IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT
[2021] EWHC 841 (Admin)

CO/313/2021

Royal Courts of Justice
Strand, London, WC2A 2LL

Friday, 5 February 2021

Before:

MR JUSTICE MARTIN SPENCER

B E T W E E N :

THE QUEEN
ON THE APPLICATION OF LEONARD OGILVY

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

THE CLAIMANT appeared in person.

THE DEFENDANT was not present and was not represented.

J U D G M E N T

(Transcript prepared from Microsoft TEAMs recording)

MR JUSTICE MARTIN SPENCER:

1 By a claim form issued on 27 January 2021, the claimant seeks judicial review of the failure on the part of the Secretary of State to deal with three applications that have been made by the claimant: firstly, an application for statelessness made on 2 April 2020; secondly, submissions made under rules 353A and 353B of the Immigration Rules made on 10 April 2020; and, thirdly, an application for a Home Office travel document made on 2 December 2020.

2 At the same time, the claimant made an application for urgent interim relief, using Form N463, which appears at p.15 of the bundle, and the relief sought in s.4 is

> "The Respondent should determine the claimant's formal application for statelessness, Rule 353A and 353B further submissions made on 2 April and 10 April 2020 and also determine the claimant's application for Home Office travel document within the next 72 hours or show cause as to why any or all of the applications cannot be determined within such timeframe."

It can be seen that the relief claimed in the application for urgent relief is, essentially, the same as the relief claimed in the substantive claim for judicial review.

3 The motivation behind the application for interim relief appears to be an offer of employment made to the claimant by an organisation called CW Law Solicitors, and at p.18 of the bundle there is a letter purporting to come from CW Law Solicitors of 22 January stating that they need to see a Home Office travel document clearly showing the claimant's name, date of birth and current immigration status, in order to comply with their obligations as employers, and that the offer of employment is conditional upon that. That timeframe expired yesterday, 4 February, but a further letter has been produced from CW Law Solicitors extending the time to next Wednesday, 10 February 2021. For this reason, the claimant submits that the application is urgent and merits an urgent hearing, on the basis that, although Article 8 does not give a right of employment, it is engaged in a case such as this where there is already an offer of employment.

4 The defendant has not appeared on this application and, in an email exchange with the claimant yesterday evening, indicated that she required an adjournment. The basis for that is set out in the document provided by the Secretary of State, namely, that knowledge of this application only came to their attention after 5 p.m. yesterday evening and they have not had time to instruct counsel. It was also suggested by Ms Wood, the caseworker instructed on behalf of the defendant, that they had not received the application for interim relief until yesterday.

5 However, the claimant has shown me an email - to which the judicial review bundle was attached - to the Government Legal Department on 28 January 2021 and that bundle included the application for interim relief at p.15, as I have indicated. Furthermore, the court sent out notice of this hearing to both parties, including the correct email address of the Government Legal Department, on 3 January and so, as the claimant has submitted, the Government Legal Department has had the same notice of this hearing as he has had. Nevertheless, I accept that the Government Legal Department is a very large department and it may not have come to the attention of the particular caseworker until late yesterday evening, as she indicates. Therefore, a reasonable opportunity to respond has not been afforded.

6 In those circumstances, I indicated to the claimant that I would hear the application and, if it appeared to me that the application had merit, then I would adjourn it for an *inter partes* hearing next week.

7 The context of this application is a complicated one and there is a very long history in relation to the correct identity of the claimant. This goes back to 1987 when one Olusegun Adedeji Alakija, a Nigerian national, was refused further leave to remain in this country as a student and, in 1989, he was arrested as an overstayer, issued with a deportation order and removed to Nigeria on 13 August 1989. He had entered the country on a Nigerian passport.

8 On 26 June 1990, this claimant was arrested for theft and gave his name as Leonard Ogilvy. Arising out of that arrest, he was sent to prison for two months on 11 July 1990. On 30 October 1991, this claimant was arrested after trying to pay a stolen cheque into a bank account in the name of Mr Alakija, that cheque being for £32,420. Arising from that arrest, the claimant was interviewed by a Home Office official, a Mr Mellor, on 14 November 1991 and the claimant maintained his claim to be Mr Ogilvy and claimed to be Portuguese. He asserted that he had shown the Home Office a Portuguese identity document when detained in relation to an earlier conviction for theft, although Mr Mellor had no record of such an identity document. He claimed to have been born in Porto, Portugal, to have been orphaned at the age of seven, to have attended Porto High School, to have come to the United Kingdom at the age of 13, to have lived in Scotland from 13 until about 17, but not having gone to school. However, somewhat incongruously for somebody claiming to have lived in Portugal for the first 13 years of his life, the claimant was unable to speak Portuguese.

