Upper Tribunal Appeal Number VA.22548.2012
Immigration and Asylum Chamber

THE IMMIGRATION ACTS

Heard at: **North Shields** **Determination Promulgated**
On: **Monday 21st October 2013**

Before

Judge Aitken
Deputy Chamber President (HESC)

Between

Ms Elizabeth Adeola Odumuyiwa

Appellant

and

Entry Clearance Officer Lagos

Respondent

For the Appellant: Mrs C Soltani
For the Respondent: Mr C Dewison (Home Office Presenting Officer)

Decision Remade

1. I reheard this matter following a decision identifying an error of law which read as follows:

1. *"This matter appeared before me following a grant of permission to appeal by First Tier Tribunal Judge Nightingale who decided as follows:*

"1. Permission is sought to appeal, in time, the decision of First Tier Tribunal Judge Holmes, dated 3rd December 2012, dismissing the

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appellant's appeal against the respondent's refusal to grant her entry to the United Kingdom as a family visitor.

2. The grounds argue that the Judge made unsustainable findings, failed to have regard to the evidence, and failed to make findings on core issues. It is also argued that the Judge erred in failing to give adequate reasons for the negative credibility findings made and had misapplied paragraphs 320(7B) and 320(11). The respondent had never even produced the document which was claimed was false.

3. It is arguable that the Judge erred in considering that the appellant bore the burden of proof in regard to the general grounds for refusal under paragraph 320 including the production of a false document (paragraph 4 refers). This ground is arguable. Whilst the remaining grounds are of less, immediately identifiable, arguable merit, the decision in ***Ferrer*** *(limited appeal grounds; Alvi)* ***[2012] UKUT 00304(IAC)*** *is followed and permission granted on all grounds pleaded"*

2. *Ms Soltani argued that there was ample evidence upon which the judge ought to have found that the appellant had a valid return ticket to Nigeria.*

3. *The Tribunal Judge at paragraph 7 of his determination indicated that there was no evidence that the appellant had a return ticket to Nigeria. This was important as it underpinned his finding that she had instead produced a forged one. However the notes of the Immigration Officer at R8 of the Respondents bundle, reveal this:*

   "They confirm pax has got a booking of MAN-FRA on 10/1/08"

4. *That itinerary was the first part of the booking produced as evidence of a ticket back to Nigeria before the Tribunal.*

5. *In addition Ms Soltani produced the appellant's boarding card showing that the ticket she left the country on was a rebooking of a ticket to Nigeria used once she was denied entry. Whilst that evidence is not admissible since it was not before the Tribunal Judge the evidence of the Immigration Officers note was, and although it seems that it was suggested to the Tribunal Judge that there was a physical ticket plainly there was not and this was something of a red herring. What there is on the papers which were before the judge is evidence that the appellant had a return Eticket. Since the Tribunal Judge misunderstood or was misled as to this important piece of evidence, there is an error of law such that the decision must be remade.*

6. *I find that there is an error of law within the decision of the First Tier Tribunal in that there was evidence upon which it would be reasonable to*

find that the appellant had a return ticket to Nigeria. The decision will have to be remade by the Upper Tribunal."

2. The appellant is a Nigerian Citizen born on 4th September 1946. She applied for leave to enter the United Kingdom for two months as a family visitor on 25th April 2012, before the Immigration Appeals (Family Visitor) Regulations 2012 came into effect.

3. The Respondent refused entry clearance on 6th June 2012 on the basis that the appellant had been refused entry clearance at Manchester Airport on 30th December 2007 when she had used deception, presenting a counterfeit return ticket to an Immigration Officer. The application was refused under rules 320 (7B) and 320(11) of the Immigration Rules. There were in addition to the counterfeit airline ticket other matters which led the Immigration Officer to suspect that her visit was not genuine.

4. Having been detained at Manchester the appellant agreed to return to Nigeria on a voluntary basis and did so. Those matters are largely agreed between the parties, however one matter of importance remains between them. Was the appellant seeking to deceive when she presented the counterfeit ticket or was it an innocent mistake. The importance of that issue was emphasised in ***AA (Nigeria) [2010] EWCA Civ 773***, because it affects whether rule 320(7B) and 320(11) affect this appellant. At paragraph 76 of ***AA*** the following was recorded:

"*Whether as a matter of the interpretation solely of the relevant rules in paragraphs 320(7A), 320(7B) and 322(1A), but in any event when consideration is also given to the assurances given in the Lords debate as supplemented by the minister's letter to ILPA dated 4 April 2008, and to the public guidance issued on behalf of the executive, the answer becomes plain, and in essence is all of a piece. Dishonesty or deception is needed, albeit not necessarily that of the applicant himself, to render a "false representation" a ground for mandatory refusal."*

5. In those circumstances it is necessary to consider the state of mind of the appellant at the time the ticket was produced, that is not made easier by the time which has now passed, and of course the absence of the appellant herself from these proceedings. I have however heard in person from the appellant's daughter and read a number of documents many of which were created at or very near to the time of the events in question.

6. It is common ground that the appellant approached immigration control at Manchester Airport on 30th December 2007 alone, her daughter has said in evidence that she was to have been collected by her niece at the airport. Immigration Officers began to make enquiries, and were not satisfied with the answers she gave, this appears in the Immigration Officer notes which survive.

The appellant claimed she was coming to see her sister, but the visa was to visit her uncles whom she said was now back in Nigeria. Fearing that the appellant may not intend to leave the United Kingdom at the end of her visit the Immigration Officer asked about her travel. *"Pax stated she had booked a R/T to Lagos but when asked what date she would travel, the pax just answered 'they (the airline) will ring me'. She eventually presented a Flight Coupon for Qatar Airways"* it is agreed now that this was the counterfeit ticket.

