



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: DA/00565/2016

THE IMMIGRATION ACTS

Heard at: Field House
On 19 March 2018

Decision & Reasons Promulgated
On 21 March 2018

Before

Upper Tribunal Judge Gill

Between

Ausrine Nekrosiute
(ANONYMITY ORDER NOT MADE)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr A Burrett, of Counsel, instructed by BHB Law.
For the respondent: Ms P. Duffy, Senior Presenting Officer.

Decision and Directions

1. The appellant, a national of Lithuania born on 25 April 1984, has been granted permission to appeal the decision of Judge of the First-tier Tribunal Andonian who, in a decision promulgated on 5 December 2017 June 2015 following a hearing on 10 November 2017, dismissed her appeal against a decision of the respondent of 4 November 2016 to make a deportation order under regulation 19(3)(b) and regulation 21 of the Immigration (European Economic Area) Regulations 2006.
2. There was no appearance by or on behalf of the appellant at the hearing before the judge on 10 November 2017. The judge said that he was satisfied that the Notice of

Hearing dated 11 October 2017 was duly communicated to the appellant at the address to which she had been bailed. He decided to proceed in the absence of the appellant and any representation on her behalf, for the reasons he gave at paras 2-9 of his decision. He proceeded to consider the substantive issues under the EEA Regulations and in relation to Article 8. He went on to dismiss the appeal on each of these grounds.

3. The grounds of appeal contend that the appellant had not received the Notice of Hearing dated 11 October 2017. In relation to the appellant, the Notice of Hearing was sent to the address to which she had previously been granted bail, on 9 December 2016. This was the address of a [BD] who had stood as surety for her in connection with that previous grant of bail. That grant of bail came to an end on 29 September 2017 when the appellant was taken into detention at HMP Bronzefield on a criminal matter.
4. At paragraph 2 of his decision, the judge made reference to the fact that the respondent's representative (a Mr. D Harvey) had informed him that the appellant had been in prison at HMP Bronzefield on a criminal offence "*since 29 September 2017*". However, at para 7 of his decision, the judge noted that the Notice of Hearing dated 11 October 2017 had been sent to the appellant at the address to which she had previously been bailed and said, *inter alia*, that the surety had not informed the court that the appellant was serving another prison term. This latter comment suggests that the judge was not aware that the appellant was in prison as at 11 October 2017, the date of the Notice of Hearing for the hearing on 10 November 2017.
5. At the hearing before, Mr Duffy confirmed that, as at 11 October 2017, the appellant was in detention in HMP Bronzefield and that the respondent's representative at the hearing before the judge (Mr. Harvey) had informed the judge of that fact.
6. In view of the fact that the judge had been informed that the appellant was in detention as at the date of the Notice of Hearing and the fact that the Notice of Hearing was not sent to the appellant at HMP Bronzefield, I am satisfied that the judge materially erred in law in concluding that the Notice of Hearing had been duly served. In this regard, the judge appeared to take into account the fact that [BD], who had previously stood as surety for the appellant, was somehow under some obligation to inform the Upper Tribunal that the appellant was in detention. In fact, [BD]'s responsibilities as a surety came to an end when the appellant's bail ended. The appellant's bail ended when she was taken into detention on 29 September 2017.
7. It is clear that the judge was informed that the appellant was in detention when the Notice of Hearing was sent to the parties. Given that the Notice of Hearing had not been served on the appellant at HMP Bronzefield, the judge materially erred in law in proceeding with the hearing of the appeal on the basis that the appellant had been duly served with the Notice of Hearing. As a consequence, the appellant has been deprived of having the opportunity to have an oral hearing.
8. For the above reasons, I set aside the decision of Judge Andonian to dismiss the appellant's appeal. None of his findings shall stand.

9. For the same reasons, I am satisfied that para 7.2(a) of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") applies. I am therefore satisfied that a remittal to the First-tier Tribunal is the right course of action.

Notice of Decision

The decision of the First-tier Tribunal involved the making of material error of law such that the decision to dismiss the appeal is set aside. This case is remitted to the First-tier Tribunal for a hearing of the Article 8 claim outside the Immigration Rules by a judge other than Judge of the First-tier Tribunal Andonian.



Upper Tribunal Judge Gill

Date: 19 March 2018