9 On 11 February 1992, Mr Mellor made a witness statement in which, among other things, he identified the claimant, claiming to be Mr Ogilvy, as, in fact, Mr Alakija, who had been deported in 1989, and he produced a photograph which the Home Office had retained of Mr Alakija which had been taken in August 1989.

10 The claimant's defence at his trial at the Middlesex Crown Court was that this was a case of mistaken identity and that he and Mr Alakija were not one and the same person. However, that defence was rejected by the jury, which convicted him of theft and using a false instrument, and the claimant was sentenced to two years' imprisonment with a recommendation of deportation.

11 As indicated in a judgment of the Upper Tribunal from last year, the conviction indicated the jury's acceptance of the evidence of Mr Mellor at the trial as to the claimant's identity. The court was shown CCTV evidence showing the claimant paying the forged cheque into the bank account in the name of Alakija.

12 On 25 February 1993, the claimant's appeal against the recommendation for deportation was dismissed and, on 23 July 1993, the Court of Appeal (Criminal Division) refused leave to appeal against conviction and sentence.

13 Seven days later on 30 July, a deportation order was made in three names, which had at one stage or another been used, including Leonard Ogilvy and Mr Alakija.

14 The claimant appealed against the removal directions, but that was refused by an adjudicator, Mr Fugard, on 25 November 1993 who stated that it appeared to him that the claimant was a citizen of Nigeria. Permission to appeal was refused by Immigration Appeal Tribunal Chairman Maddison on 23 December 1993, indicating agreement with the

decision of Mr Fugard, that the claimant was a citizen of Nigeria and, therefore, should be deported.

15 The claimant was released from prison on 24 December 1993 and in 1994 made an application for income support. That came before a Social Security Appeal Tribunal on 4 May 1994 which found that the claimant was, in fact, Mr Ogilvy and had come to the United Kingdom in 1981 and was entitled to income support. However, that finding was set aside by a further Social Security Appeal Tribunal on 20 December 1994. At that hearing, the claimant told the Tribunal that he had a childhood in Brazil, Portugal, Scotland and England, which the Tribunal found to be inherently improbable and, on 20 December 1994, the Social Security Appeal Tribunal found as a fact that the claimant is Mr Alakija.

16 There have since then been numerous applications by the claimant to the courts, including an application made to an out-of-hours judge, Keane J, in relation to matters concerning his identity.

17 On 12 May 1998, Jowitt J found that the claimant had lied to the out-of-hours judge and lied to him - that is Jowitt J - about the content of the two telephone calls which had been made to Keane J. The Claimant was found guilty of a deliberate contempt of court as a result of lying both to Keane J and Jowitt J.

18 In a comprehensive judgment of the Upper Tribunal made in January 2020, Upper Tribunal Judge Pitt commented that this decision - that is the decision of Jowitt J - showed the appellant to have been found, in the clearest possible terms, to be someone capable of lying quite deliberately to a senior judge and, even when caught out, attempting to deny it. Judge Pitt commented that that was consistent with findings of his conduct from other cases considered and behoves a very high level of caution when considering his evidence as to his identity or, indeed, anything else. Judge Pitt commented that the contempt of court case and other cases, which were considered by the Upper Tribunal in which the claimant had repeatedly been found not to be credible and to have acted dishonestly - for example, in withholding material evidence which he knew could damage his interests - made it very difficult indeed to accept anything which he said.

19 In July 1999, the then Secretary of State informed the claimant that he had decided not to pursue deportation and, on 12 August 1999, the claimant was granted indefinite leave to remain, that grant of ILR stating that he was a Nigerian national with a date of birth of 10 August 1965. However, the ILR was issued in the name of Ogilvy and, as Judge Pitt commented,

> "I am at a loss as to why the respondent issued ILR (and later, travel documents) in the name of Ogilvy where that is so. It remains the case, when considered against all the evidence before me, that the grant of ILR in the name of Ogilvy is not a matter capable of showing that the appellant is Ogilvy and not Alakija or that the respondent has ever made a substantive decision to that effect".

20 In September 1999, the claimant made an *ex parte* application to Eady J and obtained an interim injunction against the Secretary of State that relevant minutes be preserved, and that Order was extended by an Order of Collins J on 9 September until 31 October. However, the substantive application for judicial review came before Moses J on 23 September who refused permission to bring judicial review proceedings. Effectively, the decision of Moses J nullified the decision of Eady J and Collins J.

