



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/21013/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 3 December 2015

Decision and reasons Promulgated  
On 4 January 2016

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

Appellant

MRS MARY ARINZE EKWUNIFE  
(NO ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr M Hay, Counsel  
For the Respondent: Mr Kandola, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant before the Upper Tribunal is the Secretary of State for the Home Department and the respondent is a citizen of Nigeria born on 1 May 1952. However, for the sake of convenience I shall refer to the latter as the “appellant” and to the Secretary of the State as the “respondent”, which are the designations they had in the proceedings before the First-tier Tribunal.
2. The appellant’s appeal to the First-tier Tribunal was against the decision of the respondent dated 8 September 2014 cancelling the appellant’s leave to remain as a visitor because the appellant had either made false representations or had

employed material facts and had not disclosed material facts for the purposes of obtaining entry to the United Kingdom pursuant to 322 of the Immigration Rules.

3. Judge Samimi allowed the appellant's appeal. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Ransley who found that it is arguable that the Judge's decision involved arguable errors of law that might have made a material difference to the outcome of the appeal. The appellant had admitted having practised deception in procuring a false entry stamp in her Nigerian passport and the Judge may arguably have erred in not taking into account the effect of deception on the appellant's credibility
4. Thus the appeal came before me.

### **First-tier Tribunal's findings**

5. The First-tier Tribunal allowed the appellant's appeal, concluding that:

[2] the appellant arrived in the United Kingdom on 27 April 2014 with leave to enter as a multi-visit visitor which leave was valid until 9 July 2018. On arrival the appellant indicated that her intention was to visit her daughter. The appellant was found to have previously visited her daughter in 2010 and in 2013. In the course of her interview with the immigration officer, the appellant had stated that her intention was to remain in the United Kingdom for four weeks and that she had previously visited her daughter in April 2008 for two weeks. The immigration officer noted that the appellant had actually remained in the United Kingdom until 23 August 2010. The appellant is said to have admitted to have obtained the said entry endorsement by deception, from a Nigerian immigration officer by paying 1000 naira in cash. The immigration officer concluded that the appellant's actual visit of 182 days from 23 February 2010 to 23 August 2010, not only breached the conditions of entry clearance, but that the fraudulent had been subsequently used to obtain another visa, which was issued in 2013 for three months. Accordingly, the appellant leave was cancelled in accordance with paragraph 321A (2) of the immigration rules.

[5] I find that the fact the appellant has admitted to having exercised deception in facilitating a false entry Stamp in a passport, renders the immigration officer's decision to cancel her latest leave to enter as the correct one. However, the appellant has now been served with a s120 notice of additional grounds, as a result of which she has submitted additional grounds of appeal, namely the right to remain in the United Kingdom in accordance with the 2006 EEA Regulations as well as in accordance with Article 8 of the ECHR.

[9] On the totality of the evidence before me, including the oral and documentary evidence of the appellant, her daughter and son-in-law, I find that all three witnesses have provided genuine and truthful evidence of the nature and extent of the appellant's dependency on her daughter and son-in-law which includes financial and emotional dependency. The appellant had given her own position in Nigeria which is that of a retired teacher (retired in 2010) earning

60,000 naira per month. In relation to the issue of the appellant's dependency, there is evidence before me, in the form of the money transfer agency receipts to show that the appellant was financially supported by her daughter and son in law, while she was in Nigeria. The appellant's dependency on her daughter and son-in-law has increased since her arrival in the United Kingdom in April 2014, to the extent that she is now wholly dependent on the financial support provided by them, but this also now extends to emotional support. In turn the appellant provides valuable help and support to her daughter's family, the form of childcare and housework. All three witnesses have explained that without the appellant support, her daughter and son in law would not be able to carry out their full-time jobs. The appellant's daughter works as a registered community nurse earning £1714 per month which has been demonstrated by the wage slips enclosed. The appellant's husband works and earns approximately the same amount as a psychiatry care worker. The appellant does have two sons in Nigeria but all three witnesses have explained that she does not have a positive relationship with them and they have never provided her with any form of support.

[10] I find that there is sufficient evidence before me, in the form of documentary and oral evidence to show that the appellant has been wholly dependent on her EEA sponsors, for her physical and emotional support, as well as being provided with accommodation and financial support. The appellant is fully reliant on her daughter and son-in-law for her financial support, accommodation as well as emotional support. This has strengthened and developed to a mutual dependency, as without the childcare provided by her, her daughter and son-in-law would not be able to work full-time and carry out valuable work to the community. He has taken into consideration the case of Reyes (**EEA: dependency**) [2013] UKUT 00314 (IAC) at paragraph 19.

[12] On the totality of the evidence before me, I find that the respondent's decision is not in accordance with the EEA regulations 2006. On the balance of probabilities, I find that the appellant has satisfied the requirements of regulation 7 of the 2006 Regulations.

### **Grounds of appeal**

6. The respondent's grounds of appeal are the following which I summarise. The first ground of appeal is that the Judge made a material misdirection in law because having found that the appellant had made a false representation in submitting a Nigerian passport which contained an entry endorsement which she admitted to having obtained by deception from a Nigerian immigration officer by paying in cash and nevertheless finding that the appellant has a right to remain under the EEA Regulations as her son-in-law's dependent. The Judge has not given sufficient reasons as to why the documentary evidence produced to corroborate the dependency on the EEA national sponsor is reliable. Furthermore, having found that the appellant has clearly exercised deception, the Judge went on at paragraph 9 of the determination to find credible in relation to evidence with regards to her dependency. Having found that the appellant had willingly

exercise deception, any further evidence would have been treated with the circumscription. The Judge has failed to give adequate reasons for why the appellant was credible having made an adverse finding against her.

