



IAC-FH-CK-V1

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

Appeal Number: OA/04131/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 August 2015**

**Decision & Reasons Promulgated
On 8 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MISS ABOLORE OLADEJI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Aina, Counsel instructed by Martyns Rose Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought against a determination of First-tier Tribunal Judge Flynn promulgated on 11 February 2015. The appeal is brought with the permission of First-tier Tribunal Judge McDade dated 4 May 2015. The appeal was technically out of time, and this was not addressed when permission was granted. But no point was taken this afternoon and I will not allow a substantive appeal to fail on a mere technicality. The ground in relation to which permission to appeal was granted was that the judge may have made an error of law by misapplying the burden of proof given

that the refusal was based on paragraph 320 of the relevant Immigration Rules.

2. The appellant is a citizen of Nigeria who was born on 20 April 1982. The appeal arose from a decision of an Immigration Officer dated 5 October 2013 refusing the appellant leave to enter the United Kingdom and cancelling her leave to remain. That refusal letter was handed to me in copy form during the course of oral submissions today.
3. The determination includes at paragraph 13 the following: "In immigration appeals the burden of proof is on the appellant and the standard of proof required is on a balance of probabilities." Mr Aina, who acts for the appellant, states that this is not an accurate statement of the burden of proof and Mr Walker, the Home Office Presenting Officer, concurs that this is a misstatement. However, it is important to read this offending paragraph in the context of the determination as a whole because if one looks at paragraph 18 the Judge says this: "Looking at the evidence in the round I find that the respondent has not shown on a balance of probabilities that the appellant used deception in her application." To my mind it is abundantly plain that the Judge recognised not only that in this matter the burden of proof lay on the respondent but also that the standard was the balance of probabilities.
4. There is no suggestion in the course of the determination that the Judge misapplied the standard of proof. To my mind paragraph 13 is nothing more than a typographical error and that the word 'appellant' appears whereas properly the word 'respondent' should appear. I am not satisfied that there is an error of law at all, merely a slip. Even if there were an error beyond the merely typographical, it is certainly not material because as is clear from the balance of the determination notwithstanding the misstatement in paragraph 13 the burden of proof was correctly applied by the Judge in making the assessment which he did and Mr Aina in the course of his oral submissions when that was pointed out to him accepted that this represented the position.
5. It therefore follows that the issue upon which this appeal turns is whether there was a separate error of law in the judge's determination. I need say nothing about the issue of deception in that there was a rejection of this by the Judge in his evaluation of the facts. The focus of the adverse determination and the focus of the submissions I have heard this afternoon has been on financial misstatements alleged on the part of the appellant. It is first said, relying on the burden of proof point, that there was little if any evidence put forward by the respondent and it is suggested that there may have been breaches of orders requiring matters or evidence to be lodged by the respondent. It is clear, however, that at least one document was before the First-tier Tribunal, namely the refusal letter, and I have been taken to the third bullet point in that refusal letter of 5 October 2013 which says:

"You stated on your application that you earned 195,000 naira monthly as your total income after tax. You stated during further interview that you

earned 5,000,000 naira per year. There are significant anomalies between your declared income on your application and the income you state you receive today and are not able to evidence. You were previously refused a visa due to this very reason.”

6. The Judge carried out his function based on the material which was before him considering this financial material. I have been taken to the bundle of documents that was before the First-tier Tribunal. It included at page 2 an excerpt from a witness statement signed by the appellant which read as follows:

“My net monthly income, as the court will see from my payslips, was the amount stated in my visa form. However, my annual salary with bonuses and allowances is about 5,000,000 naira. I also enclose a letter from my employer with my visa application confirming my annual salary. I was not previously refused a visa for any reason connected with my salary.”

7. If we work our way through this bundle we find at page 10 an extract from the application for United Kingdom entry clearance which asks at question numbered 61: “What is your total monthly income from all sources of employment or occupation after tax”, and the reply is “N195,679.73”. Again working one’s way through these documents there are further references to income. The first is at page 23, a letter dated 15 August 2013 sent by the First City Monument Bank PLC to the British High Commission in Lagos, the third paragraph of which refers to the appellant and states that her total annual remuneration is 5,059,507.79 naira. There is then a further letter, this time dated 22 March 2012 which gives a breakdown of figures, some of which are put in terms of monthly pay, some quarterly pay, some yearly pay, some year end (thirteenth month) pay and others in the form of general allowances which are stated in the letter (although I have not checked the arithmetic) as making a total remuneration package said to be 4,662,500 naira per annum.
8. The submission maintained before me today by Mr Aina is that the Judge misunderstood the content of the documentation which I have just summarised and accordingly his findings and conclusions in paragraphs 20 to 22 inclusive of the determination cannot stand. He presents that as being an error of law sufficient to found a successful appeal.
9. To my mind, having reviewed that evidence in its entirety and having considered the totality of the determination, I am not satisfied that this amounts to anything approaching an error of law. As I have already stated, it is clear from the determination that the judge approached this assessment with the burden of proof resting on the respondent Immigration Officer and he looked at the totality of the evidence in a fair, detached and proper way. What he found was that the appellant’s explanation was not credible and that giving a monthly salary which when multiplied by twelve was significantly below the 5,000,000 naira annual salary was a cause of significant concern to the First-tier Tribunal Judge in reaching his view as to the credibility of this appellant. It is stated in the refusal letter that previous matters had been refused due to difficulties

with the issue of finance and there is some dispute on that. In an ideal world it might have been that those earlier documents could have been provided, but I take the view that the Judge was entitled to take at face value the content of the refusal letter stating what it did.

10. The judge was similarly entitled to take an adverse view of the appellant's evidence in the absence of any proper explanation for the misstatement of her earnings and even today, having been taken *de novo* to the totality of the documentation, I am of the view that no criticism can be made of the Judge for the assessment which he came to in looking at the documents and in deciding whether the respondent had properly discharged the burden of proof in demonstrating that it was not appropriate for leave to enter to be granted.
11. On the basis therefore that no error of law is made out as alleged in the grounds of appeal it must therefore follow that this appeal will be dismissed.

Notice of Decision

Appeal dismissed.

No order for anonymity is made.

Signed *Mark Hill*

Date 4 September 2015

Deputy Upper Tribunal Judge Hill QC