Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12785/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 and 24 October 2019	**On 9 January 2020**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

OLUSEGUN ADEDEJI ALAKIJA
AKA: LEONARD OGILVY
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr J Fletcher, Counsel, instructed by the Government Legal Department
For the Respondent: In person

DECISION AND REASONS

1. This decision is the re-making of Mr Alakija's appeal against the respondent's decision dated 12 June 2018 which refused his claim under Article 8 of the European Convention on Human Rights (Article 8). The respondent's decision of 12 June 2018 was made in the context of a deportation order issued on the same day.

2. The appeal must be re-made as in a decision issued on 16 August 2019 the Upper Tribunal found an error of law and set aside the decision dated 3 December 2018 of First-tier Tribunal Judge Adio which allowed Mr Alakija's appeal on Article 8 grounds.

3. For the purposes of this decision I refer to the Secretary of State for the Home Department as the respondent and to Mr Alakija as the appellant, reflecting their positions before the First-tier Tribunal.

4. The appellant's history is much disputed. The parties disagree on the appellant's identity and nationality.

5. The background to this matter was set out in some detail in the Upper Tribunal error of law decision dated 16 August 2019 and it is convenient to include that summary here:

> "The Respondent's case before the First-tier Tribunal
>
> 4. The respondent provided the First-tier Tribunal with the following history, relying on it to support the respondent's view that the appellant was not stateless but was a Nigerian national who used various aliases and who had been removed to Nigeria in the past.
>
> 5. The respondent maintained that the appellant first came to the UK on a Nigerian passport (in the name of Olusegun Adedeji Alakija, born on 10 August 1965) and was granted leave as a visitor until 10 November 1987. The landing card relied on by the respondent is at tab 4 page 7 of the respondent's consolidated bundle. When referring to documents in the remainder of this decision, all references are to the tab and page numbers from the respondent's bundle.
>
> 6. On 6 November 1987, the appellant applied for further leave to remain as a student (see tab 4 page 10) but his application was refused as it was not supported with sufficient evidence; see tab 4 page 11. His leave was extended until 12 September 1988 to enable him to lodge an appeal or make arrangements to leave the UK. The decision to refuse leave as a student was reviewed on 17 November 1988 the refusal was maintained and he was required to leave the UK; see tab 4 page 15.
>
> 7. Nothing further was heard from the appellant until 8 August 1989 when he was arrested as an overstayer and issued with a decision to make a deportation order; see tab 4 page 19. At that time he maintained that his name was Aderemi Odunsi, born in Manchester or London. He later accepted that he was Olusegun Adedeji Alakija, born on 10 August 1965. On 13 August 1989 he was removed to Nigeria.
>
> 8. It is not known when the appellant re-entered the UK but on 26 June 1990 he was arrested for theft and he gave his name (for the first time) as Leonard Ogilvy. On 11 July 1990, he received a two month prison sentence for theft by an employee but was released before any enquiries were made with regard to his identity and immigration status.
>
> 9. The appellant next came to notice on 30 October 1991 when he was again arrested by police after trying to pay a stolen cheque for £32,420 into his

bank account. He continued to maintain that his name was Leonard Ogilvy and he alleged that he came to the UK from Portugal in 1981 and had been adopted by a Scottish family.

10. On 30 October 1992, at Middlesex Guildhall Crown Court, the appellant was convicted for theft and using a false instrument for which he received a 2 year and a 12 month sentence respectively, to run concurrently, with a recommendation for deportation; see tab 4 page 23.

11. The appellant appealed against his conviction and sentence and also against the recommendation for deportation. On 25 February 1993 the Court of Appeal (Criminal Division) dismissed his appeal against the recommendation for deportation; see tab 4 pages 25-38. On 23 July 1993, his appeal against his conviction and sentence was refused; see tab 4 pages 39-43.

12. On 30 July 1993 a deportation order was made against the appellant in the three names then known to the respondent; see tab 4 page 44. An appeal to Adjudicator Fugard against removal directions was refused on 25 November 1993; see tab 4 pages 45-46. Permission to appeal that decision was refused on 23 December 1993 by Mr Maddison, Chairman of the Immigration Appeal Tribunal; see tab 4 page 47. Those proceedings referred to the appellant's aliases and stated that he appeared to be a Nigerian national.

13. On 16 August 1995 the appellant lodged a judicial review challenging the respondent's failure to progress his case. His claim was dismissed on 18 October 1995, see tab 4 pages 48-53. An application for an extension of time to renew was refused on 17 October 1996; see tab 4 pages 54-61.

14. The respondent then entered into communication with the Nigerian High Commission, seeking to deport the appellant but the process was not successful. In July 1999 the respondent informed the appellant that it had been decided not to pursue deportation. The deportation order was revoked and on 12 August 1999 the appellant was granted indefinite leave to remain (ILR); see tab 4 pages 63-65. That decision stated that he was a Nigerian national with a date of birth of 10 August 1965.

15. The appellant lodged a judicial review of the decision of 12 August 1999 on the basis that he should be recognised as stateless and had a date of birth of 1 March 1968, not 10 August 1965. On 9 September 1999, his application for judicial review was dismissed.

16. On 15 September 1999, the appellant wrote to the respondent again, requesting that the letter granting him ILR was amended to show that he was stateless and also requesting that his date of birth was changed from 10 August 1965 to 1 March 1968; see tab 4 pages 67-73. On 17 September 1999, the respondent refused to amend the document; see tab 4 page 75.

17. On 10 July 2003, the appellant was convicted of 3 counts of unlawfully providing immigration advice and was sentenced to 150 hours community punishment.

18. On 20 September 2004, the appellant applied for a travel document, maintaining again that this document should reflect his status as a stateless person and his claimed date of birth of 1 March 1968; see tab 4 pages 77-79.

On 4 November 2004, the respondent refused to amend the details in the travel document see tab 4 pages 81-83.

19. On 4 May 2005, the appellant was named in an application for leave as the Portuguese sponsor of Anne Marie Pencille/Rickets, a Jamaican national, whose application was refused.

20. On 22 January 2006, the appellant went to St Lucia. While in St Lucia he was made subject to deportation action by the St Lucian Government and disbarred from giving legal advice there. His appeal against deportation from St Lucia was refused on 8 March 2007; see tab 4 pages 85-105.

