



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

Appeal Number: IA/33876/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 4 August 2017**

**Decision & Reasons Promulgated
On 22 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

**OLAYINKA AGBOOLA JAMES
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms O Ogundipe of Fountain Gate Solicitors
For the Respondent: Ms Z Ahmed of the Specialist Appeals Team

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Nigeria born on 25 December 1975. He claims to have entered the United Kingdom in 1991. He has a long immigration history and ultimately on 3 November 2014 applied for indefinite leave to remain on compassionate grounds outside the Immigration Rules. The Appellant's claim is based on his private life and his relationship with fellow church members: see paragraph 37 of his statement of 1 November

2016 and the letter of 19 August 2014 from the Appellant's solicitors sent under cover of a letter of 3 November 2014 from the solicitors supporting the application leading to the decision currently under appeal. In the Appellant's form SET(O) he referred to extended family in Nigeria and a wife in the United Kingdom as well as family members, church members, friends and an "evangelism group".

The Appellant's Immigration History

2. The Respondent gives the following history:-
 - (a) 12 July 2007: application for indefinite leave to remain on the basis of fourteen years' residence, rejected and re-made on 25 July 2007.
 - (b) 1 April 2008: long residence application refused.
 - (c) 1 July 2008: appeal dismissed and appeal rights subsequently exhausted.
 - (d) 23 July 2014: three serial applications for indefinite leave on compassionate grounds rejected.
 - (e) 3 November 2014: application re-made.

The Respondent's Original Decision

3. The Respondent noted there was no evidence of the right of any partner or child of the Appellant to reside in the United Kingdom. She then referred to the Appellant's 2007 application and asserted the Appellant had made false representations, identifying, in particular, various payslips, Forms P60, and an NHS medical card and a diploma from the University of Leicester. Reference was made to a previous determination of an Adjudicator who supports the assertion that these documents amounted to false representations. No specific reference was made but it would appear from the copy in the Tribunal file that this was a determination of Immigration Judge T Jones promulgated on 30 June 2008 under Tribunal reference IA/07544/2008. Consequently, the Respondent refused the application by reference to paragraph 322(10) of the Immigration Rules which provides that the making of false representations for the purposes of obtaining leave to enter or a previous variation of leave or in order to obtain documents from the Secretary of State is a ground for refusal. The Appellant had supplied false documents with his application of 25 July 2007 to obtain indefinite leave to remain.
4. The Respondent considered the Appellant's application by reference to paragraph A277C and Appendix FM of the Immigration Rules. The Appellant had continued to rely on some or all of the documents previously submitted in 2007 which had been found to amount to false representations and he had not provided the requisite documentation to show how he maintained and accommodated himself and because of the

previous use of false documents his presence was not conducive to the public good.

5. The Respondent noted the far-reaching lack of information about the Appellant's partner or any information about any children and a lack of evidence to show Section EX of Appendix FM of the Immigration Rules was engaged.
6. The Respondent did not accept the Appellant's claim to have been continuously in the United Kingdom since January 1991 but accepted he had been present since April 2004. She noted he did not meet any of the critical requirements of paragraph 276ADE(1). She considered the Appellant had retained some ties with Nigeria and there were no insuperable obstacles to his return. Reference was made to the duty to consider the best interests of any children under Section 55 of the Immigration, Citizenship and Borders Act 2009. There was little, if any, information about any children. The Respondent concluded that in all the circumstances the need to maintain proper immigration control outweighed all other interests and refused the application.
7. On 5 November 2015 the Appellant through his solicitors lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds are that the Respondent did not give due weight to the length of time the Appellant had been in the United Kingdom and that her consideration of his claim based on the obligation to respect his private and family life was inadequate. Reference was also made to the circumstances which the Appellant claimed had forced him to come to the United Kingdom in the first place and that he would be at risk of inhuman treatment on return which would place the United Kingdom in breach of its obligations under Article 3 of the European Convention. There were references to other papers which related to different and unrelated cases in the Respondent's decision and which therefore indicated a lack of attention in her consideration of the application.

The First-tier Tribunal Proceedings

8. By a decision promulgated on 8 December 2016, Judge of the First-tier Tribunal Miller dismissed the appeal. He made extensive adverse credibility findings against the Appellant relying greatly on the adverse findings made by Immigration Judge T Jones in 2008, applying the principles enunciated in *Devaseelan* *[2002] UKAIT 00702. He also found there were no compassionate circumstances advanced for the Appellant whom he found to have no family in the United Kingdom such as to tip the balance of the proportionality of the Respondent's decision in favour of the Appellant.
9. By a notice dated 16 December 2016 the Appellant sought permission to appeal. The grounds are rambling. They seek to re-open the issue of the false representations by way of documents settled in 2008 without

providing reasons why the matter should be re-opened other than to assert simple disagreement with both Judges Jones and Miller. The grounds assert the Appellant has been in the United Kingdom since 1991 and suggest that the Judge was at fault in finding against the Appellant on this point because he failed to take into account documents dating from 1995. They re-iterate the Appellant's claim never to have received a copy of the 2008 determination but do not explain why the Judge's finding to the contrary was not sustainable. References to the number of times the application leading to the present decision was rejected are immaterial. The grounds also repeat the Appellant's claim based on Article 3 of the European Convention.

