



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: VA/05690/2013

THE IMMIGRATION ACTS

Heard at Field House, London  
On 6 January 2015

Determination Promulgated  
On 7 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

ATINUKE RAHMAT ANIMASHAUN AFOLABI

Appellant

and

ENTRY CLEARANCE OFFICER - ABUJA

Respondent

**Representation:**

For the Appellant: the sponsor, Moshood Animashaun

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

DETERMINATION AND REASONS

1. The appellant, a national of Nigeria, appealed to the First-tier Tribunal against the decision of the Entry Clearance Officer (ECO) dated 1 March 2013 to refuse her application for entry clearance as a visitor to visit her brother, the sponsor, in the UK. First-tier Tribunal Judge Cohen dismissed the appeal and the appellant now appeals with permission to this Tribunal.
2. The ECO refused the application for entry clearance as he was not satisfied that the appellant met the requirements of paragraph 41 (i), (ii), (vi) and (vii) of the Immigration Rules. In particular the ECO was not satisfied that the appellant had provided evidence that she is in receipt of her stated income and that he was therefore unable to assess her true financial circumstances. The ECO was not therefore satisfied that the appellant had shown that her intentions were as stated or that she intends to leave the UK at the end of her visit. The ECO was not satisfied that the appellant would be maintained and

accommodated in the UK without recourse to public funds or that she is able to meet the cost of the return or onward journey.

#### Error of law

3. First-tier Tribunal Judge Cohen set out the background to the appeal and the oral evidence given to him by the sponsor. The Judge appeared to accept that the appellant is employed and that the respondent had incorrectly stated that she is self-employed [9]. However the Judge went on to consider the case in terms of paragraph 320 (7A) of the Rules from paragraphs 10-16 of the determination. The ECO did not refer to this ground of refusal in the refusal decision. There is nothing in the papers before me to indicate that the ECO relied on paragraph 320 (7A) in this case. The grounds contend that there are a number of discrepancies in the First-tier Tribunal Judge's decision. For example paragraph 10 refers to previous applications which had not been disclosed but there is no evidence of any such applications in this case. Paragraph 11 refers to a previous passport but there is no evidence of a previous passport in this case. Paragraph 12 says that there is a discrepancy in relation to the appellant's date of birth but neither date of birth referred to relates to the appellant. I am satisfied that it is clear from reading these paragraphs that the Judge made findings on the facts of another unrelated appeal. Apart from paragraph 9 the Judge did not make any findings in relation to the evidence before him on this appeal.
4. In these circumstances the Judge made a material error of law and I set his decision aside in its entirety. Mr Nath applied for an adjournment so that he could consider all of the evidence submitted to the First-tier Tribunal in this case. However the sponsor objected to the application on the basis that he returned from Nigeria to attend the hearing and that he is going back there and does not know when he will return to the UK. I refused the application for an adjournment and instead gave Mr Nath time to consider the documents and I heard evidence and submissions in relation to remaking the decision.

#### Remaking the decision

5. I remind myself that the burden of proof is on the appellant and the standard of proof is the balance of probabilities. The relevant date for consideration of the evidence is the date of the ECO's decision which was made on 1 March 2013.
6. I firstly deal with the maintenance and accommodation requirements set out in paragraph 41 (vi) and (vii) of the Rules. In her application form the appellant said that the sponsor and his wife will maintain and accommodate her and pay for her travel to the UK. The sponsor's Santander bank statement for the period from 6 December 2012 to 5 March 2013 shows that the sponsor and his wife had savings of £8,224.21. This is in addition to the sponsor's current account. The sponsor also submitted his tenancy agreement. I am satisfied on the basis of this evidence that the sponsor can maintain and accommodate the appellant on a visit as claimed.
7. The ECO was not satisfied as to the appellant's personal circumstances in Nigeria. She said in her application form that she has been employed as a sales representative with YS Afolabi Nigeria since August 2006 and that she earns 38,364.30 nett per month from her employment. She submitted a copy of letters of appointment and of confirmation of

appointment as well as details of her salary package which are consistent with her claimed period of employment and salary. The appellant submitted a letter from YS Afolabi Nigeria confirming that she is employed there and that she is paid 38,364.30 in cash. She submitted pay advices which reflect this amount. I accept that the bank statements do not reflect all of this pay. However I am satisfied on the basis of the evidence before me that the appellant is employed as claimed.

8. The appellant also said in her application form that she manages her late parents' estate. The sponsor said that their parents had owned six properties and two shops and that he has two siblings. He said that the appellant looks after these properties on behalf of all three siblings. He also said that he travels to Nigeria to look after the family properties. He talked about a building project he is involved in. The appellant submitted rent receipts and some of the lodgements into her bank account reflect these receipts. I am satisfied on the basis of all of this evidence that the appellant manages family property in Nigeria.
9. The appellant submitted birth certificates which show that she has two children with her husband, they were born in 2004 and 2007. She submitted letters from the children's school and a letter from her husband. She also submitted a letter from her husband's employer confirming that he is employed as a Quantity Surveyor. I am satisfied on the basis of this evidence that the appellant has a husband and young children in Nigeria as claimed.
10. In his oral evidence before me the sponsor said that his wife is from Poland and that they now have two children. He said that he and his wife are keen to have the children's christening or dedication and that he cannot celebrate this event without representation from his family. He said that he feels shame in relation to this issue and is keen for his sister to come to the UK to celebrate the children's christening. He said that this would be preferable to bringing all of his wife's family to Nigeria from Poland. I accept that the sponsor's evidence in relation to this matter is credible.
11. I have considered all of the evidence before me. I am satisfied that the appellant has significant ties in Nigeria and that she therefore has an incentive to return there. I accept that she will be travelling to the UK for a specific purpose and that she intends to return to Nigeria at the end of her visit.
12. I am satisfied that the appellant has discharged the burden upon her to demonstrate that she met the requirements of paragraph 41 of the Rules at the date of the decision.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of an error on point of law.

I set the decision aside and remake it by allowing the appeal.

Signed

Date: 6 January 2015

A Grimes

**Deputy Judge of the Upper Tribunal**