21. On 19 March 2007, the appellant was deported from St Lucia to the UK. He was arrested at Gatwick South Terminal on arrival in connection with various allegations of deception and arson. He was released the following day although his ILR was suspended and his passport was retained. No charges were subsequently brought. A judicial review of the suspension of leave was dismissed; see tab 4 pages 133-141.

22. On 9 July 2014 the appellant applied for a new travel document. This application was granted. The document was endorsed with code "XXX". The document stated, incorrectly, that this was an indication that the appellant was stateless. The proper meaning of code "XXX" was that the appellant was of unspecified nationality.

23. On 30 March 2015 at South London Magistrates' Court, the appellant was convicted of 3 counts of wilfully pretending to be a barrister and fraud. He was sentenced to a 6 week suspended sentence, 200 hours' unpaid work and to pay £2,000 compensation.

24. On 3 July 2017 the appellant was convicted at Southwark Crown Court on 3 counts of wilfully pretending to be a barrister and 3 counts of fraud. On 5 July 2017 he was sentenced to 2 years' imprisonment; see tab 4 pages 149-157. His appeal against conviction was refused on 24 January 2018.

25. Following that conviction, the respondent commenced deportation proceedings on 1 August 2017. On 12 June 2018, the respondent made a deportation order against the appellant, setting out his various aliases; see tab 4 page 199.

26. The respondent provided reasons for refusing the appellant's human rights claim in a letter dated 12 June 2018 which again referred to the respondent's view that he had used a number of aliases; see tab 4 pages 207-227. That letter also included the history set out above.

27. The appellant appealed against the refusal of his human rights claim. On 3 December 2018 First Tier Tribunal Judge Adio allowed the appellant's appeal against deportation, finding him to be stateless and that, as a result, a breach of his Article 8 rights would arise if he were deported to Nigeria; see tab 2 pages 6-10.

<u>The appellant's case before the First-tier Tribunal</u>

28. The appellant disputes a great deal of the respondent's view of his history. His version of events is probably best set out in a witness statement dated 11 June 2018. This document is at pages 30 to 38 of tab 3 of the respondent's bundle.

29. The appellant maintains that his history is as follows. He was born on 1 March 1968. He came to the UK in 1981 at the age of 13. He was raised by Scottish parents who "adopted" him and looked after him until he was 17 years old when he went to London.

30. After coming to London, he attended City and Islington College; see tab 3 pages 57-58 of the respondent's bundle. He studied law at Thames Valley University from 1995 to 1998 and obtained his degree; see tab 3 pages 54-56. He studied for a post-graduate qualification in law (see tab 3 page 53) but was unable to gain admission to the Bar as he had previous convictions. The convictions are not detailed in the witness statement but at tab 3 page 68 there is reference to convictions in 1990 and 1992.

31. The appellant also set out in his witness statement that he worked for the Free Representation Unit between 1995 and 1997. He worked in the Legal Department of the London Borough of Ealing as a litigation assistant and then as Principal Litigation Officer. He was a school governor from 1995 to 2000 and sat on Educational Appeal Panels for Southwark Council. He was a lay visitor to Southwark Police Station from 1994 to 1999. In 2010 he married [CO], a British citizen.

32. The appellant does not appear to dispute that he spent time in St Lucia, his return to the UK on 19 March 2007 and the material events thereafter as set out in the history relied upon by the respondent. He does maintain, however, that he was wrongly convicted in 2015 of pretending to be a barrister (see tab 3 pages 71-75)."

6. Paragraph 10 of the error of law decision requires correction as the sentence that was handed down in 1992 was given on 10 March 1992 and not 10 October 1992; see tab 4 page 23.

7. Bringing matters up to date, the respondent applied for permission to appeal against the decision dated 3 December 2018 of Judge Adio and was granted permission by First-tier Tribunal Judge Boyes in a decision dated 17 January 2019. The appeal came before Lord Uist and Upper Tribunal Judge Pitt on 26 March 2019. The hearing was adjourned because the paperwork was not in order and directions issued for this to be remedied.

8. The appeal was re-listed for 30 July 2019 before Upper Tribunal Judge Pitt and Deputy Upper Tribunal Judge A Black. On 16 August 2019 the Upper Tribunal issued a decision finding error of law, setting aside the First-tier Tribunal decision and directing that the decision would be re-made in the Upper Tribunal.

9. The appeal was then listed for hearing on 23 and 24 October 2019.

The Law

10. The appellant seeks to rely on the exception in section 33(2)(a) of the UK Borders Act 2007, maintaining that his deportation would breach his Article 8 rights. Where, in the context of deportation, the Tribunal must determine whether the respondent's decision breaches a person's rights under Article 8, Part 5A (sections 117A-D) of the

Nationality and Immigration Act 2002 (NIA 2002) applies. Section 117C is of particular application to cases concerning foreign criminals and provides:

> **117C Article 8: additional considerations in cases involving foreign criminals**
>
> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
>
> (b) C is socially and culturally integrated in the United Kingdom, and
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
>
> (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

11. The provisions of the Immigration Rules in paragraphs 398-399A of the Immigration Rules have been amended so as to harmonise with Part 5A of the 2002 Act. The relevant provisions in the Immigration Rules, as amended with effect from 20 July 2014, are as follows:

> 362. Where Article 8 is raised in the conduct of deportation under Part 13 of these rules, the claim under Article 8 will only succeed where the requirements of these rules as at 20 July 2014 are met, regardless of when the notice of intention to deport or the deportation order, as appropriate, was served.
>
> …
>
> 398 Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and
>
> …

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months;

…

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) … applies if –

…

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

399A This paragraph applies where paragraph 398(b) or (c) applies if -

(a) the person has been lawfully resident in the UK for most of his life and

(b) he is socially and culturally integrated in the UK, and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

12. The Supreme Court provided guidance in KO (Nigeria) v SSHD [2018] UKSC 53 on the correct approach to the "unduly harsh" test set out in Exception 2 of s.117C and paragraph 399 of the Immigration Rules, stating in [23]:

> "... the expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under Section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further, the word "unduly" implies an element of comparison. It assumes that there is a "due" level of "harshness", that is the level which may be acceptable or justifiable in the relevant context. "Unduly" implies something going beyond that level. The relevant context is that set by Section 117C(1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child facing the deportation of a parent."