10. On 20 June 2017 Judge of the First-tier Tribunal Landes granted permission to appeal because it was arguable that if the Appellant had been using a bank account in 1995 he might have been in the United Kingdom for more than twenty years but the Judge had not addressed the point. He had also not taken account of the evidence on the face of the University of Leicester certificates that they were not issued by the University of Leicester but by another college on behalf of the university. She found that Judge Jones in the 2008 determination had meant:

“Only that the Appellant had not shown that he had been resident for the necessary period [29] and that he did not find that documents could be relied upon. The Respondent did not make positive allegations of forgery in 2008 nor did the Respondent need to prove forgery nor is Judge Jones' language at [30] or self direction at [6] such as to indicate that the Respondent had proved forgery.”

She found that arguably Judge Miller should have considered the issue of false representations afresh in the context of all the documentary evidence and the Appellant's explanations rather than relying so extensively on the findings in Judge Jones's determination.

11. She noted there was no argument before Judge Miller about any children of the Appellant and that although he did not expressly consider the claim under Article 3 his factual findings indicated the Appellant would have no difficulty re-integrating in Nigeria.

Proceedings in the Upper Tribunal

12. On 12 July 2017 the Respondent lodged a response under Rule 24 of the Practice Rules. The response asserts no document verification report (DVR) was issued in connection with the present decision but the Respondent's claim was that the false documents had been used in a previous application and in its decision of 3 March 2008 the Respondent had explained why those documents were considered to be false. Further, Judge Miller was entitled to use the findings of Judge Jones in his 2008 determination as a starting point and Judge Miller's conclusions were open to him.

13. The Appellant attended the hearing. I explained the purpose and procedure to be adopted at the hearing to determine whether there was an error of law in Judge Miller's decision. He confirmed his address.

Submissions for the Appellant

14. Ms Ogundipe relied on the grounds for appeal. She re-iterated that Judge Miller had based his decision on the determination of Judge Jones and the Respondent had never supplied a DVR. I enquired why one was necessary in view of the analysis contained in paragraphs 13 and 14 of the determination of Judge Jones. These showed that the documents were by virtue of their contents evidence of their own falsity. I noted the problems identified by the Respondent in 2008 with the documents were not untypical from presented in a large number of cases heard at Taylor House at around about the same time. 15. Ms Ogundipe then submitted that Judge Jones had been in error in finding the tax codes referred to were invalid. I asked for evidence to show they were valid at the relevant time but none was produced. I was referred to the bank statements at pages 87, 88, 93 and 96 of the Appellant's original bundle. I enquired how these bank statements would show that the tax codes submitted by the Appellant in 2008 were valid. Ms Ogundipe did not seek to continue her submission on the point.
15. I expressed the view that it appeared the Appellant had little or no evidence to support the assertions in the grounds for appeal which related to documents historically submitted by the Appellant. I was however concerned about paragraph 6 of the grounds for appeal which referred to the Appellant's child to which reference had been made in the Respondent's Reasons for Refusal Letter at pages 6-7. The Judge had made no reference to the Appellant's child or to Section 55 of the Borders, Citizenship and Immigration Act 2009, Section 117(B)(vi) of the 2002 Act or paragraph 276ADE(1) of the Immigration Rules. While no argument may have been put to the Judge at the hearing, he was on notice there was a child and consequently the duty imposed by Section 55 of the 2009 Act arose.
16. There was a further discussion and the parties agreed that the Judge Miller's findings on the Appellant's claim for long residence and his findings on the documentation before Judge Jones in 2008 should stand but that Judge Miller had erred in law in his failure to deal with the question of the Appellant's child and that the matter should be remitted for hearing afresh limited to issues based on the Appellant's private and family life and the circumstances of any child.
17. Having regard to the matters agreed between the parties and for the reasons already given, I find that the decision of the First-tier Tribunal contained a material error of law in its treatment of any claim the Appellant may have based on his relationship with his child and on the State's duty to respect his private and family life protected by Article 8 of the European Convention should be remitted to the First-tier Tribunal for

consideration afresh. The findings made or relied upon by Judge Miller in respect of documentation previously submitted by the Appellant and referred to in the determination of Judge Jones and on the length of time the Appellant had been in the United Kingdom should stand.

Anonymity

18. There was no request for an anonymity direction and having heard the appeal I find that none is required.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained a material error of law and is to the limited extent specified set aside and remitted to the First-tier Tribunal for re-hearing.

Anonymity direction not made.

Signed/Official Crest
2017

Date 21. viii.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal