



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

Appeal Number: IA/14641/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 13th July 2016**

**Decision & Reasons
On 28th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**MS SHUKURAT SURAKAT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Nobody

For the Respondent: Ms Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Nigeria born on 15th April 1988. She appealed against the decision of the Respondent dated 15th March 2015 refusing to issue her with a residence card as confirmation of the right of residence under European Community law as the family member of an EEA national exercising treaty rights in this country. There was a representative at the First-tier hearing but he had instructions that there was to be no oral hearing. Both the Appellant and the Respondent were given a chance to lodge evidence and make representations. The judge found that the appeal could be justly determined on the papers before him. The appeal was heard by Judge of the First-tier Tribunal Blair on 9th December 2015 and dismissed in a decision promulgated on 7th January 2016.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Nightingale on 13th June 2016. The permission states that the judge erred when he stated that no documents had been lodged as a 32 page bundle had been sent to the Tribunal by fax on 22nd November 2015 and this was not before the judge. The grounds maintain that had the contents of the bundle been taken into account the decision of the judge might well have been different. The notice issued on 23rd October 2015 by the Tribunal required that any written evidence or submissions had to be sent by 20th November 2015 but the representative chose to send the documents on 22nd November 2015. The fax transmission was dated at 6.02 hours on 22nd November 2015 but the fax cover sheet is dated 23rd November 2015. In any case this 32 page bundle was not before the First-tier Judge when the appeal was considered. The permission states that it is arguable that there was procedural impropriety which amounts to an arguable error of law by no fault of the judge's making.
3. There is a Rule 24 response on file by the Respondent which states that the Appellant chose to serve the material relied upon otherwise than in accordance with the directions of the Tribunal and no explanation was given for the tardy service or why such evidence was not available prior to this. The Rule 24 response states that the Judge of the First-tier Tribunal directed himself appropriately.
4. The Appellant did not appear for the hearing of this appeal. Neither did a representative on her behalf. The clerk telephoned Chancery ES Solicitors London, (the Appellant's representatives) and a fax was discovered dated 12th July 2016 asking for the matter to be dealt with on the papers.
5. The 32 page bundle is on file now. I asked the Presenting Officer if she wished to make submissions and she submitted that she is relying on the Rule 24 response. She accepted that the 32 page bundle was supplied before the hearing and the judge would normally have taken this into account but it was not on file. She submitted that it is clear that there was a representative at the Hearing Centre and there is no explanation of why he did not mention this bundle and point out that it should have been before the judge. The Presenting Officer asked me to deal with the hearing on papers.
6. It is clear that the 32 page bundle of the Appellant was not received on time by the Tribunal although it was received before the date of the hearing. It is now on file and I have considered this. The facts before the First-tier Judge have not been altered. The bundle contains two witness statements, one medical report, the first page of an Aviva insurance policy, bank account summaries for the Appellant's spouse, family photographs, a Santander four month statement and a Lloyds statement for the Appellant and a Halifax letter to the Appellant.
7. I have noted that the Appellant admits that she and her partner did not attend the interviews with the Respondent but she states that medical

reports were sent to the Respondent explaining why she was unable to attend. This is confirmed in the Appellant's partner's statement but there is no evidence of medical letters on file which state the Appellant was not fit to attend the interviews. The medical report on file is by an independent psychiatrist and states that the Appellant has been suffering from ICD of a mild degree but the depression is improving and she is not receiving any treatment from her GP. The Appellant's evidence is that she is receiving support from a support group and does not require any antidepressant treatment at this stage. This report is dated 18th February 2015 and states that the Appellant is likely to recover from the depressive episode within a period of six months. The letter about the insurance policy from Aviva is dated 22nd August 2013. It is not clear whether this policy is still in existence or whether the Appellant has told the insurance company about her medical condition. There are no details of the policy in this letter apart from the policy number. This is not helpful. The photographs require clarification. The Appellant's partner's bank statements show an extremely small amount in his bank account which show that he has been working but the bank accounts are dated in 2014. The Appellant's bank statements show a debit balance in 2013 and nothing more recent.

8. It is clear from this bundle that had it been before the First-tier Judge his decision would have been no different. Perhaps if oral evidence had been given at the First-tier hearing, explanations could have been given to the judge about the issues he was not satisfied with but the evidence in the bundle is not up-to-date evidence and the judge made no error of law in his decision. The evidence was also submitted late and the representative who attended the hearing made no mention of this bundle when a paper hearing was requested.
9. In January 2016 the Appellant had overstayed in the United Kingdom since her leave was curtailed on 22nd May 2012.
10. The judge has given proper reasons for dismissing the appeal and I find that there are no material errors of law in the judge's decision. His decision, which was promulgated on 7th January 2016, must stand.

No anonymity direction is made.

Signed

Date **28th July 2016**

Deputy Upper Tribunal Judge I A M Murray