7. The second ground of appeal is that the Judge did not take into account the case of **Moneke (EEA-OFM's-assessment of evidence) Nigeria [2011] UKUT 00430 IAC** which provides that in determining appeals regarding OFM applications made in country, immigration Judges should scrutinise with some care the supporting evidence, in order to satisfy themselves that the burden of proof demonstrating legibility has been discharged. The Judge has failed to have regard to the principle enunciated in this case.
8. The appellant has misrepresented her intention when seeking entry as a visitor. Having found the appellant had exercised deception by presenting a false entry stamp any evidence now submitted in support of the dependency should have been approached with circumspection. Furthermore, the visits and lifestyle by the appellant were inconsistent with the requirements of dependency. The appellant had to demonstrate financial support was being provided for essential living needs. This was clearly not the case. Support of a certain lifestyle does not equate to dependency.

#### **Submissions at the hearing**

9. Mr Kandola said that the appellant has not been an application under the EEA regulations for leave to remain. He said that the appellant has not provided evidence that her dependency is not one of choice but essential for her day-to-day living. The appellant was a teacher and therefore is not destitute. The Judge has not assessed the evidence properly.
10. Ms Hay said that the presumption must be that the determination is correct. The determination can only be discharged on an error of law. In order to succeed it must be shown that the outcome of the case would have been different. The Judge was alive to the issue of deception and made an express finding of that. It was also the centre theme in the respondent's refusal letter. Dependency is a separate issue. The witnesses were credible as explained by the Judge in the determination. There was sufficient documentary evidence of payments to the appellant such as £1000 or more. The appellant was dependent on her sponsors in the United Kingdom before she came here. The Judge found that the appellant has a genuine financial dependency on her sponsors to meet her primary needs. The daughter's evidence which Judge relied upon stated that not only is the appellant wholly dependent on her sponsors but she is now emotionally dependent on them as well. The Judge explored with the witnesses at the hearing the concept of the mutual dependency between them. The Judge's determination and findings are in line with the case of **Moneke**.

11. Mr Kandola in reply stated that if the appellant is genuinely dependent, why did she not make an application for a family permit under the 2006 regulations? There is no evidence set out in the determination that the appellant was dependent on her sponsors from Nigeria. It appears from the evidence that her sponsors are dependent on her doing the housework and looking after her grandchildren.

### **Discussion and Findings**

12. The appeal therefore involves two steps, the first being to determine whether there is an error of law in the determination of the first-tier Judge and the second, if I find there was an error, to hear evidence or submissions to enable me to remake the decision whether she succeeds under the EEA regulations
13. The complaint made against the determination is the fact that the judge did not adequately consider that the evidence that the appellant had practised deception by having obtained a false entry stamp from a Nigerian immigration officer in order to show her date of departure from the United Kingdom as March 2010, instead of the actual date of departure which was 23 August 2010 which would have demonstrated that she was in breach of her visa conditions by not leaving the country in time. The appellant admitted as much and therefore the Judge should have taken this into account in evaluating the appellant's evidence in respect of her dependency on her EEA national sponsors in the United Kingdom and her evidence should have been treated with circumspection.
14. The Judge at paragraph 4 and 5 of the determination made it abundantly clear that she was very much alive to the fact that the appellant had resorted to deception and the respondent's decision to cancel her leave was correctly made. The Judge however stated "on the totality of the evidence before her, including the oral and documentary evidence of the appellant, her daughter and son-in-law, I find that all three witnesses have provided General Electric and evidence on the nature and extent of the appellant's dependency on her daughter and son-in-law which includes financial and emotional dependency".
15. This demonstrates that the Judge took into account not only the appellant's evidence but that of her sponsors, including documentary evidence that they have been supporting the appellant in Nigeria by sending her money. Although the Judge has not implicitly stated that she considers the appellant's evidence with care because of her previous deception, it is clear from the reading of the entire determination that she is relying on other reliable and cogent evidence and not only that of the appellant.

16. The Judge set out all the evidence that the appellant provided including financial support of between £3000-£4000 per year. She took into account that the appellant's salary from her teaching job was not sufficient and without the support of her sponsors in the United Kingdom, the appellant would have otherwise suffered financial hardship. She took into account the salaries that her sponsors and in this country to show that they had the financial strength to support the appellant while in Nigeria and in the United Kingdom.
17. Unlike the Immigration Rules, there is nothing in the 2006 regulations which states that if the person has been deceptive in any application in the past, any future applications by the applicant under the 2006 Regulations must be denied. If the appellant met the requirements of the 2006 regulations, there is nothing to preclude her from being issued with a residence permit as a family member of an EEA national.
18. I have considered the determination with anxious scrutiny to see whether there is a material error of law within it. The Judge did take into account the appellant's fraudulent behaviour but found that there was other evidence which corroborated the appellant's evidence. There is no material error of law in the Judge's consideration of the evidence and the conclusions he reached on it.
19. The respondent's appeal is merely a disagreement with the Judge's decision. A different Judge may well have come to a different conclusion on the same facts but that still does not mean that there is a material error in the determination of the First-tier Tribunal Judge and his decision stands.

### **DECISION**

For the reasons given above, the determination of the First-tier Tribunal is upheld and the Secretary of State's appeal is dismissed.

Signed by

Deputy Upper Tribunal Judge Chana

Dated This 15<sup>th</sup> day of December 2015