



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: EA/06393/2018

THE IMMIGRATION ACTS

Field House
On 15th October 2019

Decision & Reasons Promulgated
On 17th October 2019

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

CHINAZO [E]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Fletcher, of Counsel, instructed by Samuel Louis Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nigeria born on 10th June 1988. She arrived in the UK on 18th April 2012 as a Tier 4 general student migrant. In 2015 she applied for a derivative residence card as the primary carer for her EEA child, CFN, who is a citizen of the Netherlands. The application was refused, and her appeal was dismissed by Judge of the First-tier Tribunal Parker. She reapplied to the

respondent on the same basis in June 2018 and the application was once again refused in a decision dated 11th September 2018. Her appeal against the decision to was dismissed by First-tier Tribunal Judge Malone in a determination promulgated on the 13th June 2019.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Ford on 14th August 2019 on the basis that firstly it was arguable that the First-tier judge had erred in law by unfairly finding that a letter put in evidence by the appellant had been tampered with when that allegation was not raised by the respondent or put to the appellant. This was material because that letter was relied upon also to find that documents regarding family land in Nigeria were not genuine, and so to find that the appellant was not self-sufficient. Secondly it was arguable that there was a failure to consider the fact the appellant had £12,000 of savings.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. The appellant argues in her grounds of appeal that at paragraph 16 of the decision the First-tier Tribunal finds that the letter regarding CFN has been tampered with because the name has been typed in a different font to the rest of the letter. This was not a contention made by the respondent, and the appellant was not given an opportunity to deal with this issue, and so the hearing was not fair and just on this point. At paragraph 26 there is a finding that the appellant has £12,000 of savings in her bank account, and there is a failure to go on to consider this with respect to her self-sufficiency. It is possible also that at paragraph 33 the First-tier Tribunal did not apply the correct standard of proof, and that there was a misconstruction of Regulation 16(2) of the EEA Regulations.
5. Ms Fletcher accepted that the appellant would have lost her appeal before the First-tier Tribunal as there was not the relevant medical insurance for her other children (although this failing has since been addressed and the relevant medical insurance now exists) but says that this is a case where the appellant was denied a fair hearing as the contention at paragraphs 16, 22 and 31 was that she had put forward a false document, as there are consistent findings in all of those paragraphs that the letter at page 66 of the bundle has been tampered with to mislead the First-tier Tribunal and was not genuine. These findings were not based on allegations made by the respondent and this was not a matter raised by the Judge at the hearing. As such the appellant had not had the opportunity to defend herself with respect to this highly damaging contention of deception. It is important that the appellant is not seen as someone who has tried to pervert justice by presenting false evidence as that would clearly prejudice her in the future, and she is entitled to the opportunity to clear her name.
6. The appellant also makes an application to adduce new evidence that the letter from the Greenwich Community Health Services dated January 2013 is genuine and authentic, as this evidence was not obtained before as the issue was not raised

by the respondent and it is important. Ms Fletcher says that this matter is in-hand with the solicitors.

7. Mr Walker agreed that the Home Office Presenting Officer before the First-tier Tribunal had not put forward any contention that the letter had been tampered with and so was false evidence. He accepted that the hearing had been unfair due to the way this matter had been dealt with.
8. At the end of the hearing I informed the parties that I found that the First-tier Tribunal had erred in law and that it was appropriate to remit the appeal to be heard again by the First-tier Tribunal with no findings preserved.

Conclusions – Error of Law

9. The First-tier Tribunal erred in law by conducting an unfair hearing as there was a finding that the appellant had tampered with the letter of Greenwich Community Health Services, offering an appointment to the parent of her child, CFN, on 2nd October 2015, and thereby had attempted to mislead the First-tier Tribunal at paragraphs 16, 22 and 31 of the decision. This was not an allegation made by the respondent at any point, either in the refusal letter or at the hearing, and having had regard to the record of proceedings in the file it is clear that the First-tier Tribunal Judge had not raised the matter at the hearing for the appellant to give her evidence in response, and for her representative to make submissions upon.
10. The Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal states as follows at paragraph 7.2: “The Upper Tribunal is likely on each such occasion to proceed to remake 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.” Given my finding in the paragraph above it is therefore appropriate for the matter to be remitted to the First-tier Tribunal to be heard de novo.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal.
3. I remit the matter to the First-tier Tribunal to be remade de novo with no findings preserved.

Signed: *Fiona Lindsley*
Upper Tribunal Judge Lindsley

Date: 15th October 2019