



IAC-AH-CJ-V1

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

Appeal Number: OA/10902/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 24<sup>th</sup> February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MRS OLUYEMISI BASIRAT AKINLADE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Adesina, Solicitor

For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Nigeria born on 20<sup>th</sup> August 1965. The Appellant applied for entry clearance as a partner under Appendix FM of the Immigration Rules. Her application was considered by the Entry Clearance Officer under paragraph EC-P.1.1 of Appendix FM of the Immigration Rules and under paragraph 320(11). The Appellant's application was refused by the Entry Clearance Officer on 12<sup>th</sup> August 2014.
2. The Appellant appealed and the appeal came before a Judge of the First-tier Tribunal Wylie sitting at Hatton Cross on 12<sup>th</sup> June 2015. In a decision

and reasons promulgated on 27<sup>th</sup> July 2015 the Appellant's appeal was allowed on human rights grounds and under the Immigration Rules.

3. On 5<sup>th</sup> August 2015 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended that the First-tier Tribunal Judge failed to consider the quotations set out in the refusal letter and that that undermined the First-tier Tribunal Judge's reasoning and findings that the Appellant met paragraph S-EC.2.2(b). Further it was contended that in relation to Rule 320(11) it was submitted that the First-tier Tribunal Judge's findings at paragraph 42 were based on a mistake of fact and a misapplication of law.
4. On 9<sup>th</sup> November 2015 Judge P J M Hollingworth granted permission to appeal. In the very briefest of grants of permission the judge's reasons were:

"An arguable error of law has occurred in relation to the construction placed upon the available evidence appertaining to disclosure."
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. No Rule 24 response appears to have been lodged by the Appellant's solicitors. This is an appeal by the Secretary of State. However in order to ensure continuity in the appeal process Mrs Akinlade is referred to herein as the Appellant and the Secretary of State is the Respondent. The Appellant appears by her instructed solicitor Mr Adesina. The Secretary of State appears by her Home Office Presenting Officer Mr Tufan. I note that when the matter came before the First-tier Tribunal Judge there were no legal representatives. However the appeal was not dealt with on the papers and that the Appellant's husband and Sponsor Mr Martin Akinlade attended and gave oral testimony.

### **Submissions/Discussion**

6. Mr Tufan notes the Grounds of Appeal. He notes that the grounds raised, purely recite an appeal pursuant to the Immigration Rules. He would seek to vary those grounds to appeal against the decision under Article 8, this being a ground that was allowed by the First-tier Tribunal Judge. It is clear that nowhere within the Grounds of Appeal has the finding under the Human Rights Act been challenged. Mr Adesina understandably strongly opposes any such application. It is not Mr Tufan's fault that he is placed in the position that he is. There is no documentary evidence nor basis set out in writing upon which the Secretary of State seeks to challenge the finding under Article 8. His application is consequently refused. On that basis both legal representatives acknowledge that there is no extant appeal pursuant to Article 8 and consequently, irrespective of any other outcome on this appeal, the basis upon which the Appellant's appeal was allowed on human rights grounds must stand.
7. In the light of this finding Mr Tufan indicates that he does no more than rely on an appeal under the Immigration Rules. He relies on the Grounds of Appeal as set out and raises the issue of the number of wage slips that

were produced before the First-tier Tribunal. Again this is not an issue that is raised in the Grounds of Appeal.

8. Mr Adesina queries the point as to whether or not disclosure of criminal issues are material and points out that the judge has made a considerable number of findings. He takes me to paragraph 37 of her determination where she has concluded that the Sponsor was genuine in his evidence and that he had encouraged the Appellant to return to Nigeria to regularise her immigration status by seeking legal entry and that he was determined that full disclosure be made of all relevant factors, namely her conviction and previous immigration history. He consequently submits that the judge has made clear findings within her determination and that it is not reasonable of the Secretary of State to submit that she has failed to properly construe and analyse the criminal convictions. He does ask me not to go behind the judge's findings and to find that there is no material error of law and to dismiss the appeal.

### **The Law**

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Findings**

11. The Secretary of State has not helped herself in this matter. Firstly no Home Office Presenting Officer was instructed to attend before the First-tier Tribunal. Secondly the Grounds of Appeal make no reference to a challenge to the finding allowing the appeal pursuant to Article 8. The judge in her decision considered Article 8 in some detail at paragraphs 44 to 51 of her determination. Had it been the intention of the Secretary of State to consider that they contained any material errors of law, they

should have been raised in the Grounds of Appeal. Not only that, when the matter thereafter reaches the hands of Mr Tufan, there is no evidence put to me to suggest that there are material errors of law, merely that the Secretary of State would seek to appeal. Despite the valiant effort of Mr Tufan, that application could not possibly succeed and consequently the only issue that was extant before me was whether or not there was a material error of law in the decision of the judge so far as it relates to allowing the appeal under the Immigration Rules. Mr Tufan merely relies on the Grounds of Appeal. He makes a brief reference to the decision of the First-tier Tribunal Judge. In fairness to him, that is all he can do. The judge has produced a well-presented and well-reasoned decision. Reference is made to the previous conviction of the Appellant and the judge has noted that it was unfortunate that the solicitors did not set out the details of the criminal conviction. She has noted that the Sponsor indicated that the Appellant's criminal conviction was prior to his meeting her and that the Sponsor was instrumental in encouraging the Appellant to return to Nigeria to regularise her immigration status. The judge thereafter noted that in the absence of any information from the Respondent what the terms of the question relating to criminal convictions actually were, that the Appellant failed to disclose a criminal conviction and accordingly she did not accept that the Appellant failed under the provisions of Rule S-EC.2.2(b). Further the judge went on to address the references to paragraph 320(11) at paragraphs 41 to 43 of her decision and made findings upon which she was entitled to but in the absence of aggravating circumstances she concluded that refusal under paragraph 320(11) should not be made.

12. All in all the determination is well-constructed, well-reasoned and the judge has made findings which she was perfectly entitled to. The decision discloses no material error of law and the appeal of the Secretary of State is consequently dismissed.

### **Notice of Decision**

The decision of the First-tier Tribunal discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

### **TO THE RESPONDENT FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris