



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

**Appeal Number: IA/46227/2013
IA/46214/2013
IA/46222/2013**

THE IMMIGRATION ACTS

Heard at North Shields

**On 20 August 2014
Signed 21st August, 2014**

**Determination
Promulgated**

On 3 September 2014

Before

UPPER TRIBUNAL JUDGE RICHARD CHALKLEY

Between

DR. CHRISTOPHER CHINEDU OBIAJUNWA

1st Appellant

MRS ANN-PRINCESS CHETACHI OBIAJUNWA

2nd Appellant

PRYLLA CHIDINMA OBIAJUNWA

3rd Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Appearance

For the Respondent: Mr C Dewison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The first named Appellant is a citizen of Nigeria and is the husband of the Second named Appellant and the father of the Third named Appellant. The Second and Third named Appellants are also citizens of Nigeria and the Third named Appellant is the daughter of the Second named Appellant. They were born on the 27 October, 1964, 24 September, 1982, and the 11 April, 2002 respectively. The First and Second named Appellants have two other children who are not appellants, because they were born to the First and Second named Appellants after their arrival in the United Kingdom.
2. On the 27 February, 2013 the First named Appellant made application for further leave to remain in the United Kingdom as a Tier 2 (General) Migrant and for a Bio Metric Residence Permit. The Secretary of State refused the application on 24 October 2013, asserting that the Appellant had relied on false documentation for the purpose of obtaining a previous variation of leave. On the 29 March, 2014, the First named Appellant had submitted documents from Abuja State of Nigeria which the Respondent believed were not be genuine. In the light of this, the Secretary of State deemed that refusal of the Appellant's application was appropriate under Paragraph 322(2) of Statement of Changes in Immigration Rules HC 395, as amended ("the Immigration Rules") and was not prepared to exercise her discretion in his favour. The Second and Third Appellants' appeals are dependant on the First named Appellant and their applications were likewise refused by the Secretary of State.
3. The Appellants appealed the Respondent's decisions and their appeals were heard by First-tier Tribunal Judge Fox at a hearing in North Shields on the 2 February 2014. In his determination, promulgated on the 20 January, 2014, the judge said at Paragraph 6 that the burden on proof was on the Appellant and that the standard of proof was on a balance of probabilities. He noted that the Respondent's officers had conducted a further enquiry in relation to the income tax clearance certificates provided by the First named Appellant in support of his original application of 29 March, 2011. The Chairman or Chief Executive of a State Board of Internal Revenue had confirmed to the Respondent in an email that the documents in question were false. The judge indicated at Paragraph 13 of his determination that he was satisfied that the documents used by the Appellant were not genuine and that the Respondent was correct in refusing the First named Appellant's leave.
4. Grounds of appeal were submitted on behalf of the Appellants, challenging the judge's decision and asserting that he had failed to make proper findings in respect of facts that were material and that he had introduced grounds which were not raised by the Secretary of State. In relation to that challenge, he noted that the First named Appellant had failed to provide any evidence to show that he met the maintenance requirements of the Immigration Rules, but he did not go on to consider the substantive appeal in any event, having concluded that it was sufficient having found that the First named Appellant had relied on false

documents, simply to dismiss the appeal. There was a second challenge raised by the Appellant in respect of the Appellants' Article 8 claim. In granting permission, First-tier Tribunal Judge Page suggested that the grounds were arguable and that they allege a number of factual errors. At Paragraph 12 of the judge's determination the judge said incorrectly that the Appellants' bundle of documents contained no formal certification from the Nigerian Government that the First Appellant's tax documents could be relied upon. At Pages 16 and 17 of the First named Appellant's documents are letters dated the 23 February 2011 and the 14 September, 2011, purporting to have been issued by the Nigerian Government, authenticating the First named Appellant's tax documents. These are documents which the Respondent sought to verify.

5. At a hearing before me on the 31 March 2014 I was satisfied that the judge had materially erred in law by failing to take account of these documents. During the course of that hearing I pointed out that the judge appeared to have made a second error on a point in law in that he had indicated that the standard of proof was a balance of probabilities and that the burden fell on the Appellant. No where had he properly directed himself in law in recognising that where allegations of forgery are made by the Respondent, the burden of proof shifts to the Respondent to prove such allegation. I found a further error of law and set aside the determination.
6. My reasons for finding an error of law are re-produced in the appendix to this determination.