13. In paragraph 27 of KO (Nigeria) the Supreme Court also approved the guidance provided by the former President of the Upper Tribunal in MK (Sierra Leone) v SSHD [2015] UKUT 223 (IAC) on the meaning of "unduly harsh":

> "... unduly harsh does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. "Harsh" in this context, denotes something severe, or bleak. It is the antithesis of pleasant or comfortable. Furthermore, the additional adverb "unduly" raises an already elevated standard still higher."

14. The Court of Appeal in NA (Pakistan) v SSHD [2016] EWCA Civ 662 held at [25]-[27] that there was an obvious drafting error in section 117C(3). The consequence of that decision is that section 117C(3) is to be read in conjunction with section 117(6), as follows: "the public interest requires C's deportation unless Exception 1 and 2 applies or unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2". In order to assess the appellant's Article 8 claim, I must therefore consider the Exceptions 1 and 2 and, if the appellant does not come within them, go on to assess whether there are very compelling circumstances that outweigh the public interest in deportation.

15. The Court of Appeal also provided guidance in NA (Pakistan) on the correct approach to the "very compelling circumstances" assessment where the appellant is a "medium offender", as is the case here:

> "29. In our view, the reasoning of the Court of Appeal in *JZ (Zambia)* applies to those provisions. The phrase used in section 117C(6), in para. 398 of the 2014 rules and which we have held is to be read into section 117C(3) does not mean that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that "there are very compelling circumstances, over and above those described in Exceptions 1 and 2". As we have indicated above, a foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paras. 399 or 399A of the 2014 rules), or features falling outside the circumstances described in those Exceptions and those paragraphs, which made his claim based on Article 8 especially strong.
>
> …
>
> 32. Similarly, in the case of a medium offender, if all he could advance in support of his Article 8 claim was a "near miss" case in which he fell short of bringing himself within either Exception 1 or Exception 2, it would not be possible to say that he had shown that there were "very compelling circumstances, over and above those described in Exceptions 1 and 2". He would need to have a far stronger case than that by reference to the interests protected by Article 8 to bring himself within that fall back protection. But again, in principle there may be cases in which such an offender can say that features of his case of a kind described in Exceptions 1 and 2 have such great force for Article 8 purposes that they do constitute such very compelling circumstances, whether taken by themselves or in conjunction with other factors relevant to Article 8 but not falling within

the factors described in Exceptions 1 and 2. The decision maker, be it the Secretary of State or a tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation.

33. Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.

…

36. In relation to a medium offender, first see whether he falls within Exception 1 or Exception 2. If he does, then the Article 8 claim succeeds. If he does not, then the next stage is to consider whether there are "sufficiently compelling circumstances, over and above those described in Exceptions 1 and 2". If there are, then the Article 8 claim succeeds. If there are not, then the Article 8 claim fails. As was the case under the 2012 rules (as explained in *MF (Nigeria)*), there is no room for a general Article 8 evaluation outside the 2014 rules, read with sections 117A-117D of the 2002 Act."

16. The appellant also maintains that he is stateless. Article 1 of the 1954 Convention relating to the status of Stateless Persons provides:

Article 1

Definition of the term "stateless person"

1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

17. A "stateless person" is defined in paragraph 401 of the Immigration Rules:

401. For the purposes of this Part a stateless person is a person who:

a. satisfies the requirements of Article 1(1) of the 1954 United Nations Convention relating to the Status of Stateless Persons, as a person who is not considered as a national by any State under the operation of its law;

b. is in the United Kingdom; and

c. is not excluded from recognition as a Stateless person under paragraph 402.

18. Paragraph 403 of the Immigration Rules provides:

403. The requirements for leave to remain in the United Kingdom as a stateless person are that the applicant:

a. has made a valid application to the Secretary of State for limited leave to remain as a stateless person;

b. is recognised as a stateless person by the Secretary of State in accordance with paragraph 401;

c. has taken reasonable steps to facilitate admission to their country of former habitual residence or any other country but has been unable to secure the right of admission; and

d. has obtained and submitted all reasonably available evidence to enable the Secretary of State to determine whether they are stateless or whether they are admissible to another country under the meaning of paragraph 403(c);

e. has sought and failed to obtain or re-establish their nationality with the appropriate authorities of the relevant country; and

f. if, in the case of a child born in the UK, has provided evidence that they have attempted to register their birth with the relevant authorities but have been refused.

19. In AS (Guinea) v SSHD [2018] EWCA Civ 2234, the Court of Appeal confirmed that persons alleging that they were stateless had to prove their case on the balance of probabilities. The Court of Appeal also stated at paragraph 57 of AS (Guinea):

> "… A person claiming to be stateless must take all reasonably practicable steps to gather together and submit all documents and other materials which evidence his or her identity and residence in the state or states in issue, and which otherwise bear upon his or her nationality. The applicant ought also to apply for nationality of the state or states with which he or she has the closest connection …"

The Hearing

20. I heard evidence from the appellant and Ms [CO]. As the appellant was representing himself, Ms [O] left the hearing room while the appellant gave evidence on their relationship. The appellant remained in the hearing room while Ms [O] gave her evidence so that he could make submissions on it if he wished. The appellant and Ms [O] were both cross-examined by Mr Fletcher. Mr Fletcher and the appellant made oral submissions. I reserved my decision. At the hearing, the parties referred to the documents as set out in the respondent's bundle and I also refer to the relevant tab numbers and page numbers from that bundle in this decision.

My Findings on Identity and Nationality

21. The question of the appellant's identity and his claim to be stateless are closely interlinked and are fundamental to his Article 8 claim. I therefore turn to these issues first.

22. The appellant continues to maintain that he is Leonard Ogilvy (Ogilvy), born on 1 March 1968. He maintains that he has never had any other identity. The appellant also maintains that he is stateless, with no previous connections to Nigeria.

23. The respondent considers the appellant to be Olusegun Adedeji Alakija (Alakija), a Nigerian national, born on 10 August 1965. The respondent maintains that in addition to using the name Ogilvy, the appellant has also used other aliases, including Alakija Olusegun Adedeji and Aderemi Odunsi.

24. Having considered all of the materials before me, it is my firm conclusion that the evidence shows to a high standard of proof, well beyond the balance of probabilities, that the appellant is Olusegun Adedeji Alakija, a Nigerian national born on 10 August 1965 who has also used the other aliases recorded by the respondent.

