Agency did not hear from her within 14 days, enforced removal would be contemplated.

15. I have also been provided with a file note dated 15 June 2012 prepared by the respondent dealing with the request for a reconsideration in which it is said:

> "The decisions were maintained, and copies of the fraudulent documents were sent to Gill Law AG128199730GB, confirmed as delivered on 13 April 2012."

16. I take the identification number as a reference to a recorded delivery slip. This material satisfies me that no objection was made at the hearing that documentary evidence had not been submitted to the appellant's representative. No material documentation was mentioned by the Judge of which the appellant or her representative was unaware. It is apparent that the falsity of the document was conceded by the appellant's representative at the hearing. Accordingly, the grounds of challenge to the Upper Tribunal have not been made out. Indeed the grounds themselves fail to identify what documents are relied upon as giving rise to the procedural unfairness.

17. Since the hearing, the appellant has changed her representative. Her current representative on file is Maxim law and the grounds of appeal have been settled by Mr Asad Maqsood of that organisation. There was no appearance before me of either the appellant or Maxim Law. The hearing before me took place on 7 July 2014 and was fixed for 2pm. By fax dated 7 July and timed at 10.54 (GMT), Maxim Law wrote to the Tribunal seeking an adjournment. In support was a letter dated 5 July 2014 (the previous Friday) from a Dr A. Chatterjee of the Clockwork Centre, London E8 in which he says:

> "This is to confirm that I have seen and examined the above named.
> She has significant stress and regular panic attacks. She has low mood with poor sleep, early morning awakening, poor concentration, memory etc. She also experienced floaters before her eyes. May I please request that her official engagements/appointments etc be postponed to the middle of August or thereafter."

18. There is no reference, of course, to the appellant being unable to attend the hearing by reason of her medical condition. Nor is there any consideration of any treatment that is necessary. The letter does not provide a reason why, if stress, panic attacks and poor sleep prevented her appearance on 7 July 2014, that situation is likely to have altered in a month's time, were the hearing to be reconvened then. If the cause of stress is the Tribunal hearing, that source of her anxiety will not have altered.

19. More importantly, however, is the fact that the hearing before me was to determine whether the First-tier Tribunal Judge made a material error of law in his determination. That was a matter which was essentially for the appellant's representative to deal with by way of submissions and, in particular, to identify the documents referred to in the grounds of appeal which were not made available to the appellant or her representative at the hearing which rendered the hearing unfair and procedurally irregular. There was no attempt on the part of Maxim Law to attend the hearing before me notwithstanding the fact that they had received no response from the Tribunal to the application for an adjournment. An appellant's representative is not entitled to assume an application for an adjournment has been granted without hearing from the Tribunal to that effect, far less to provide the Tribunal with a *fait accompli* by failing to attend. There is no suggestion that the appellant was unable to give her representative prior instructions, either on the day of the hearing or on any earlier occasion; indeed stress and panic attacks along with poor sleep and poor concentration do not offer a reason why an appellant is incapable of providing instructions. This was not an appeal which required the appellant to give evidence in support of the error of law finding. The appellant's presence was not, therefore, essential to the proper determination of the error of law stage.

20. There was no skeleton argument served or filed which may have shed light on the merits of the appeal.

21. I am not satisfied on considering the grounds of appeal, the determination of the First-tier Tribunal Judge, the doctor's letter or the request for an adjournment by Maxim Law that it is in the interests of justice to adjourn the appeal. I am satisfied that the appellant's previous representatives were supplied with all the material documentation and that there was nothing said by Mr Gill at the First-tier Tribunal hearing which suggests he had not been provided with the documentation. There is no statement from Mr Gill to the effect that he

had been misled or that his client had been placed at an unfair disadvantage. In such circumstances, the bald assertion made in the grounds of appeal that the Tribunal had looked at, and referred to, documents which were not available to the appellant or her representatives is, as a matter of fact, not made out. Whilst the grounds may have been prepared on instructions from the appellant, this does not amount to evidence.

DECISION

The Judge made no error on a point of law and the original determination of the appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
7 July 2014