21 Judge Pitt commented as follows,

> "The outcome of the litigation in CO/2695/99 was, therefore, that the appellant had ILR in the name of Ogilvy but was still considered by the respondent to be Alakija, a Nigerian, with a date of birth of 10 August 1965. It was not accepted by the court or the respondent that he was stateless. The Eady Order had no legal force following the final determination of the judicial review by Moses J in his decision of 23 September 1999.
>
> Notwithstanding, the outcome of that litigation, some 20 years later, the Eady order remains a core part of the appellant's claim to be Ogilvy and to be stateless. The appellant has sought to rely on it in other cases he has brought in the intervening years, discussed below. In all the cases before me in which he relied on the Eady order, the appellant asserted that that order amounts to incontrovertible evidence that either the Home Office found him to be stateless or Mr Justice Eady found him to be stateless. It is entirely obvious from the wording of the order itself that it does not make any kind of definitive statement on the appellant being stateless. It merely requires a Home Office minute to be preserved.
>
> Further, the materials before me show that when repeatedly relying on the Eady order, the appellant has never provided the order of Mr Justice Moses showing that the Eady order was superseded and that the existence of the Home Office minute of no avail to him in his attempt to persuade the High Court to declare that the respondent should recognise him as stateless".

22 Continuing the history, in December 2000, the claimant claimed to have married a British national whilst in St Lucia. On 10 July 2003, the claimant was convicted of three counts of unlawfully providing immigration advice and was sentenced to 150 hours' community service.

23 In September 2004, the claimant applied to renew his travel document and maintained that it should reflect his status as a stateless person and also his clamed date of birth as 1 March 1968. He pressurised the Secretary of State for a quick decision upon the basis that he claimed that his father-in-law was getting married. He also claimed to have been born in Porto in Portugal. However, on 4 November 2004, the Secretary of State refused to amend the details in the travel document.

24 In May 2005, the claimant was named in an application for leave to remain by one Anne Marie Pencelle, or Rickets, a Jamaican national, the claimant being named as a Portuguese sponsor. That application was refused.

25 In 2006, the claimant was visiting St Lucia and, on 18 March 2006, the Attorney-General of St Lucia obtained an injunction against him preventing him from practising as an attorney. He was deported from St Lucia in March 2007 and came back to the United Kingdom on 19 March 2007.

26 In July 2014, he applied for a new travel document and this was granted, endorsed with a code "XXX". The document, which is exhibited and contained within the appeal bundle, at p.28, on its face, indicates that that means that he is stateless, but, in fact, that is an error and the code "XXX" indicates that his nationality is unknown. That document expired in July 2019 and it is the renewal of that document which forms part of the application before me.

27 In the meantime, on 30 March 2015, the claimant was convicted of three counts of wilfully pretending to be a barrister and of fraud and he was given a sentence of imprisonment of six weeks, which was suspended, and ordered to undertake 200 hours of unpaid work and £2,000 by way of compensation.

28 Undeterred, the claimant continued with his deceitful pretence to be a barrister, whereby on 3 July 2017, he was convicted at the Crown Court at Southwark on three counts of wilfully pretending to be a barrister and three counts of fraud. Two days later, on 5 July 2017, he was sentenced to two years' imprisonment. His application for leave to appeal was refused in January 2018.

29 In association with the proceedings which eventually came before Judge Pitt in the Upper Tribunal in 2020, the claimant made a witness statement, on 11 June 2018, asserting that he had been born on 1 March 1968, that he came to the United Kingdom in 1981 at the age of 13, that he was raised by Scottish parents, that he came to London aged 17, that he attended the City and Islington College, that he studied law at Thames Valley University, that he obtained a law degree, that he had worked for the Free Representation Unit and then for Ealing Council.

30 On 12 June 2018, the Secretary of State refused the claimant's claim under Article 8 of the European Convention on Human Rights and made a deportation order.

31 The claimant's appeal was initially allowed by First-tier Tribunal Judge Adio on 3 December 2018, but that decision was set aside by the Upper Tribunal on 16 August 2019 and it was directed that the decision would be remade in the Upper Tribunal. That was the hearing that came before Upper Tribunal Pitt on 23 October 2019 and, having heard the case over two days, Judge Pitt, on 9 January 2020, issued the judgment to which I have referred.

32 I should indicate that the judgment is an extremely full and considered judgment in which Judge Pitt considered the voluminous evidence that was before the Tribunal and there has been no successful appeal against that decision. Indeed, permission to appeal was refused by Dingemans LJ, although I understand that the claimant still seeks to challenge that decision and he has referred me to correspondence with the Court of Appeal from yesterday by email. In any event, as matters presently stand, that decision is extant and valid, it has not been overturned and I consider it appropriate to accept everything that Judge Pitt said in that judgment.