25. There are numerous reasons for this conclusion which I set out now. In order to give my reasons it is necessary to go into the appellant's history, including the extensive litigation in which he has been involved, in some detail. I have attempted, as far as possible, to deal with the evidence in chronological order.

Criminal Conviction in 1992

26. The appellant does not dispute that on 5 March 1992, at Middlesex Guildhall Crown Court, he was convicted for theft and using a false instrument for which he received a 2 year sentence; see tab 4 page 23. He was convicted in the name of Ogilvy. The details of the offence were that he took a cheque from his employer, endorsed it in favour of Alakija for the amount of £32,420 and paid it into a bank account in the name of Alakija.

27. The appellant maintained in the trial that he was Ogilvy, not Alakija. He argued that the only reason he ever came to be associated with the name Alakija was because when he was arrested documents belonging to another man of that name were found in the house where he was living. He stated the same thing in his evidence before me. The criminal proceedings in 1992 show that this account was rejected, however, a finding that the appellant was Alakija and that he was using the alias of Ogilvy being a key part of the case against the appellant which led to his conviction.

28. The identification evidence from the criminal trial that led to the appellant being found to be Alakija is at tab 5 page 3-4. This is the witness statement dated 11 February 1992 of Mr Mellor, an Immigration Officer. He states that on 14 November 1991 he was called to court to interview the appellant as he was claiming to be Ogilvy but was suspected by police of being Alakija, the person who had been issued with a deportation order in August 1989 and returned to Nigeria shortly thereafter.

29. Mr Mellor's statement records that the appellant told him in November 1991 that he was not Alakija but maintained that he was Ogilvy. He claimed to be Portuguese and maintained that he had shown a Portuguese identity document to an Immigration Officer in 1990 when detained in relation to an earlier conviction for theft. Mr Mellor could not find a record of a meeting in which a Portuguese identity document was provided. The appellant also told Mr Mellor in November 1991 that he had been born in Porto and orphaned at the age of 7, coming to the UK at the age of 13. He had attended Porto High School. He was then adopted by a British family and lived in Scotland with them but did not go to school. He spoke no Portuguese despite living there until the age of 13; see tab 5 page 4.

30. The witness statement goes on to indicate that Mr Mellor retained doubts about the appellant's claim to be Ogilvy. He therefore obtained from Home Office records a photograph of Alakija, the Nigerian national with a date of birth of 10 August 1965

who had been served with a notice of intention to deport and returned to Nigeria in 1989. Mr Mellor exhibited the photograph of Alakija to his witness statement and stated that the person in the photograph was identical to the person claiming to be Ogilvy whom he had interviewed in 1991; see tab 5 page 4.

31. As well as providing a witness statement, Mr Mellor gave oral evidence in the criminal trial. The transcript of his evidence is at tab 5 page 5-13. The transcript shows that his evidence was consistent with the contents of the witness statement. He provided the court with an enlarged copy of the photograph taken of Alakija in 1989 and this was shown to the jury; see C to G on tab 5 page 9. Mr Mellor's evidence was, therefore, that the photograph showed that Alakija and Ogilvy were the same person.

32. The witness statement of Mr Mellor and transcript of his oral evidence from the trial in 1992 provides strong evidence indicating that the appellant is Alakija, a Nigerian national who has been calling himself Ogilvy for many years. The fact that the appellant was convicted in 1992 shows that Mr Mellor's evidence was accepted and it was found beyond reasonable doubt that Alakija and Ogilvy were the same person and that the appellant, using both identities, had forged the cheque which was paid into the bank account in the name of Alakija.

Appeal Against Conviction to the Court of Appeal in 1993

33. Further support for the conclusion that the appellant is Alakija comes from his appeal to the Court of Appeal against his 1992 conviction. On 23 July 1993, his appeal was refused by the Court of Appeal; see tab 4 pages 39-43. In the decision upholding the conviction, the Court of Appeal said this, starting at D on tab 5 page 40:

> "The applicant renews his application for leave to appeal against conviction. The basic facts can be shortly stated. The cheque was paid into an account at Barclays Bank in the name of Alakija.
>
> It was the case for the Crown that this applicant and Alakija were one and the same person. The person presenting the cheque was photographed on a security camera and was, according to the evidence, identified as this applicant.
>
> Evidence was given by an official from the Home Office that in August 1989 he had arrested a man by the name of Alakija, who gave an address of [~] Street. This man Alakija was photographed during the investigation by the Home Office and admitted to be a Nigerian overstayer. He was deported on 18th August 1989. He was photographed and that photograph was of this applicant."

and at C on tab 5 page 41:

> "With regard to the second count on the indictment, the main thrust of his submissions is that the directions on identification were inadequate and the evidence of identification insubstantial.
>
> Each member of the Court has carefully considered the submissions of the appellant, including a 10 page, undated memorial outlining alleged prejudice on the part of the police; and a document headed "further grounds of appeal" dated

> 25th June 1992 consisting of some 20 pages, which assert in particular that the applicant is not Olusuja (sic) Alakija.
>
> In our judgment, there are no reasonably arguable grounds of appeal against conviction. In our judgement, the summing up of the learned Assistant Recorder cannot be faulted."

34. The Court of Appeal specifically rejected the appellant's challenge to the identification evidence and the judicial direction given on identification which led to him being found to be Alakija. The comments of the Court of Appeal also show that there was further evidence against the appellant showing him to be Ogilvy and Alakija by way of a security camera showing him paying in the forged cheque to the bank account of Alakija. This is further strong evidence that the appellant is Alakija and that he has been using an alias of Ogilvy. The evidence from the criminal trial, the conviction and upholding of the conviction by the Court of Appeal show that the appellant's claim that he only came to be confused with Alakija because another man's documents were found in his home is not credible.

Appeals to the Immigration Tribunal and Immigration Appeal Tribunal in 1993

35. On 30 July 1993 a deportation order was made against the appellant referring to him as Olusegun Adedeji Alakija, Leonard Ogilvy and Aderemi Odunsi; see tab 4 page 44.

36. The appellant appealed that decision to the Immigration Tribunal (IT). Adjudicator Fugard refused his appeal on 25 November 1993; see tab 4 pages 45-46. In his decision, Adjudicator Fugard set out the three names used by the appellant. He stated that the appellant "appears to be a citizen of Nigeria" with a date of birth of either 1 March 1968 or 10 August 1965. Adjudicator Fugard found that the appellant had not shown that he could not be removed to Nigeria.