7. It was established by the Immigration Officers that the ticket was counterfeit (or possibly a stolen ticket of some sort issued in Guadalajara), it certainly want a genuine document, the ticket was not however to and from the United Kingdom it was routed Lagos-FRA-Washington. "FRA" is the airport code for Frankfurt. In addition the Immigration Officers discovered that the appellant had a genuine booking or E-ticket as they are sometimes styled with Lufthansa to fly Manchester to Frankfurt on 10th January 2008. A typed itinerary to that effect was found within her luggage, the itinerary also ha a second leg back to Lagos. Ms Soltani places great reliance upon the document because it is the itinerary upon which the appellant arrived, and she is now able to produce the boarding card that the appellant had in her possession when she arrived. She points also to the copy printed ticket which the appellant used to leave the United Kingdom on 31st December after having been refused entry. That ticket is endorsed with the following "INVOL REBOOKED DUE TO UK IMMIG INNAD" that seems to indicate that it is an involuntary rebooking of the return ticket due to being refused admission. Taken together Ms Soltani argues that it is perfectly clear that the appellant had, at the time she sought entry in December 2007, a perfectly valid return eticket or booking.

8. Ms Soltani goes on to argue that the appellant would not in those circumstances have produced a counterfeit ticket, and however it came into the possession of the Immigration Officer it was not in any sense an attempt at deception. Mr Dewison disagreed, he suggested that for some reason as yet unknown it may be the appellant clearly wished to keep her movements hidden from the authorities. The evidence of the Immigration Officer at the time is that she presented the ticket as her return method and it was a clear attempt at deception.

9. As to the appellant herself, she claims not to speak English, and claims merely to have handed over the papers she had. Whilst there is a note of questions asked and responses in English, I am prepared to accept that she may not be fluent. The sponsor gave an explanation for the ticket as follows: The appellant had visited earlier in 2007 (and this was recorded in her passport) but the flight had been very expensive when the sponsor paid for it, for the second visit in 2007 the sponsor had asked her younger brother to find a travel agent in Lagos who could get a cheaper flight. He did so and a Qatar airlines flight was arranged. However the travel agent despite having been paid by the sponsor became difficult to catch and only after great effort did they deliver the ticket, and

then only 2 hours before departure. By then it was too late to use the ticket. The Sponsor wished to do something about this, but the Travel Agent was clearly unreliable and the sponsor felt that she would be best placed to get some form of refund by writing to Qatar airways herself so when another ticket was arranged, this time through Lufthansa a few weeks later she asked the appellant to bring the Qatar ticket to the United Kingdom with her. The Lufthansa ticket was always electronic, in other words existed only as a booking, the Qatar ticket was physical.

10. Whilst it is little support, there is some consistency in the fact that it appears that this ticket although expired has not been used, or attempted to be used, since there is a record of tickets with sequential numbers being used in an attempt to board a flight in Lagos, but not this one.

11. I note from the notes made by the Immigration Officer at the time that the appellant did not expressly claim that the ticket was to be used as her return ticket, what is recorded is this:

"Pax stated she had booked a R/T to Lagos but when asked what date she would travel, the pax just answered 'they (the airline) will ring me'. She eventually presented a Flight Coupon for Qatar Airways"

12. There is some separation in the account between the claim to have a return flight arranged with the airline and the production of the counterfeit coupon. It seems to me that the most likely explanation is that the appellant's English is limited, that as the Immigration Officer has recorded she made it plain she had a return (booking), unsurprisingly the Immigration Officer pressed for evidence of this, the appellant, 63 years of age and flying by herself for the first time, with limited language skills produced the only ticket she had (as opposed to a simple typed itinerary). Whilst one could understand it being put forward to show that the family in general had the means to return her to Lagos, in the sense of "*Of course I can get back to Lagos here is another ticket which has been bought for me*". It does not seem likely to have been put forward as the return ticket firstly because it is out of date and secondly it was completely unnecessary to do so since she has a valid e-ticket. I am reinforced in that view by the Immigration Officer describing how the appellant "eventually" presented the Qatar ticket. Whilst of course those who seek to deceive are often tripped up because they do not think of everything or are not as clever as they would like to believe, it does rather defy all logic that the appellant would, knowingly put forward an expired counterfeit ticket as evidence of something which already existed in legitimate form, and had to be pressed to do so. A much more likely explanation on the facts is that the Qatar ticket was not produced to deceive as to her return arrangements but was produced as to some evidence of her good standing. Again that is not likely if the sponsor knew it was a forgery.

13. It seems therefore clear that the appellant in producing that ticket was not doing so with intent to deceive, I find that as a fact and therefore she does not come within Rule 320(7)(b) or 320(11), both rules being subject to the interpretation of the word Deceive indicated above.

14 In those circumstances the decision to refuse her application on those grounds is not in accordance with the law since the Entry Clearance Officer describes the refusal in this way *"Therefore I am automatically refusing this application for entry clearance under paragraph 320(7B) of the Immigration Rules"* it is also said to be considered under Rule 41, although that is difficult to reconcile with the previous automatic refusal, and under Rule 320(11) on the basis of a deliberate deception.

Decision

1. There is an error of law within the decision of the First Tier Tribunal
2. I remake the decision and the appeal is allowed to this extent:

The decision is not in accordance with the law and is remitted to the Entry Clearance Officer to reconsider his decision in the light of the facts as found.

Judge Aitken
Deputy Chamber President (HESC)
Wednesday 23rd October 2013