



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

Appeal Number: IA/50840/2014

THE IMMIGRATION ACTS

Heard at Field House

On 28 September 2015

**Decision & Reasons
Promulgated**

On 22 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

**SHILEOLA OLABANJI AKINRINLOLA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Shah, instructed by Vision Solicitors
For the Respondent: Mr S Clarke, Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

No anonymity order was made by the First-Tier Tribunal. We find that no particular issues arise on the facts of this case that give rise to the need for a direction. For this reason no anonymity direction is made.

DECISION AND REASONS

1. The appellant in this case is a Nigerian national. He was born on 10 March 1975. The respondent decided on 27 November 2014 to refuse him entry to the UK. On arrival at Heathrow Airport the appellant presented a visa endorsed with a family visit visa issued on 6 November 2014 valid until 6 November 2016 which had effect as leave to enter the UK for a maximum

period of 180 days. The reason why the appellant was refused entry was that the Immigration Officer was satisfied that false representations were employed or material facts were not disclosed for the purpose of obtaining the visa. According to the reasons given in a notice dated 27 November 2014 refusing leave to enter, checks had been made regarding the appellant's previous travel history which showed that he fraudulently obtained a counterfeit Ghanaian Nigerian date stamp for 22 April 2009 and 29 April 2009 on his Nigerian passport. In addition further examination of his passport had revealed a counterfeit Malaysian visa purported to have been issued on 28 June 2011 and two further counterfeit entry and exit stamps on the same passport. Also two corresponding Nigerian exit and entry stamps were considered to be counterfeit. On the basis of this the respondent was satisfied that the appellant had made false representations to create a false travel history for himself and had the Visa Officer been aware he would not have issued this or any other previous visa. The Immigration Officer therefore considered that the visit visa should be cancelled.

2. The appellant appealed that decision to the First-tier Tribunal. He appealed on the basis that he maintained that the visa stamps were not counterfeit and asserted that he would be providing adequate evidence of the same in his appeal bundle. He also asserted that the respondent had not provided him with any verification report confirming that the travel stamps were counterfeit and he was not able to take issue therefore with that allegation at that time.
3. His appeal was dealt with on the papers. He elected not to have an oral hearing. His appeal was determined on 10 March 2015 by First-tier Tribunal Judge Ghani and was dismissed in a decision promulgated on 16 April 2015. The First-tier Tribunal found that there was no evidence before it from the appellant to confirm that the stamps in his passport were not counterfeit. The First-tier Tribunal concluded in the absence of any evidence whatsoever from the appellant that the respondent's decision was in accordance with the Immigration Rules.
4. The appellant then sought permission to appeal to the Upper Tier Tribunal. Permission to appeal was granted by First-tier Tribunal Judge Ransley on 25 June 2015. He noted that the grounds only really raised one issue, namely that the judge erred in law in finding that the respondent's decision was in accordance with the law when the respondent had failed to provide any evidence to substantiate the allegation that the visa stamps in the appellant's Nigerian passport were counterfeit. First-tier Tribunal Judge Ransley, in granting permission, considered it was arguable that the judge erred in law due to the failure to apply the well-established legal principle that the burden of proof is on the respondent to provide evidence to substantiate the allegation of deception. The grant of permission states that the First-tier Tribunal should not have found the respondent's decision to be in accordance with the Immigration Rules when there was no evidence from the respondent to substantiate the allegation of deception.

5. The matter now comes before the Upper Tribunal to determine whether there is a material error of law and what to do about it. I heard representations both from Mr Clarke for the Secretary of State and Ms Shah for the appellant. According to Ms Shah, neither she nor the appellant had had sight of the respondent's bundle in this appeal. It had not been served on the appellant and consequently the appellant had not received any evidence in relation to the Immigration Officer's allegations that he had counterfeit stamps in his passport. The Tribunal file also does not hold a copy of the respondent's bundle. Mr Clarke had on his file a large bundle of documents including forgery reports from experts. Mr Clarke agreed before me that in light of the fact that the respondent's bundle was not before the First-tier Tribunal and was also not served upon the appellant there had to be an error of law in the determination of the First-tier Tribunal. There had been no evidence before the First-tier Tribunal to substantiate the allegation of deception. The burden of proof is clearly on the respondent to provide cogent evidence in regard to any allegation of fraud and that had not been done.
6. I find therefore that there was a material error of law in the decision of the First-tier Tribunal. The burden of proof was on the respondent to substantiate the ground for refusing entry, namely that the appellant had made false representations. There was no evidence before the First-tier Tribunal to substantiate this claim. The First-tier Tribunal materially misdirected itself and reversed the burden of proof in finding that the Appellant had produced no evidence to confirm that stamps were counterfeit and dismissing the appeal. In the circumstances I conclude that there was a material error of law.
6. I then asked for submissions from the representatives as to the appropriate forum for the re-making of the decision. Mr Clark made representations that the appropriate forum would be the Upper Tribunal in the light of the necessity for limited judicial fact-finding. Ms Shah made representations that the appropriate forum would be the First-tier Tribunal in light of the fact that the appellant would have to provide evidence in rebuttal and had not had sight of the respondent's bundle.
7. Having regard to Part 7.2 (a) of the Practice Statements for the Immigration and Asylum Chamber of the First-tier Tribunal and Upper Tier Tribunal, I conclude that the absence of the respondent's bundle in this case meant that the appellant was deprived of a fair hearing and consequently in the circumstances the appropriate course of action is to remit the matter to the First-tier Tribunal.

Notice of Decision

The appeal is allowed.

I set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal for re-hearing. No findings are preserved.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge L J Murray

Date