37. I found that this decision was a further strong indication that the appellant is Alakija and that he is Nigerian. Reading the decision fairly, nothing turns on the use of the wording "*appears* to be a citizen of Nigeria", as highlighted by the appellant, where there was a clear finding that the appellant could be returned to Nigeria. The fact that the Adjudicator was not certain as to the date of birth, the appellant as Ogilvy asserting a date of birth of 1 March 1968, is not sufficient to prevent this decision supporting the conclusion that the appellant is Alakija, born on 1 August 1965.

38. Further, the decision of Adjudicator Fugard was upheld on 23 December 1993 by Mr Maddison, Chairman of the Immigration Appeal Tribunal (IAT); see tab 4 page 47. Those proceedings again referred to the three names used by the appellant and stated that he appeared to be a Nigerian national. The decision shows that the Immigration Appeal Tribunal upheld the decision to deport to Nigeria in the face of the appellant's claims to be Portuguese. This is further evidence that the appellant is Alakija even though he persisted in presenting himself as Ogilvy in those proceedings.

Appeals to the Social Security Tribunal and Social Security Appeal Tribunal in 1994

39. The appellant had a Social Security Appeal Tribunal (SSAT) appeal hearing on 4 May 1994; see tab 5 page 28-31. In that appeal, the appellant maintained that he was Ogilvy and that he came to the UK in 1981 with his foster parents from Portugal. He went to Scotland and then to London. He relied on documents from a number of sources, for example, a GP, McDonald's, the Local Authority and the Probation Service referring to him as Ogilvy. He maintained that he had always been known as Leonard Ogilvy and that when he was arrested in 1992 the police found documents concerning a Mr Alakija in the house and that this led to the police asserting that he was Alakija in the criminal trial. I have already indicated in paragraphs 29 and 36 above why this assertion lacks credibility in light of the criminal conviction in 1992. The SSAT, in May 1994, however, found that the appellant was Ogilvy, that he had come to the UK in 1981 and was entitled to Income Support.

40. The appellant has continued to rely on the findings of the May 1994 SSAT that he is Ogilvy ever since. That reliance is misconceived because the findings made by the in that decision were set aside by another SSAT panel and the appellant found to be Alakija in decisions dated 20 December 1994; see tab 5 page 43-45A and tab 5, page 42A.

41. The decision at tab 5 page 42A sets aside the decision of 4 May 1994. The decision at tab 5 page 43-45A said this on the appellant's identity:

> "1. The claimant was listed on the case papers as "L Ogilvy" and his presentation, which was unstructured, appeared to concentrate upon an attempt to persuade the Tribunal that he was "L Ogilvy". The record of earlier hearings on the same subject matter also contain a firm contention that he is correctly described.
>
> 2. He is known as "O A Alakija" but is hardly likely to admit to that, as Alakija is an illegal entrant.
>
> 3. He is not without intelligence or education, but has utilised the Social Security Appeal Tribunal procedure in order to reassure others that he is not "Alakija". There have been earlier Hearings, one set aside and two adjourned, all of which concentrate at some length on the issue of identity. With respect to the memory of the famous naturalist, Grey Owl if you continue calling yourself "GREY OWL" for long enough and parade your Canadian Indian ancestry for long enough, you will be addressed as "Grey Owl" by the world at large and not in your real persona as a native of Hastings, Sussex."

42. The December 1994 SSAT decision also records in paragraph 6 that:

> "6. He provided the Tribunal with an account of his childhood in Brazil, Portugal, Scotland and England. Our conclusion was that, at best, this was inherently improbable, at worst it was so indefinite that it could not be independently checked. We found the suggestion that his two foster siblings went to a place of schooling whilst he studied alone or went fishing quite unusual and, in view of his admitted intelligence, found it very

> difficult to believe he would not have used the Portugal (EU) connection had there been such."

43. The SSAT allowed the Income Support appeal but also made the following findings:

> "10. … Our decision is to allow the appeal but not for the reasons that Mr Alakija would prefer. Or possibly we should describe him as Mr Alakija/Ogilvy. He seems to be able to present identity with some ease but no substance, and we sympathise the patience of the Adjudication Authorities in their attempt to deal reasonably with him.
>
> 11. … The Adjudication Officer had accepted the case for decision from the Secretary of State under Commissioners Decision R(SB) 29/83, and had asked for evidence of identity. It is our conclusion that this claimant had no such evidence (Commissioners Decision RI 2/51) either because he had never possessed such evidence, or in the alternative, because there was such evidence which he felt was self-incriminating.
>
> 12. He is also a person from abroad and was in Pentonville Prison, being released on 24/12/1993. He was also a person who was capable of identification because notwithstanding his stout denial, we believe that on the balance of probabilities he was served with a Deportation Order …"

44. The SSAT in December 1994, like the criminal court in 1992, the Court of Appeal in upholding the criminal conviction, the IT and the IAT found the appellant to be Alakija, a Nigerian national who entered the UK illegally. This adds further weight to the conclusion that the appellant is Alakija.

45. The December 1994 SSAT decision also shows that some 25 years ago, the SSAT identified, entirely accurately, in my view, using the "Grey Owl" example, the appellant's *modus operandi* after he returned to the UK illegally in 1990 of asserting so persistently and vociferously that he is Ogilvy that this has, at times, been accepted, for example in the SSAT decision.

46. Further, the concern expressed in paragraph 11 of the December 1994 SSAT decision that the appellant had withheld self-incriminating evidence is the first of a number of judicial comments on this aspect of the appellant's conduct over many years that further undermines his credibility. A significant example arises shortly after the appeals before the SSAT. The materials before me include a letter from the Nigerian High Commission (NHC) dated 12 September 1997; see tab 5 page 81-83. This letter shows on page 82 that that the appellant continued his "vehement contention" that he was Ogilvy and provided the NHC with the SSAT decision from 4 May 1994 not the decisions from 20 December 1994. He can only but have known that the May 1994 SSAT decision had been overturned by the December 1994 decision finding him to be Alakija, a Nigerian national and a highly unreliable witness. In the context of all of the evidence before me, I am satisfied that this was a deliberate withholding of material evidence from the NHC in an attempt by the appellant to mislead and frustrate the immigration system, further examples of which are noted below.

