



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

Appeal no: **AA 05107-13**

THE IMMIGRATION ACTS

At **Harmondsworth**
on **17.07.2013**

Decision signed:
17.07.2013
sent out: **18.07.2013**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Iwinosa Lucky OMOSIGHO

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: Miss Mavelyn Vidal (working under the supervision of
Duncan Lewis & Co, Harrow)

For the respondent: Mr Gurinderpal Jagpal

DETERMINATION AND REASONS

This is an appeal, by the respondent to the original appeal against the decision of the First-tier Tribunal (Judge Kamorudeen Adio), sitting at Hatton Cross on 11 June, to allow an asylum and human rights appeal by a citizen of Nigeria, born 21 September 1990. The appellant was arrested in this country on 12 April 2013, and claimed asylum on the 18th. When interviewed on 14 May 2013, he said his parents had been killed in February 2012, following a meeting with some family members who were trying to get possession of their land; on hearing about that, someone he described as Uncle Frank, whom he had not seen for some time, had come and taken care of him, and arranged to get his finger-prints taken for a visa to come to this country. He arrived in May 2012; but then had been held by Uncle Frank till he managed to escape him in August, and forced to have sex with numerous women, no doubt for his uncle's benefit,

2. This account may seem improbable in itself; but it is not suggested that the judge was not entitled to believe it, providing he gave proper reasons for doing so, and dealt with all significant points against it. The difficulty on this score was that Home Office records showed the appellant's visa had been applied for on 19 December 2011, and issued on 11 January 2012: this of course meant that the application process could not have been carried out as the appellant had said, after Uncle Frank took charge of him, following the death of his parents in February.
3. That was a point taken in the refusal letter, as the judge noted at paragraph 12: so far as he dealt with it, he did so at paragraphs 76 - 80. The judge's main finding, at paragraph 76, is that "... the Appellant's uncle had planned for the Appellant to leave Nigeria before any possible issue arose concerning the meeting to be attended by his father". This was of course not what the appellant had said at interview; but neither was it something he had claimed in oral evidence before the judge. From the judge's paragraphs 45 it is quite clear that the appellant was still saying he hadn't seen Uncle Frank for 'a while' before his parents died; and there is nothing to suggest that he was resiling from his account of the visa having been obtained by Uncle Frank, as a result of what happened to his parents.
4. That finding by the judge was pure speculation, as were the conclusions he drew from the simple statement on the visa application form that the application had been received through an (accredited) agent. The judge's finding that the false details in the form were the work of an (unscrupulous) agent was also pure speculation, because the appellant's evidence was that the application process had been managed by his uncle, and he knew little or nothing about it, beyond the fact that his finger-prints had been taken. However, that is not central to the real credibility point made against the appellant on the form, because that depends on its date, not its contents.
5. There was no evidence before the judge, and certainly none that he referred to, which was capable of supporting the explanation he gave for the discrepancy between the date of the visa, and the appellant's own account of events, and it follows that this point on its own involved an error of law on the part of the judge which will require a re-hearing.
6. There is another credibility point which would also have had that result. At the appellant's interview on 14 May 2013, he said he had been playing football for a club called 'Mandela FC' in Liverpool since about August 2012; but the undated letter he handed in then, from someone who described himself as the chairman of the club said he had been with them for "over a year". While this was only marginally inconsistent with the appellant's claimed arrival date of May 2012, it was completely inconsistent with the appellant's own account of being held captive by Uncle Frank from then until August that year.
7. This point was not taken at the interview, so far as the parties could tell me; but it was taken in the refusal letter, sent on 23 May 2013. There were before the judge two further undated letters from the club chairman, but bearing fax transmission details, from an unknown number, of 20 and 22

May. They were not received by the Home Office till the hearing; but the suggestion is that they represent an correction, to match the appellant's account, on the part of the chairman, unprompted because it came before the point was taken in the refusal letter. There is no further evidence to support the date shown on these letters.

8. As Miss Vidal frankly acknowledged, though the judge noted this point against the appellant, he did not deal with it himself at all, either by accepting that the further letters from the football club chairman represented a genuine unprompted correction of what he had said in the first one, or in any other way. This failure too was an error of law on the part of the judge, which will require a re-hearing. The re-hearing can most conveniently take place, given the time limits in the fast-track procedure, by another judge of the First-tier Tribunal.
9. When I announced this decision, Miss Vidal asked for the re-hearing to be put off till after 6 September, when the appellant has an appointment, given on 18 June, for an initial assessment with the Helen Bamber Centre. That application will have to be made, following my decision, to the First-tier Tribunal, where it will no doubt be duly considered.

Home Office appeal allowed

Fresh hearing before First-tier Tribunal, not Judge Adio

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JLH' followed by a horizontal line.

(a judge of the Upper
Tribunal)