33 At paragraph 146, the judge set out the conclusions on identity and nationality as follows,

> "I have set out above the cases in which the appellant has been found to be Alakija and to be Nigerian. I have also set out the evidence showing that he has been seriously dishonest in his dealings with the public and the legal system. I have set out above that the May 1994 [Social Security Appeal Tribunal] decision, the refusal of the [Nigerian High Commission] in the 1990s to recognise him as Nigerian, the Eady order, the grant of [indefinite leave to remain] and issuing of travel documents in the name of Ogilvy and the 2014 travel document do not amount to evidence even when taken together that are in any way capable of showing that the appellant is Ogilvy or that he is stateless. I have not found his own evidence on his personal history to be remotely credible. The appellant's claims to be Ogilvy and stateless are without merit as a result. The evidence shows overwhelmingly that he is Alakija.

147. The appellant cannot show that he meets the Immigration Rules on statelessness. Paragraph 403(c) of the Immigration Rules requires him to take reasonable steps to facilitate admission to Nigeria and show that he has been unable to secure the right of admission. As in *AS* (*Guinea)* at para.57, set out above in para.19, in order to meet this requirement, he must take all reasonably practical steps to submit all documents which bear on his nationality to the Nigerian authorities. Nothing here shows that he has done so where this would require him to provide the [Nigerian High Commission] will full disclosure of the materials that are before me. It is wholly insufficient to rely on the refusal of the [Nigerian High Commission] in the 1990s to accept he was a Nigerian national where that decision was made on the basis of other information which was limited and incorrect.

148. In summary, for the reasons set out above, I have reached the following conclusions:

I. The appellant is Olusegun Adedeji Alakija;

II. He was born …"

And then the judge says 10 October 1985, but I have no doubt that that was a misprint and she intended to state "10 August 1965".

"III. He is a citizen of Nigeria

IV. He entered the UK in 1987 using a Nigerian passport

V. He returned to Nigeria in 1989

VI. He is not stateless

VII. There is no valid decision from any Court or Tribunal finding him to be Leonard Ogilvy, to be stateless or to have a date of birth of 1 March 1968

VIII. The appellant has used the aliases of Leonard Ogilvy, Adedeji Olusegun Alakija, Alakija Olusegun Adedeji and Aderemi Odunsi

IX . He may also have used the aliases of Leonardo Eusibio Assumpcao, Robert |Leonard Ogilvy, Hubisi Nwenmely, Thomas Raymond and Leonard Raymond Ogilvy, the aliases recorded in the Government Notice from St Lucia."

34 Furthermore, Judge Pitt went on to make decisions on the claimant's Article 8 claim. The judge considered the exceptions contained in s.117C(4) of the Immigration Act and found that the appellant is not socially and culturally integrated in the UK. The judge said,

"152. I accept that he has been in the UK most of the time since he came as a visitor in 1987. That is a period of 32 years and provides a basis on which he could be found to have become socially and culturally integrated. There

was very little evidence of any positive social and cultural links formed during that period, however. Taking his evidence at its highest he has studied and worked at times and currently attends church and is still studying. The evidence on the extent of his integration is very limited, however."

153. Set against his long residence and history of work and study, it is my judgment the appellant has conducted himself throughout his time here in a manner that shows contempt for the social and cultural values of the UK. He has acted profoundly dishonestly throughout his time here in using aliases, in particular the false assertion over at least 29 years that he is Ogilvy. He has been dishonest in asserting vociferously and wholly untruthfully that he is not Nigerian but is either Portuguese or stateless. He avoided deportation and was granted ILR in the 1990s only because of his profound dishonesty. He has conducted extensive and meritless litigation on his own behalf in which he has made representations which he knew were false and has withheld documents in a dishonest attempt to bolster his various claims. He has found to be a dishonest person by a number of judges and has been found formally in contempt of court.

154. His criminal convictions for theft, unlawfully providing immigration advice, pretending to be a barrister and fraud also weigh against his being socially and culturally integrated. He has repeatedly acted for others in legal proceedings when not qualified or competent to do so. His evidence before me that he continues to assist or advise others in legal matters even in the face of his criminal convictions and having been found to be incompetent to do so by the judiciary was deeply concerning. He continues to assert his innocence of the most recent conviction, maintaining this to be so at the hearing before me and to the Probation Service as shown in the progress report dated 26 July 2019. This is in the face of the comments of the sentencing judge that the evidence against him was overwhelming and the conviction being upheld on appeal.