47. Further, the appellant was highly successful in gaining an advantage from withholding the December 1994 Social Security decision and relying on the May 1994 decision. When the NHC continued to refuse to accept the appellant as a Nigerian citizen, the respondent, eventually, decided that the appellant could not be deported, cancelled the deportation order and granted ILR on 12 August 1999.

48. The appellant has also repeatedly sought to rely on the NHC refusing to accept that he was Nigerian in his dealings with the respondent and litigation ever since, discussed in more detail below. However, the position of the NHC up until 1997 that the appellant was not accepted as Nigerian cannot carry weight now where the evidence in this case shows that the decision was made on the basis of the wrong SSAT decision and, it would appear, in ignorance of the material evidence from the 1992 criminal proceedings, the decision of the Court of Appeal maintaining the 1992 conviction and the findings of the IT the IAT, all showing the appellant to be Alakija, a Nigerian national.

R (Ogilvy) v SSHD CO/2625/95

49. The appellant, meanwhile, continued to litigate concerning the 1992 criminal conviction. In 1995 he challenged the delay of the respondent in making a decision to refer his application for leave to appeal against conviction to the Court of Appeal Criminal Division. The judgment dated 18 October 1995 of Mr Justice Ognall is at tab 4 pages 48 to 53. This shows that by the time of the hearing on 18 October 1995 the respondent had made the decision sought by the appellant but that he went on to use the hearing "to ventilate a quite different matter". Having heard the appellant's amended grounds, Mr Justice Ognall stated:

> "I am entirely satisfied that the long and tortuous history of this matter demonstrates in essence no more than a very sustained attempt by Mr Ogilvy to go behind a conviction recorded against him some considerable time ago and founded upon clear and compelling evidence …"

and

> "… I am bound to observe here that what has confronted the Secretary of State, and ultimately, this Court, is neither more nor less than a legal filibuster."

50. Mr Justice Ognall refused permission. The appellant continued his challenge, Lord Justice Simon Brown and Mr Justice Gage commenting in a decision made on 17 October 1996 on "these extensive and protracted proceedings" and agreeing with Mr Justice Ognall's comment on the appellant trying to go behind an entirely valid conviction. They refused the application.

51. I include details of this particular litigation as, like the SSAT in 1994, it appears to me that Mr Justice Ognall, Lord Justice Simon Brown and Mr Justice Gage had the appellant's measure, finding the conviction which found him to be Alakija to be sound and recognising his use of unmeritorious legal proceedings to try to try to "filibuster" a more favourable outcome. The evidence considered below show that he

has used a similar approach in other litigation when trying to show that he is Ogilvy and not Alakija.

R (Marfo) v SSHD in 1996

52. As well as representing himself, the appellant has for many years represented others in legal proceedings. He appeared before Mr Justice Collins in a judicial review on behalf of a Mr Marfo at a hearing on 25 June 1996; see tab 5, page 55-62.

53. In R (Marfo), Mr Justice Collins sets out at D of tab 5 page 56 and at B on page 59 that the applicant had been found by Lord Justice Brooke to have held back documents that he ought to have produced and had misled the court. This case therefore provides a further example of the appellant withholding relevant documentation, already identified above by the SSAT and in his dealings with the NHC and which further undermines his credibility.

54. As a result of his conduct in R (Marfo), as set out on tab 5 page 58 at G and page 59 at A, the appellant was barred from issuing applications other than on his own behalf. On tab 5 page 59 at B, Mr Justice Collins also notes the lack of skill shown by the appellant. Shown on page 62 at F, Mr Justice Collins hoped that the appellant would not be seen in court again unless qualified to appear.

Judicial Review CO/1980/98 – Contempt of Court Finding in 1998

55. In CO/1980/98, the respondent brought contempt of court proceedings against the appellant; see tab 5 page 84-102. This case shows that the criticisms of the appellant's improper and incompetent conduct by the various judicial bodies set out above had no impact on him.

56. The decision of Mr Justice Jowitt at tab 5 page 84 refers to the appellant in three of his identities, Ogilvy, Alakija and Adusi. The decision sets out that the appellant had represented a Mr Ibehi, a detainee facing removal. In the contempt proceedings the appellant was accused of misleading the out of hours judge, Mr Justice Keene, on 12 May 1998 when stating that removal directions had been set for a particular time when they had not.

57. Mr Justice Jowitt's conclusion, at tab 5, page 91 at F, is as follows:

> "Second, if (as I am satisfied so as to be sure) Mr Ogilvy has lied about what took place in those two telephone calls, that is something I have to look at in assessing the other evidence he gave. I say I am satisfied so as to be sure that Mr Ogilvy has lied to me about the content of those two telephone calls. I reject his evidence; I am sure it is untrue."

58. Mr Justice Jowitt goes on to find on tab 5 page 95 at A that the appellant:

> "… decided to lie to Keene J and tell him that he had this information about the deportation at 7:15am the next morning from Mr Ibehi himself. He knew that was a lie. He sought to protect himself by saying that that was the only information he had. But it was not information that he had; it was simply a lie."

59. Tab 5 page 100 at E shows that the appellant was found guilty of a "deliberate" contempt of court as a result of lying to Mr Justice Keene and that Mr Justice Jowitt considered a prison sentence. At B on the same page, the decision shows that the appellant avoided a prison sentence by making an undertaking:

> "… not to make any application, written or oral, on behalf of any other person to the Crown Office of the Queen's Bench Division, or the Judge in chamber of the Queen's Bench Division, or the duty judge, nor to contact any office of the Immigration and Nationality Department or the Treasury Solicitors Department on behalf of any other person, whether in writing or by telephone or in person".

60. This decision shows that the appellant has been found in the clearest of terms to be someone capable of lying quite deliberately to a senior judge, and, even when caught out, attempting to deny it. That is consistent with the findings on his conduct from the other cases already considered above. It behoves a very high level of caution when considering the appellant's evidence as to his identity (and anything else). This contempt of court case and those considered above and below in which he has repeatedly been found not credible and to have acted dishonestly, for example in withholding material evidence he knew could damage his interests, make it very difficult indeed to accept anything the appellant says. His claim to be Ogilvy and not Alakija is significantly undermined as a result.

