



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

Appeal Number: UI-2022-000429
EA/50742/2021; IA/03301/2021

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 14 February 2023**

**Decision & Reasons Promulgated
On 21 February 2023**

Before

**UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

Between

**ABHULIMEN VICTOR OKAKA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. J. Wilson of the Refugee and Migrant Centre.

For the Respondent: Mr. C. Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. In a decision dated 10 October 2022 the decision of the First-tier Tribunal was set aside. The appeal came before us to be remade.
2. The Appellant is appealing under Regulation 36 of the Immigration (European Economic Area) Regulations 2016 (the "Regulations") against the Respondent's decision to refuse to issue a residence card as the extended family member of the Sponsor. The Respondent's decision is dated 20 March 2021.

The hearing

3. We heard oral evidence from the Appellant. The Sponsor attended the hearing centre but, as directed in the Error of Law decision, the witness statements were to stand as evidence in chief and Mr. Bates indicated that he did not have any cross-examination for her. Both representatives made oral submissions. We reserved our decision.
4. We have also taken into account the evidence in the Appellant's supplementary bundle provided for the resumed hearing ("AB" 82 pages) and the evidence in the Respondent's bundle (to Annex I).

The appeal

5. The burden of proof lies on the Appellant to show that he meets the requirements of Regulation 8 of the Regulations. The standard of proof is the balance of probabilities.

Decision and reasons

6. We did not find the Appellant to be a reliable or credible witness. We find that he has failed to provide reliable evidence of his circumstances in Nigeria prior to coming to the United Kingdom, and that he has therefore failed to show that he was dependent on funds sent by the Sponsor or her partner to meet his essential living needs.
7. The Appellant made an application for a visit visa in which he provided evidence which demonstrated that he was financially independent. He now claims that this evidence was false and was provided solely for the purposes of obtaining entry clearance as he needed to leave Nigeria for his own safety. In the visa application form it states that he was employed by Tohan & Sosa Limited. He was asked by Mr. Bates whether he had sought confirmation from this company that he was not employed by them. He said that he not. We find that the failure to do so casts doubt on his claim that he was not employed by them.
8. The Appellant claims to have had two bank accounts in Nigeria, with Zenith Bank and First Bank of Nigeria. He provided bank statements for the Zenith Bank account with his visa application form. He was asked whether he had provided updated statements to show the current level of his savings. He did not answer the question, but said that he had handed over control of his Zenith Bank account to the agent who had made deposits and withdrawals solely for the purpose of the Appellant's visa application. He was referred to the statement from Zenith Bank covering the period from 1 October 2019 to 31 January 2020 (Annex H RB). This shows a closing balance of NGN 2,135,022.31. He was asked what savings there were in this account when he came to the United Kingdom. He said that he had no more statements from this account, but that he did not have "much" in his Zenith Bank account. He claimed that every credit made to that account was done by the agent and that he was not able to

use this account while the agent was using it. He said that this money was not his.

9. The Appellant has not provided more recent statements from his Zenith Bank account to show that these funds were subsequently removed by the agent, and that they were not accessible by him. He confirmed that he still had control over the Zenith Bank account, so to provide statements would be an easy way of showing that the money was then withdrawn by the agent. The failure to do so casts doubt on his credibility. We find that the Appellant has not shown that the funds in the Zenith Bank account did not belong to him.
10. The Appellant claims that he used his account with the First Bank of Nigeria for his day-to-day transactions. However he has not provided any statements from this account. He said that he was not asked to provide the statements, and then said that he could not remember if he had provided them. We find that the failure to provide bank statements for the account which he claims to have been using on a daily basis casts doubt on his credibility.
11. The Appellant claims that the Azimo transfers from the Sponsor were made to his First Bank of Nigeria account. He has provided copies of printouts of transfers from Azimo, some of which are made to the First Bank of Nigeria and some to Zenith Bank. He claims that he asked for the transfers to be made to his First Bank of Nigeria account after the agent had taken over his Zenith Bank account. The copy of the Zenith Bank account statement provided with the visa application covers the period between October 2019 and January 2020. The Appellant's claim is that all of the transactions during that period were carried out by the agent. However, he has provided copies of transfers from Azimo to Zenith Bank dated 28 November 2019 (page 24 AB), 27 December 2019 (page 23 AB) and 28 January 2020 (page 25 AB). These all fall during the period when the Appellant claims the account was being used only by the agent and that he had no access to the funds. His evidence that he asked the Sponsor not to transfer funds to his Zenith Bank account while the agent had control over it is contradicted by the documentary evidence of three transfers being made from Azimo to Zenith Bank during this period.
12. The Appellant has provided copies of two Azimo transfers made to the First Bank of Nigeria on 12 September 2019 (page 30) and 18 July 2020 (page 27 AB). However he has not provided the bank statements for this account to show receipt of these funds. Without the copies of the bank statement for this account, we do not have a full picture of the Appellant's financial circumstances in Nigeria. He has not shown that these transfers were made to him in order to meet his essential living needs.
13. The Appellant also provided letters from people who claim to have delivered cash to him in Nigeria (pages 32 and 37 AB). However without any reliable evidence of the Appellant's financial circumstances, these

letters do not show that this money was given to him to meet his essential living needs or whether it was for some other purpose.

14. In order to demonstrate dependency on the Sponsor, the Appellant needs to provide evidence of his own financial circumstances in Nigeria. He has provided what he claims are statements of his personal income, support and expenditure for 2014 to 2019. We have not found the Appellant to be a credible witness so we place little weight on these statements which are not corroborated by any documentary evidence.
15. The Appellant's claim to be dependent on the Sponsor relies on his claim that the evidence provided with his visa application was false. However, the Appellant has failed to provide any evidence to show that this was the case. He has not sought confirmation that he was not employed as claimed, nor has he provided evidence to show that the funds in his Zenith Bank account belonged to the agent.
16. We find that the Appellant has not provided a truthful account of his financial circumstances in Nigeria. He has failed to show that he was dependent on funds sent by the Sponsor to meet his essential living needs. He has therefore failed to show that he meets the requirements of regulation 8 of the Regulations.

Notice of Decision

17. The Appellant's appeal under the Regulations is dismissed.
18. No anonymity direction is made.

Signed

Kate Chamberlain
Deputy Upper Tribunal Judge Chamberlain

Dated 17 February 2023