Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number:
IA/18027/2014

THE IMMIGRATION ACTS

Heard at: Manchester	**Determination Promulgated**
On: 4th November 2014	**On: 6th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Segun Emmanuel Okogbe
(no anonymity direction made)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: **Mr Schwenk, Counsel instructed by CM Fortis Solicitors**
For the Respondent: **Mr Harrison, Senior Home Office Presenting Officer**

DETERMINATION AND REASONS

1. The Appellant is a national of Nigeria date of birth 20th January 1978. He appeals with permission[1] the decision of First-tier Tribunal Judge Foudy[2] to dismiss his appeal against the Respondent's decision[3] to refuse to vary his leave to remain and to remove him from the UK pursuant to s47 of the Immigration

[1] Permission granted by First-tier Tribunal Judge W. Grant on the 18th August 2014
[2] Determination promulgated on the 30th July 2014
[3] Decision dated 7th April 2014

Asylum and Nationality Act 2006. That decision had followed the Respondent's rejection of the Appellant's application for leave to remain as a Tier 1 (Entrepeneur) Migrant.

2. There were two grounds of refusal. The first was that the Appellant had, without good reason, failed to attend an interview. That matter was resolved in the Appellant's favour by Judge Foudy who accepted medical evidence that he was unwell at the time. There is no challenge to that finding and it is preserved.

3. The second ground for refusal was that it was not accepted that the Appellant was a genuine entrepreneur. Judge Foudy heard evidence that the Appellant had set up a business called 'Elec-Telec Ltd' which he described as delivering "telecommunications and networking solutions". The company had been incorporated but at the date of appeal it had not yet commenced trading. It was the Appellant's stated intention that it would do so in the near future. Judge Foudy had regard to the evidence before her and made a number of findings rejecting the Appellant's claim to have invested, or to intend to invest in, this company. She found:

   i) That the Appellant was "very vague" about what services he would actually provide and "exhibited a poor ability to explain his business plans";
   ii) In his oral evidence the Appellant appeared to be relying on stock phrases such as "to user specification" without being able to explain what they actually meant;
   iii) The documentary evidence gave very little detail about the business;
   iv) The Appellant's market research was "rudimentary in the extreme", consisting of drawing up a list of other IT companies in the Bolton area. Judge Foudy rejected as not credible the claim that some of these businesses had been prepared to talk to the Appellant about their work and observed that the list could just as conveniently have been found in telephone directory;
   v) That the Appellant admitted that his financial projections were aspirations rather than realistic figures. The complete inadequacy of these projections is illustrated by the fact that he had estimated the costs of providing cabling, computers, routers etc to a potential customer as "zero".

4. At paragraph 14 the Tribunal found it "highly surprising", given the evident failings in the Appellant's business plan, that he had won a contract from a friend of his, a Mr Oteri of Nelson Consultants. The Appellant said that he would provide services to Nelson Consultants and that Mr Oteri would in turn pay him £15,000. Judge Foudy commented that it was a pity that Mr Oteri had not been called to give evidence since there were a number of matters arising from the contract which were left "opaque". These included the pricing structure and the duration of the contract. Judge Foudy found it "quite

incredible" that these vital items were omitted from the contract. She then said this:

> "Moreover, if Nelson Consultants Ltd is a successful company, Mr Oteri may have been able to explain why his latest company accounts show a net worth of only £121 for his company. If the Appellant ever actually believed that Mr Oteri would have paid him £15,000 for an unspecified amount of work over an unspecified period of time I find that the simplest of internet searches would have revealed to him that Mr Oteri's business is probably not capable of honouring such a contract…."

5. It is this paragraph that has led to this appeal. The Appellant alleges, and the Respondent accepts, that this paragraph reveals that Judge Foudy conducted post-hearing internet research and then used this to attack the Appellant's credibility as a witness, and more importantly as a Tier 1 (Entrepeneur).

6. I am unable to say with certainty whether Judge Foudy did in fact look Nelson Consultants up on the internet after the hearing. The parties are in agreement that she must have done, since no-one can say where the figure of £121 came from otherwise. If that was what happened, that would, in these circumstances, be an error, since the Appellant was deprived of an opportunity to respond to the point made: EG (post-hearing internet research) Nigeria [2008] UKAIT 00015.

7. Mr Harrison argues however, that any error is immaterial, since it is evident from the remainder of the decision that the Tribunal had found comprehensively against the Appellant.

8. Mr Schwenk relies on the authority of MM (Unfairness: E&R) Sudan [2014] UKUT 00105 (IAC). He submits that where there is a procedural impropriety such as this, the appellate court should exercise caution in concluding that the outcome would have the same even if the error had not occurred. He points to the dicta from R v Chief Constable of Thames Valley Police ex parte Cotton [1990] IRLR 344, cited with approval in MM: "it is sufficient if an applicant can establish that there is a real, as opposed to purely minimal, possibility that the outcome would have been different".

9. I am satisfied that in this case there is no real possibility that the outcome would have been any different had Judge Foudy not conducted an internet search on Nelson Consultants Ltd. That was because she found absolutely nothing in the evidence to support the contention that the Appellant knew anything about IT, was capable of running an IT business, or indeed had a genuine intention to do so. She made numerous well-reasoned findings that were all supported by the evidence before her. Although I exercise caution in finding that the procedural impropriety was not such that the decision should be set aside, that is my finding.

Decision

10. The determination of the First-tier Tribunal does not contain an error of law such that it should be set aside.

11. I make no direction as to anonymity.

Deputy Upper Tribunal Judge Bruce
4th November 2014