Grant of Indefinite Leave to Remain in 1999

61. As already mentioned above, unable to persuade the Nigerian authorities to accept the appellant as a Nigerian national, in July 1999 the respondent informed him that it had been decided not to pursue deportation. The deportation order was revoked and on 12 August 1999 the appellant was granted indefinite leave to remain (ILR); see tab 4 page 63-65.

62. The grant of ILR was made in the name of Ogilvy. It is not my view that this was an indication that the respondent positively accepted that the appellant was Ogilvy and not Alakija. The ILR decision referred to the appellant by the name of Ogilvy but stated that he was a Nigerian national with a date of birth of 10 August 1965; see tab 4 pages 63-65. Those are the personal details of Alakija. In the vast majority of documents before me, the respondent maintains that the appellant is Alakija, a Nigerian national born on 10 August 1965; see, for example, the letter dated 22 August 1995 from Nicholas Baker MP to Simon Hughes MP at tab 5 page 47-54 which sets out the respondent's full view of the appellant's history at that time. I am at a loss as to why the respondent issued ILR (and, later, travel documents) in the name of Ogilvy where that it so. It remains the case, when considered against all the evidence before me, that the grant of ILR in the name of Ogilvy is not a matter capable of showing that the appellant is Ogilvy and not Alakija or that the respondent has ever made a substantive decision to that effect.

CO/2695/99 – The "Eady Order"

63. The appellant was not satisfied with his grant of ILR where it referred to him as a Nigerian national with a date of birth of 10 October 1965. He used judicial review proceedings (CO/2695/99) to argue that the ILR decision of 12 August 1999 was unlawful as he was stateless and had a date of birth of 1 March 1968. The grounds in CO/2695/99 are at tab 5 page 103-105.

64. As part of those proceedings, the appellant made an out of hours *ex parte* application to Mr Justice Eady on 2 September 1999. He obtained an interim injunction; see tab 5, page 105A to 105B. Paragraph ii of the order states:

> 'The Secretary of State for the Home Department whether by himself, agent or servants must preserve the relevant minutes registered on the applicant's Home Office file which reads thus: "We are unable to prove that Mr O is neither Nigerian or Portuguese and we are unlikely to do so in the future. It is accepted that Mr O is stateless and therefore unremovable".'

65. The final sentence of the order (the Eady order) on page 105B states that it was to remain in force only until a hearing which had already been listed for 9 September 1999. The order was made initially to be in force only for a week, therefore.

66. On 9 September 1999, the matter came before Mr Justice Collins; see tab 5 page 106. In an order dated 15 September 1999, he directed as follows:

> "1) This matter be adjourned either to be withdrawn by the Applicant or dismissed by the Crown Office on a date on or before the 31st day of October 1999.
>
> 2) Directed that the Applicant write to the Respondent regarding whether the Respondent is prepared to treat the Applicant as a stateless person and clarify his date of birth.
>
> 3) Directed the Respondent to reply within 14 days
>
> 4) Directed the Applicant to issue fresh proceedings limited to issue that matters depending on reply from the Respondent
>
> 5) The order made by the Honourable Mr Justice Eady dated the 2nd day of September 1999 be extended to the 31st day of October 1999"

67. This shows that the order of Mr Justice Collins acted to extend the Eady order to 31 October 1999. In line with the order of Mr Justice Collins, the appellant wrote to the respondent on 9 September 1999 and 15 September 1999 about his claim to be stateless and to have a different date of birth to that on his grant of ILR; see tab 5 page 107-108 and tab 5 page 109-112.

68. The respondent replied on 17 September 1999; see tab 4 page 75. The respondent stated in clear terms that the appellant's true identity was Alakija and referred to his having been removed to Nigeria in that identity. Reliance was placed on the findings from the criminal case in 1992. The respondent stated that the appellant was not

credible and that, without proper evidence, his claimed date of birth of 1 March 1968 was not accepted. The respondent declined to amend the letter of 12 August 1999 granting ILR. I wonder again, given the clear statement that the respondent considered that the appellant was Alakija, why the grant of ILR and, in time, travel documents were issued to him in the name of Ogilvy. I remain unable to find an answer but do not accept, for the reasons already given, that this meant that the respondent positively accepted that the appellant was Ogilvy or that it supports his claim to be Ogilvy.

69. The appellant wrote again to the respondent on 17 September 1999; see tab 5 page 113-115. He requested that a travel document was issued urgently in order for him to travel to St Lucia to the funeral of his fiancées mother. The final paragraph of the letter of 17 September 1999 threatened court action if the respondent did not grant his request.

70. The appellant did return to court but only as anticipated in the decision of Mr Justice Collins. On 23 September 1999 Mr Justice Moses refused permission; see the first entry on tab 7 page 87. He indicated that the burden was on the appellant to show that he was stateless and had a different date of birth and that the dispute was not suitable for court resolution.

71. The outcome of the litigation in CO/2695/99 was, therefore, that the appellant had ILR in the name of Ogilvy but was still considered by the respondent to be Alakija, a Nigerian, with a date of birth of 10 August 1965. It was not accepted by the court or the respondent that he was stateless. The Eady order had no legal force following the final determination of the judicial review by Mr Justice Moses in his decision of 23 September 2019.

72. Notwithstanding the outcome of that litigation, some 20 years later the Eady order remains a core part of the appellant's claim to be Ogilvy and to be stateless. The appellant has sought to rely on it in other cases he has brought in the intervening years, discussed below. In all of the cases before me in which he relied on the Eady order, the appellant asserted that the order amounts to incontrovertible evidence that either the Home Office found him to be stateless or Mr Justice Eady found him to be stateless. It is entirely obvious from the wording of the order itself that it does not make any kind of definitive statement on the appellant being stateless and merely requires a Home Office minute to be preserved.

73. Further, the materials before me show that when repeatedly relying on the Eady order the appellant has never provided the order of Mr Justice Moses showing that the Eady order was superseded and that the existence of the Home Office minute of no avail to him in his attempt to persuade the High Court to declare that the respondent should recognise him as stateless. It is my conclusion, having considered in more detail below the appellant's extensive reliance on the Eady order, that he did so knowing that he was misrepresenting what the order said and deliberately attempting to conceal the fact that it had only been in force for a short period of time and no longer had any legal force by failing to provide the order of Mr Justice Moses.

