Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/29475/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 24 October 2013	**On 7 November 2013**
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Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

IFEATU FAVOUR OKEKE

Appellant

and

ENTRY CLEARANCE OFFICER-LAGOS

Respondent

Representation:

For the Appellant: Mr A. Ariyo, Solicitor: Apex Solicitors
For the Respondent: Mr N. Bramble, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Nigeria, born on 12 August 1986. His appeal against the Entry Clearance Officer's ("ECO") decision to refuse entry clearance as a (family) visitor was dismissed by First-tier Tribunal Judge C.M.A. Jones in a determination promulgated on 26 July 2013.

2. The application for entry clearance was refused on 13 July 2012 on the basis that the appellant had used false documents in support of the application, leading to a refusal under paragraph 320(7A) of HC 395 (as amended), as well as under paragraph 41.

3. The reasons given for the refusal of the application in more detail were, that the appellant had submitted a bank statement in the name of B.F.E Ventures but enquiries with the bank revealed that although the bank statement was genuine the account holder was unaware that the account was to be used in support of the application for entry clearance. Tax documents had been confirmed to be false as they did not emanate from the tax office claimed.

4. Judge Jones took into account what was said to be a letter from the United Bank for Africa ("UBA") dated 28 March 2013 which purported to show that the account holder and business partner of the appellant did now support the use of the account. The judge nevertheless concluded that at the time the bank statement was submitted it was in an attempt to deceive. A letter from the tax office said to explain the issue of the tax receipts did not in the judge's view answer the point made by the ECO about the tax documents.

5. The judge therefore found that paragraph 320(7A) was made out and that consequently the appellant was not able to establish that he was a genuine visitor who intended to leave the UK at the end of the period of the visit, with reference to paragraph 41(i) and (ii).

Submissions

6. Mr Ariyo submitted that the letters that the appellant had produced did, contrary to the judge's conclusions, address the matters raised in relation to the bank account and the tax documents. I pointed out that the account number on the letter from UBA said to relate to the account of B.F.E. Ventures was different from the account number on the bank statement of that business that the appellant used in support of the application, and that there were spelling or grammar mistakes in the bank letter ('reference' spelt "refrence" and 'resolved the issue' written as "resolved the issued"). In response, Mr Ariyo suggested that if there were concerns about the bank letter, the matter should be remitted to the ECO for further enquiries.

7. Mr Bramble accepted that where there is an allegation under paragraph 320(7A) later evidence could be taken into account and here the judge appears to have made an artificial separation between the evidence. As to what impact that possible error could have had, one has to take into account that the account numbers on the letter and on the relevant account itself were different. In any event, there was more to consider than simply the bank account.

8. In relation to the tax documents, the judge was correct to find that the letter did not resolve the concern about the documents not emanating from the tax office, that letter relating to the basis on which tax was paid rather than whether the tax

documents had come from the tax office. Even if the judge had adopted an incorrect approach, that was not a material error.

9. In reply Mr Ariyo submitted that there was no dishonesty evident, which was a necessary condition for the application of paragraph 320(7A). The issue over the account number could have been a mistake on the part of the bank over which the appellant has no control.

My assessment

10. I have taken into account the skeleton argument submitted in support of the appeal before me, albeit that Mr Ariyo did not refer to it in his submissions. In any event, it makes the same points as were advanced in submissions. There is also a witness statement from the appellant (although described as the statement of someone else entirely). The witness statement provided in support of the appeal to the Upper Tribunal again makes the same points. The business registration certificate referred to in that witness statement has not been provided but in any event it is not evidence that can be taken into account in considering whether the First-tier Tribunal erred in law, it not having been evidence put before that Tribunal.

11. The grounds of appeal before the Upper Tribunal are to the effect that the two letters to which reference has been made above do address the concerns raised by the ECO. No point is made in the grounds, and none was advanced before me, in terms of the document verification reports ("DVR") not having been provided to the appellant. I mention that because it is a contention that was raised in the original grounds to the First-tier Tribunal but as I say, was not advanced before me, doubtless because it is an argument that has no merit having regard to the matters set out in the Entry Clearance Manager's review.

12. Although Mr Bramble suggested that the First-tier judge may have been wrong artificially to separate the date of decision from the evidence relevant to dishonesty that came after the decision, I do not consider that the judge did fall into error in this respect.

13. The appellant submitted a bank statement from B.F.E. Ventures in support of the application for entry clearance. The DVR, following the e-mail from UBA to the ECO on a pro forma, states that although the bank statement is genuine "our client" (the account holder) is not aware that it has been used to sponsor the visa application. As Judge Jones correctly observed at [10], the implication on proffering the bank statement was that the appellant had access to the funds therein for the purpose of the application. At the time it was proffered the account holder was not aware that it had been used to support the application.

