



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

Appeal Number: IA/49649/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 30 June 2014**

**Determination
Promulgated
On 25 July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE E B GRANT

Between

MRS AYODELE BEATRICE YUSSUF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Akindemi of Dillex Solicitors.

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. On 15 November 2013 the appellant arrived at Heathrow TN4 and was refused leave to enter but given temporary admission and informed that she was required to attend Heathrow TN4 for a flight to Nigeria on 2 December 2013 and on 16 November 2013 the appellant's leave to enter was cancelled by the respondent in the following terms: *"You were given entry clearance to enter the UK on 23/05/2012 but I am satisfied that false representations were employed or material facts were not disclosed for the purpose of granting leave...I therefore cancel your continuing leave....This is because an endorsement in your*

passport purports to show that you arrived back in Nigeria on 4th July 2011 after having arrived in the UK on the 13th June 2011. However Home Office records show that you didn't in fact arrive back in Nigeria until 11th November 2011. You were unable to give any explanation as to why the Nigerian Entry stamp dated 4th July 2011 is in your passport. I am therefore satisfied that you have used deception in order to facilitate your entry into the United Kingdom. This means any future applications for entry clearance or leave to enter the UK you make will be refused under paragraph 320 (7b) of the Immigration Rules... for a period of one year from the date on which you leave the UK following this refusal"

2. The appellant's appeal against cancellation of her leave was heard by FTTJ NMK Lawrence on the papers on 12 March 2014. In a determination promulgated on 27 March 2014 the judge found that the appellant accepted that the entry on her passport is an error committed by a Nigerian Immigration Officer. The appellant submitted a letter from the Nigerian Immigration Service to UKBA purporting to explain the mistake in the entry. The letter stated that the appellant had landed in Nigeria on 11 July 2013 and an Immigration Officer erroneously endorsed the passport showing the appellant landed there on 11 November 2013. *"I am not satisfied, however an Immigration Officer may be incompetent, it cannot extend to endorsing a passport 4 months hence. There is a vast difference between 4th of July 2011 (even expressed as 4.7.11 or 04.07.2011 and 11th of November 2011 (even expressed as 11.11.11 or 11.11.2011). It simply does not make sense. The dates in numerals in whatever format do not match. Therefore I rule out any mistake on anyone's part. The differences in the dates is a deliberate attempt by the appellant or at her instigation to give a false impression she left the UK on 11 July 2011 when in actual fact she left on 11th of November 2011. I do not attach any weight to this letter. I do not find that the appellant has discharged the evidential burden"*
3. The appellant applied for permission to appeal. On 8 May 2014 FTTJ PJM Hollingworth granted permission to appeal in the following terms: *" An arguable error of law has arisen since a concession as to an error does not lead to a conclusion of deliberate falsity. There are inadequate findings of fact in relation to a letter from the Nigerian Immigration Services referred to in the application and in the determination"*
4. Thus the matter came before me to determine whether the determination contains an error of law.
5. For the appellant Mr Akinyemi relied upon the grounds set out in the application for permission to appeal. He relied upon his skeleton argument and expanded his argument to say that there was no way the stamp would have been placed in the appellant's passport if not placed there by the Nigerian authorities. He submitted that the later date did not show any breach of the Immigration Rules because at all times his client left the United Kingdom within six months as required by the Immigration Rules.

6. Mr Jarvis for the respondent submitted there was no error in the determination. Once the respondent had highlighted the reasons for the cancellation of leave which because a stamp in the passport did not match the appellant's immigration history the burden passed to the appellant to rebut. She elected to have a hearing on the papers. The judge had to make his findings on what was before him. It can be seen the judge did not accept the letter was a reliable document and he could not accept that an Immigration Officer would make such a significant mistake by stamping a date which bore no numerical relation to the date the appellant said she returned to Nigeria. There had been no explanation as to how a letter addressed to UKBA fell into the hands of the appellant to enable her to produce it. This is a case where the appellant disagrees with the findings of the judge but could not provide any proper evidence of rebuttal to the judge. She provided no explanation as to how she obtained the letter addressed to UKBA.
7. As an aside Mr Jarvis said that if I were to find there was an error of law the respondent would like additional time for the listing of the appeal because concerns have now been raised about another stamp in her passport.

Decision

8. Contrary to what is submitted in the grounds the judge has not erred in law in his determination. The judge has given adequate reasons for attaching little weight to the purported letter from the Nigerian authorities. The weight to be attached to the document was properly a matter for the judge and a submission that too little weight was attached to it cannot establish any arguable error of law.
9. The FTTJ was not assisted by the choice of the appellant to request a hearing on the papers. She did not instruct a representative and the FTTJ was faced with her explanation which was based on a letter purportedly from the Nigerian authorities. There was no explanation as to how this letter had come to be in the appellant's possession and, on the face of it, the letter raised the concerns mentioned by the FTTJ.
10. An explanation as to how she came by that letter has now been provided with the application for leave to appeal. It is not an error of law to fail to take account of matters not placed before the judge. The explanation as to how a document purportedly addressed to UKBA should have been in the possession of the appellant should have been put before the judge at the appeal hearing.
11. Overall the judge in a well reasoned determination has given adequate findings for finding that the appellant had not rebutted the evidence adduced by the respondent and I find that he did not err in law.

Conclusions:

The determination contains no arguable error of law.
I uphold the determination.

Signed
7 July 2014

Deputy Judge of the Upper Tribunal