



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

Appeal Number: IA/34453/2015

THE IMMIGRATION ACTS

Heard at Field House

On 30 October 2017

**Decision & Reasons
Promulgated**

On 14 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

And

**MRS YETUNDE OLAJUMOKE AKINREMI AKA OSIBAMURWO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr P Singh, Home Office Presenting Officer
For the Respondent: Ms D Revill, Counsel instructed by Peer & Co

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Walters promulgated on 10 February 2017. In that decision the judge allowed the appeal by the respondent (hereinafter “the claimant”) against the decision of the Secretary of State to refuse her

application for leave to remain in the UK on the basis of her private and family life.

2. The background to this appeal is that the claimant, who was born on 19 October 1963, claims to be a citizen of both the UK and Nigeria who has resided in the UK for over 25 years. On 17 June 2013, on returning to the UK from a three week stay in Nigeria, the claimant was informed that the British passport in her possession which she sought to rely on when entering the UK had been revoked by HM Passport Office because she was not the rightful holder. She was refused leave to enter and detained. The claimant was subsequently released with reporting restrictions. She claimed that she is the rightful holder of the passport when questioned and maintains this position.
3. On 18 June 2013 the claimant made a human rights application for leave to enter the UK on the basis of her family and private life. In a decision dated 19 November 2015 the Secretary of State refused the claimant's application. The key reason for the refusal was that the Secretary of State maintains that the claimant sought to rely on a British passport and identity which was not hers and consequently is unable to satisfy the suitability requirements under the Immigration Rules.

The Decision of the First-tier Tribunal

4. The appeal came before Judge Walters in the First-tier Tribunal. At the hearing, the Secretary of State applied for an adjournment. The reason for the application was that evidence was missing from the Secretary of State's bundle. The evidence in question was a witness statement dated 28 May 2015 by Jasmeet Lotey, a civil servant employed by HM Passport Office, concerning the passport that was revoked. Only the first page of the statement was in the bundle. This page sets out some background information about the passport but gives no information about why it was revoked or why it was determined that the claimant is not the rightful owner. The Secretary of State's representative understandably wished to rely on the full statement and sought an adjournment for it to be obtained.
5. The judge refused the application on the basis that the Secretary of State had already had ample time to prepare the case for trial and had been made aware that the statement of Ms Lotey was incomplete. The judge noted that the claimant's solicitors wrote to the Secretary of State before the hearing pointing out that the statement was incomplete but had not had a response to that letter.
6. The judge found that the Secretary of State had failed to produce any evidence to support its case that the claimant was an imposter and that the burden of establishing she was an imposter had not been discharged.
7. The judge found that the claimant met the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules on the basis of having lived continuously in the UK from the age of 26 to the age of 49 a total of 23

years. At paragraph 28 of the decision the judge stated that the Secretary of State appears to accept this and quoted from paragraph 37 of the Secretary of State's refusal letter where it is stated as follows:

"Whilst you have submitted numerous documents in relation to your claimed length of residence in the United Kingdom due to the fact you have previously used deception to gain entry to the United Kingdom and have used the identity and passport that did not belong to you little weight has been placed on the submitted documentation".

Grounds of appeal and submissions

8. The grounds of appeal argue that the Secretary of State was denied a fair hearing by the decision not to adjourn as the consequence of not adjourning was that material evidence in the form of a witness statement from HM Passport Office was not considered. A further argument put forward in the grounds was that the judge recorded that the Secretary of State accepted that the claimant lived continuously in the UK for over twenty years when this was never conceded.
9. Before me, both Mr Singh and Ms Revill focused on the issue of whether it was unfair of the judge to fail to adjourn the hearing.
10. Mr Singh argued that the statement in question was highly material and the Secretary of State should have been given the necessary time to obtain it.
11. Ms Revill argued that the Secretary of State had been treated fairly by being given considerable time to prepare its evidence and that it was incumbent on the Secretary of State to properly submit evidence in support of the claim. She also added that no evidence had been submitted in the present proceedings before the Upper Tribunal to show that the Ms Lotey's statement would have made a difference to the outcome.

Consideration

12. Failure to accede to an adjournment request can amount to an error of law and the relevant question is whether there has been any deprivation of an affected party's right to a fair trial. See *Nwaigwe (adjournment fairness)* [2014] UKUT 418 IAC.
13. I am satisfied that the Secretary of State has not been deprived of a fair trial in this appeal. On 19 October 2016 the claimant's solicitors wrote to the Secretary of State stating, inter alia, that the copy of Ms Lotey's statement in the Secretary of State's bundle that had been served on them was incomplete. The Secretary of State therefore had over two months before the hearing during which they were on notice that their bundle contained an incomplete copy of Ms Lotey's statement. This was ample time to file and serve a complete statement.

14. Given that the Secretary of State had sufficient time to prepare for the hearing and that she was given unambiguous and timely notice about Ms Lotey's statement being incomplete, the decision to proceed did not deprive her of a fair hearing. Fairness required that the Secretary of State was given sufficient opportunity to submit evidence to support her case, not that the appeal should be adjourned because on the day of the hearing her representative realised that key evidence was missing even though the Secretary of State had been given notice of this.
15. The grounds of appeal also maintain that the judge erred by mistakenly finding that the Secretary of State had accepted that the claimant had lived in the UK continuously for over twenty years. This ground lacks merit. The judge did not say the Secretary of State conceded the point. He only stated that the Secretary of State "appears to accept" the duration requirement was met. Given that no arguments were made by the Secretary of State to refute the claimant's extensive evidence to establish length of residence, this was a reasonable characterisation of the Secretary of State's position. In any event, having looked afresh at the claimant's evidence before the First-tier Tribunal concerning her length of residence in the UK, I am satisfied that the judge was entitled to conclude that the evidence adduced by the claimant was adequate to establish that the duration requirement of paragraph 276ADE(1)(iii) was satisfied.

Notice of Decision

The appeal is dismissed.

The decision of the First-tier Tribunal does not contain a material error of law and stands.

No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 10 November 2017