14. The letter dated 28 March 2013 (about eight months after the ECO's decision), said to be from UBA bank is on headed paper with the bank logo at the top. The original is on the Tribunal file. It states that after further verification the Managing Director of the company (B.F.E. Ventures) has confirmed that the appellant "was

his business partner and that he was not in the country when the application was made." It goes on to state that "The two individuals have now resolved the issued (sic), as stated earlier that the bank statement is genuine."

15. Judge Jones referred to that letter and its contents at [10]. At [11] she stated that she was bound to consider the situation as it was at the date of decision. She concluded that at that time the bank statement was used it was intended to deceive, justifying the 320(7A) refusal.

16. The letter dated 28 March 2013 said to be from UBA does not indicate or suggest that at the time of the application for entry clearance the other party to the account consented to its use in support of the application, or would have consented to its use had he/she known about it. The evidence in that letter post-dates the decision and is not evidence of the circumstances obtaining at the date of decision, even assuming that its content does provide an explanation for the response given by UBA to the ECO. The letter does not alter the fact that at the time of the application the appellant purported to have authority to use the bank statement in support of the application when the evidence indicated that he did not. That he and the other person, whoever that may be, have subsequently 'resolved the issue' does not alter that fact.

17. Although the letter states that the appellant and his "business partner" have now resolved 'the issue', as I pointed out there is no information as to who the business partner is or how they have resolved the issue. Mr Ariyo was not able to provide any information as to who is the managing director of B.F.E. Ventures, referred to in the letter. Indeed, the letter's reference to their having resolved the issue suggests that there was no authority for the appellant to use the bank statement in support of the application at the time the application was made.

18. In any event, the letter from UBA appears on the face of it to relate to a different account entirely, given the differences in the account numbers to which I have referred at [6] above. That, and the other matters I have referred to in relation to the letter's content, would have featured in an analysis of the reliability of that document in any re-making of the decision. However, these are matters that do not require further exploration in the circumstances.

19. I am satisfied that the judge did not fall into legal error in the conclusion that she came to in respect of that letter.

20. For completeness, it is as well to observe that the judge correctly identified that it was for the ECO to establish that paragraph 320(7A) applied, albeit that at [8] she overstated the standard of proof, which is the ordinary civil standard. In concluding that the appellant's use of the bank statement was intended to deceive she effectively concluded that he had been dishonest, a requirement that needs to be established for 320(7A) to bite.

21. In those circumstances, there is no need to go on to consider the judge's assessment of the tax receipts issue, because the refusal in respect of 320(7A) was

made out in connection with the bank statement. Nevertheless, I go on to consider the complaint made in relation to the judge's treatment of the tax receipts.

22. The DVR in respect of the tax receipts states that the Lagos State Internal Revenue Service confirmed that the tax receipts relied on by the appellant did not emanate from their tax office. There is an e-mail from the Revenue Service to that effect which states that they should therefore be treated as counterfeit.

23. Judge Jones had before her, and considered, a letter dated 26 March 2013 on headed paper said to be from the Revenue Service. It states that the appellant had written a protest letter to them. It states, in effect, that having considered the receipt provided he made the tax payment under the wrong tax code namely PAYE, whereas it should have been on a self-employed basis. The letter goes on to state that "we believe this might have form (sic) the basis of the response from our head office to your office" and that "the tax payment is correct and the receipt was genuinely issued by us." It is contended on behalf of the appellant that that letter shows that the tax receipts that the appellant submitted were genuine.

24. The judge stated at [14] that the explanation given in that letter does not answer the allegation made in the DVR that the tax receipts did not emanate from their tax office and should therefore be treated as counterfeit. The question of whether the wrong code was or was not used is irrelevant to that issue, she concluded.

25. I am satisfied that Judge Jones was entitled to find that the letter said to be from the Revenue Service does not deal with the fact that the e-mail to the ECO stated that the tax receipts did not emanate from the tax office. That e-mail does not say anything about the appellant's status as a tax payer or the tax coding. Confusion or a mistake over the tax code does not explain why the Revenue Service stated that the receipts did not come from their office and should therefore be treated as counterfeit.

26. Even if the letter that is said to be from the Revenue Service could be said to establish that the tax receipts are genuine, paragraph 320(7A) is nevertheless made out because of the use by the appellant of the bank statement in the name of B.F.E. Ventures in circumstances where he had no authority to use it in support of the application.

27. I am not satisfied therefore, that there is any error of law in the decision made by the First-tier Tribunal and the decision to dismiss the appeal with reference to paragraph 320(7A) and paragraph 41(i) and (ii) therefore stands. It is not necessary to go on to consider the questions of maintenance and accommodation which, although part of the refusal decision by the ECO by extension of the main grounds for refusal, did not feature in the First-tier judge's decision.

Decision

28. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision of the First-tier Tribunal to dismiss the appeal under the Immigration Rules therefore stands.

Upper Tribunal Judge Kopieczek 4/11/13