



IAC-FH-CK-V1

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

Appeal Number: OA/02070/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30 July 2015**

**Decision & Reasons Promulgated
On 11 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR PAULINUS CHIJOKE NWANONEZE
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr A Corban, Corban Solicitors

DECISION AND REASONS

Introduction

1. In this decision I am going to refer to the parties by their designations before the First-tier Tribunal.
2. The appellant is a Nigerian national and was born on 19 August 1960. He appealed to the Upper Tribunal with permission of Senior Immigration Judge Martin. Senior Immigration Judge Martin considered that the decision of the First-tier Tribunal was arguably wrong because the First-tier Tribunal Judge had remitted the matter back to the Entry Clearance Officer

for him to make a decision on the basis that the original decision appeared to have been erroneous because the Entry Clearance Officer had insisted on the requirement of the Rules, that there had to be a bank statement or statements covering the 28 day period up to the date of the application, be met.

Discussion

3. I have been referred by Mr Tufan, who represents the Home Office, to the requirements of the Rules and in particular the requirement that in deciding any application under Appendix FM all documents must be supplied with the application. The Entry Clearance Officer will only consider documents submitted after the application where certain exceptions apply, and it is not being suggested that those exceptions apply here.
4. The Immigration Rules and Appendix FM-SE at subparagraph (c), quoted in Phelan on Immigration Law at p.1176 states that where personal bank statements are relied on they must correspond with the dates on the payslips submitted showing that the salary has been paid into the account in the name of the person concerned or their partner for the relevant period. The period concerned was 28 days and accordingly it is difficult to understand the legal basis for the Immigration Judge holding in paragraph 7 that to expect the appellant to provide bank statements for a 28 day period up to the date of the application would not have been reasonable, sustainable or lawful. I am paraphrasing what he said. The Immigration Judge characterised this as a mistake but, with respect to the Immigration Judge, on my reading of the Rules, it was not a mistake. It was indeed a requirement of the Immigration Rules that bank statements for that period were supplied and whilst I am sympathetic to the difficulties in obtaining such documents I am afraid the Rules, however onerous they appear, have to be complied with. This Tribunal does not have any power to strike down statutory instruments or Immigration Rules which appear unduly technical or difficult to comply with. That would be for another court and another place.

Conclusion

5. So for those short reasons, I will allow the respondent's appeal. I find that there was a material error of law in the decision of the First-tier Tribunal and I substitute the decision of this Tribunal, which is to dismiss the appeal against the ECO's decision to refuse entry clearance. That is not to say that a fresh application supported by the correct documentation would not now succeed. Indeed, it may well succeed given that all the other requirements of the Immigration Rules appear to be met.

Notice of Decision

The respondent's appeal is allowed. The decision of the First-tier Tribunal is set aside. The Upper Tribunal re-makes the decision which is to dismiss the appellant's appeal against the decision of the ECO.

No anonymity direction was made by the First-tier Tribunal and I make no anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

There was no fee award by the First-tier Tribunal and that decision stands.

Signed

Date

Deputy Upper Tribunal Judge Hanbury