Hearing on the 20 August 2014

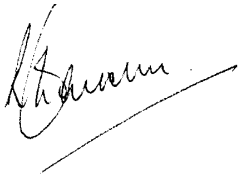
7. Notice giving the date, time and place for the hearing of the Appellants' adjourned appeal were sent to the three Appellants and to their solicitors by first class pre-paid post on the 11 July 2014. This morning at 10.15a.m. there was no appearance by or on behalf of either the Appellants or their solicitors.
8. My usher telephoned the Appellants' solicitors and was subsequently called back and told that the solicitors had not had notice of the hearing.
9. Perusal of the file shows that notice of the hearing was sent not only to the Appellants' solicitors but also to each of the Appellants. No explanation for the Appellants failure to attend the hearing has been given.
10. I commenced the hearing at 10.30 am. I am satisfied that in the circumstances I am required to proceed with the hearing of the appeal in the absence of any satisfactory explanation for the non-appearance of the Appellants.
11. For the Secretary of State, Mr Dewison reminded me that I directed that the Respondent reviews her reasonable endeavours to provide any up to

date verification report to the Appellants' solicitors at the earliest opportunity and that in any event no later than 14 days before the hearing which would not be before the 10 June 2014. The up to date verification report was in respect of the tax documents relied on by the Appellant. Mr Dewison told me that he now had an up to date verification report, a copy of which he gave to me. He advised me that it had been sent to the Appellants' solicitors by facsimile on the 9 May 2014. He told me that according to a facsimile delivery report on his file it was successfully delivered to the Appellants' solicitors on the 9 May 2014.

12. The evidence comprised in the up to date verification report consisted of a copy of an email sent by a member of the Verification Unit of the Visa Section at the British High Commission, Lagos to the Abuja State Board of Internal Review. It explained that as part of the officer's daily duties he requested to verify the authenticity of various documents submitted in applications for UK visas. He attached scanned copied of the income tax clearance certificate, the income tax receipt and the references issued in respect of the First named Appellant and relied upon by him as being genuine. He asked that the attached documents be confirmed as genuine.
13. The reply, signed by the Executive Chairman, confirms that not only is the income tax receipt and income tax certificate not genuine, but the clearance confirmation letter of the 23 February 2013, is not genuine and the letter of September 14, 2011 is also false. The letter goes on to confirm that none of the documents were issued by or emanated from any tax office in Abuja state.
14. Ordinarily, in immigration appeals, the burden of proof is on the Appellant and the standard of proof is on a balance of probabilities. However, where, such as in this case, the Secretary of State asserts that the documents relied upon by an Appellant are false the burden of proof shifts and is with the Respondent.
15. I am satisfied on the evidence before me that documents relied upon by the First named Appellant in connection with his visa application on the 29 March 2011, are false. I find that the Secretary of State has satisfied me that she was entitled to refuse the First named Appellant's application made on the 22 February, 2013, under Paragraph 322(2).
16. First-tier Tribunal Judge Fox appears to have assumed that in their notices of appeal, the Appellants had raised a human rights appeal. Unfortunately I can find no record anywhere of them ever having raised a human rights appeal.
17. Nonetheless the judge considered their rights under Article 8 of the European Convention for the Protection of Human Rights and

Fundamental Freedoms and it seems to me only fair that I should do the same.

18. I considered Appendix FM of the Immigration Rules. The Appellants are a family unit and if one of them were to be removed from the United Kingdom they would all be removed as a unit. None of the appellants would appear to qualify under paragraph 276ADE. Applying **Gulshan (Article 8 - New Rules - Correct Approach) [2013] UK UT00640(IAC), KABIA (MF Para 398 - Exceptional Circumstances Gambia [2013] UK UT59** and **Nagray v Secretary of State for the Home Department [2013] EWHC 720 (Admin)** I can find no exceptional circumstances which would permit me to consider the matter outside the rules.
19. I therefore dismiss the Appellants' Article 8 human rights appeal.
20. First-tier Tribunal Judge Fox materially erred in law in his determination of the appellants' immigration appeals, which I set aside. I remake the decision myself. The Appellants' appeals are dismissed. The Appellants' Article 8 Human Rights Appeals are also dismissed.