155. These matters show that the appellant's conduct throughout the time that he has been here has been inimical to the social and cultural values of the UK. There is very little positive evidence of social and cultural integration. My conclusion is that the appellant is far from being socially and culturally integrated.

156. Further, the appellant cannot show that there would be very significant obstacles to reintegration in Nigeria. I accept that he has not lived or been there since approximately 1990. That is a period of 29 years and there will inevitably be a period of readjustment and difficulties to overcome on return, as a result. As above, however, the evidence from St Lucia indicates that he is likely to have some contacts there. The evidence as a whole shows the appellant to be a highly dishonest person and I do not accept that he has no contacts in Nigeria from whom he could obtain some support on return, even if this was limited."

35 In the light of those findings, it is perhaps ironic that, as part of his application before the court today, the claimant relies on a purported offer of employment by a firm of lawyers, CW Law Solicitors, whereby it appears that they are proposing to employ him to give legal advice.

36 Judge Pitt also rejected arguments under para.399(b) and Exception 2 of s.117C(5), in that the Claimant was maintaining that he was in a relationship with a British national. It is enough for me to record that at para.160 Judge Pitt said,

> "Such is the appellant's dishonesty, it is my view that he knows that he is not legally married to Ms [O]. I also noted that nothing before me shows that the appellant has ever divorced Ms [C]; see paragraph 90 above."

37 The claim that he has a genuine relationship with Ms [O], as relied upon by the claimant, was rejected on the basis of inconsistency. Judge Pitt said at para.168,

> "That deception [referring to a deception in relation to the tenancy] the appellant's profoundly dishonest conduct over many years, the untruthful evidence about a formal marriage, the absence of evidence showing the couple have any kind of joint life and the inconsistent evidence about a tenant led me to conclude that whatever Ms [O]'s position may be the appellant is not in a genuine and subsisting relationship with her."

38 The judge also rejected the suggestion that there were very compelling circumstances under 117C and, in the circumstances, found that the strong public interest rested in maintaining the claimant's deportation.

39 With that background, I refer to the present proceedings and, in my judgment, there is no merit whatever in the application for interim relief. Although it is true that the claimant made an application for a declaration of statelessness to the Secretary of State on 2 April 2020, the judgment of Judge Pitt shows that the resolution of that application is an extremely complicated one, involving consideration of a very large quantity of evidence indeed, and is not a decision which could be taken by the Secretary of State quickly or lightly. In my judgment, the Secretary of State is entitled to take her time in resolving this, particularly given the inconsistent approach in some regards taken by previous emanations of the Home Office, as highlighted by the Upper Tribunal in its judgment and, in particular, granting the claimant indefinite leave to remain in the name of Ogilvy when, on the finding of the Upper Tribunal, that is not the claimant's name at all. There is also inconsistency in relation to the Home Office travel document that was issued and, in particular, the inconsistency between the suggestion that he is stateless on that document and the code "XXX" which does not indicate that he is stateless.

40 In any event, the Secretary of State needs to take a considered approach to the question of whether the claimant should be issued with a new Home Office travel document, in the light of the finding of the Upper Tribunal and the evidence presented to that Tribunal, which suggests very strongly, if not overwhelmingly, that the claimant is not Leonard Ogilvy at all, but Mr Alakija.

41 The same goes for the claimant's Act 8 application and the renewed or further submissions made on 10 April 2020.

42 So far as this application for judicial review is concerned, the Secretary of State clearly needs to have time to consider her position, to marshal the evidence, to consider the position in the light of the history which I have explained and then to take a stance which can be maintained in relation to these various matters. That is not something that can or should be done under pressure of time.

43 So far as the offer of employment is concerned, I do not know whether that is a genuine offer of employment, but, if it is (as to which I have to say I have severe doubts) I would be amazed if it is an offer of employment which has been made in the light of full knowledge by that firm of solicitors of the claimant's background, as I have described earlier in this judgment. No self-respecting firm of solicitors would employ this claimant to give legal advice to their clients, given his criminal history and, in particular, his history in relation to the giving of legal advice. It seems to me that the possibilities are twofold: firstly, that the offer was made without the firm of solicitors having full and proper knowledge of the claimant's background or, alternatively, it is not a genuine offer of employment at all. If I was asked to decide which of those two is the more likely, I would incline towards the latter.

44 In those circumstances, the application for interim relief is refused and I shall certify it as having made totally without merit.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.