Signed
Judge Chalkley
Judge of the Upper Tribunal

The appendix above referred to

APPELLANTS: CHRISTOPHER CHINEDU OBIAJUNWA (FIRST APPELLANT)
ANN-PRINCESS CHETACHI OBIAJUNWA (SECOND APPELLANT)
PRYLLA CHIDINMA OBIAJUNWA (THIRD APPELLANT)

RESPONDENT: SECRETARY OF STATE FOR THE HOME DEPARTMENT

**CASE NOS: IA/46227/2013
IA/46222/2013
IA/46214/2013**

DATE OF INITIAL HEARING IN UPPER TRIBUNAL: 31st March, 2014

Representation:

For the Appellant: Ms B Asigo

For the Respondent: Mr P Mangion, Home Office Presenting Officer

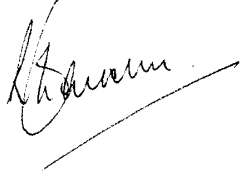
**REASONS FOR FINDING THAT TRIBUNAL MADE AN ERROR OF LAW,
SUCH THAT ITS DECISION FALLS TO BE SET ASIDE**

1. The first named appellant is a citizen of Nigeria and is the husband of the second named appellant and father of the third named appellant. The second and third named appellants are also citizens of Nigeria and the third named appellant is the daughter of the second appellant. The first named appellant was born on 27th October, 1964 and his wife was born on 24th September, 1982 and his daughter was born on 11th April, 2002. The first and second named appellants have two other children who are not appellants because they were born to the first and second named appellants after their arrival in the United Kingdom.
2. On 22nd February, 2013 the first named appellant made application for further leave to remain in the United Kingdom as a Tier 2 (General) Migrant and for a biometric residence permit. The Secretary of State refused that application asserting that the appellant had relied on false documentations for the purpose of obtaining a previous variation of leave. On 29th March, 2011 the first named appellant had submitted documents from Abia State of Nigeria that the respondent believed were not to be genuine. In the light of this she deemed that refusal was appropriate under paragraph 322(2) and was not prepared to exercise discretion in his favour. The second and third appellants' appeals are dependent on the first named appellant.
3. The appellants appealed the respondent's decision and their appeal was heard by First-tier Tribunal Judge Fox at a hearing in North Shields on 2nd January, 2014. In his determination of 20th January, 2014 the judge said at paragraph 6 of his determination that the burden of proof was on the appellant and the standard of proof required is a balance of probabilities. He noted that the respondent's officers had conducted a further enquiry in relation to the income tax clearance certificates provided by the appellant

in support of his application. The chairman or chief executive of the State Board of Internal Revenue had confirmed to the respondent in an email that the documents were false. The judge indicated at paragraph 13 of his determination that he is satisfied that the documents used by the appellant were not genuine and that the respondent was correct in reviewing the first named appellant's leave.

4. Grounds of appeal were submitted on behalf of appellant challenging the judge's decision asserting that he had failed to make proper findings in respect of facts that were material and that he had introduced grounds which were not raised by the Secretary of State. In relation to that challenge he noted that the appellant had failed to provide any evidence at all to show that he met the maintenance requirements of the Immigration Rules but as pointed out by the appellant's representative Ms Asigo today that was not something that was in issue because it seems the respondent did not go on and consider the substantive appeal but concluded that it was sufficient having found that the appellant relied on false documents simply to dismiss it.
5. There was another challenge raised by the appellant in respect of the appellant's Article 8 claim. In granting permission First-tier Tribunal Judge Page suggested that the grounds were arguable and that they allege a number of factual errors. At paragraph 12 of the judge's determination the judge said incorrectly that the appellant's bundle of documents contained no formal certification from the Nigerian government that the first appellant's tax documents could be relied upon. At pages 16 and 17 of the appellant's documents are letters dated 23rd February, 2011 and 14th September, 2011 purporting to have been issued by the Nigerian government authenticating the first appellant's tax documents. They are documents which apparently the respondent again sought to verify. I am satisfied having heard argument from both representatives that the judge has erred and there clearly are letters at pages 16 and 17 of the appellant's bundle which the judge appears not to have taken account of.
6. In reading the determination it appeared to me that the judge had erred in relation to what he said concerning the burden of proof. He identified the correct burden of proof at paragraph 6 of his determination and identified that generally it was for the appellant to prove issues relied upon and that the standard of proof was a balance of probabilities. Very fairly in my view Mr Mangion accepted that the Immigration Judge had not anywhere in his determination demonstrated that he had properly directed himself on the law in recognising that where allegations of forgery are made by the respondent the burden of proof shifts to the respondent.
7. Again, very fairly in my view, Mr Mangion accepted that he could not argue that this was a *Robinson* obvious point not having been identified by the appellant's solicitors but having been identified by me from the determination. I am satisfied that there are errors of law in this

determination such that it cannot stand. I set aside the determination.
None of the findings of fact are preserved.

A handwritten signature in black ink, appearing to read 'Chalkey', with a long horizontal stroke extending to the right.

Upper Tribunal Judge Chalkey