Further Convictions and St Lucia – 2000 to 2007

74. Although he was unable to persuade the respondent to recognise him as stateless, the appellant was left in the position of having ILR and a travel document. He proceeded to use the travel document to travel to St Lucia. The appellant claims that he married [JC], a British national, in St Lucia on 16 December 2000; see tab 4, page 77 in paragraph 1.4.

75. The appellant did not appear to pay any heed to the views of Mr Justice Collins in R (Marfo) or the finding of contempt of court and undertaking made to Mr Justice Jowitt in CO/1980/98 as, on 10 July 2003, he was convicted of 3 counts of unlawfully providing immigration advice and was sentenced to 150 hours community punishment.

76. On 20 September 2004, the appellant applied to renew his travel document, maintaining again that this document should reflect his status as a stateless person and his claimed date of birth of 1 March 1968; see tab 4 pages 77-79. On this occasion he pressured the respondent for a quick decision as his father-in-law was getting married; see tab 5, page 79. He again threatened legal action if the travel document was not issued as he requested. He continued to make baseless assertions, for example stating that the respondent had recorded him as having a date of birth of 1 March 1968 and that he was born in Porto. As above, the respondent has never accepted that the appellant has this date of birth or accepted any of his various claims to be connected to Portugal.

77. On 4 November 2004, the respondent refused to amend the material details in the travel document, amending the new document only to reflect the respondent's view of the appellant's date of birth and remove an additional entry of his claimed date of birth; see tab 4 pages 81-83. The respondent reminded the appellant that it was for him to adduce new materials supporting his claim to be stateless and the date of birth of 1 March 1968.

78. On 4 May 2005, the appellant was named in an application for leave as the Portuguese sponsor of Anne Marie Pencille/Rickets, a Jamaican national, whose application was refused. Nothing in the materials before me addresses how he came to be the sponsor where he also claimed to be married to Ms [C]. His claim to be a Portuguese national is obviously wholly at odds with the assertions he has made for many years that he is stateless. The application was refused on 29 July 2005.

79. The appellant then commenced a period of travelling to and from St Lucia. A document from the Eastern Caribbean Supreme Court at tab 4 page 85-106 sets out that on 18 March 2006 the Attorney General of St Lucia obtained an injunction preventing the appellant from practising as an attorney. The appellant was subsequently arrested trying to fly to the UK and charged with seven counts of working without a work permit. Allegations of improper or illegal actions brought against judges, legal representatives and the media by the appellant were all rejected

other than a period of unlawful detention of 14 hours for which the appellant was awarded $1500.

80. The respondent also relied on a Government Notice from St Lucia; see tab 5, page 146-149. This document sets out that the appellant used a number of aliases in St Lucia, Leonardo Eusibio Assumpcao, Robert Leonard Ogilvy, Hubisi Nwenmely, Thomas Raymond and Leonard Raymond Ogilvy as well as the aliases used in the UK. The document goes on to state that his true identity and nationality were unknown. It states that his wife had given information that he was Nigerian, that his mother, Celestina A Alakija, formally Celestina Assumpcao, was alive and working in Lagos. The appellant's sister was in Canada and his brother, Christopher Alakija was in Nigeria. The St Lucian authorities had seen a handwritten letter from the appellant's mother dated 23 November 1999. The Attorney General's Chambers had made contact with Christopher Alakija on 13 March 2007. He confirmed the appellant was his brother and that their mother was in Nigeria.

81. The Government Notice goes on to state that in an application for St Lucian nationality the appellant had stated that he was from Nigeria. He subsequently maintained that he was Portuguese. He stated first that he was born in Portugal and later that he was born on an English vessel heading for Portugal. His parents did not register his birth so there was no record. He maintained that his father died when he was 7 and that his mother was still alive. He referred to being brought up by his uncle and also by friends of his father, Sir James and Lady Kathy Ogilvy. After the appellant's case in St Lucia became well known, the Attorney General's Chambers were contacted by solicitors in the UK who were looking for the appellant as there was a bankruptcy order against him obtained on 10 October 2002. The document also refers to the Law Society prohibiting the appellant from working for a solicitor.

82. The appellant submitted to me that he knew, from his personal knowledge of St Lucian law, that these were not valid documents. For the reasons already set out, any assertion made by the appellant that is not supported by good evidence has to be approached with great caution given his propensity to act dishonestly to further his own interests. I considered these documents with care, however, where the respondent could not tell me how they came to be on the appellant's file and that the Government Notice did not appear to be complete.

83. In the context of the evidence as a whole, I found I could place weight on the document from the Eastern Caribbean Supreme Court and the St Lucia Government Notice. The documents reflect the appellant behaving in St Lucia exactly as he has in the UK, attempting to represent others in legal proceedings when he was not qualified to do so. He also pursued unsuccessful legal actions on his own behalf and was arrested for working illegally. Further, the Government Notice refers to undisputed facts from the appellant's history in the UK, the deportation order made in 1993, his criminal record, the court case before Mr Justice Jowitt (and a conviction on 22 March 1999 for breach of the undertaking), his legal studies at Thames Valley University, failure to qualify as a lawyer and so on. The Government Notice is accurate in those regards and I find, in the context of all of the evidence before me,

notwithstanding the appellant's submission that the documents from St Lucia are not reliable, that they are documents on which I can place weight. They show the appellant's conduct in St Lucia to have been the same as that in the UK, acting dishonestly and in a profoundly self-serving manner and assuming a variety of false identities. They provide further strong evidence that he lacks credibility and is Alakija, a Nigerian national who has family in Nigeria.

Return to the UK in 2007

84. The appellant returned to the UK on 19 March 2007. He was arrested at Gatwick South Terminal on arrival in connection with allegations of deception and arson. He was released the following day although his ILR was suspended and his passport was retained; see tab 4 page 129-130. In the event, no criminal charges were brought on that occasion.

85. The appellant commenced further litigation. On 16 April 2007 he issued a judicial review (CO/3114/2007) (see paragraph 11 of tab 7 page 10), maintaining that the respondent acted unlawfully in suspending his ILR and retaining his passport. In an order dated 6 June 2007, Mr Justice Bennett ordered the return of his travel document in the event of there being no objection from the respondent; see paragraph 11 of tab 7, page 30.

86. Mrs Justice Dobbs dismissed the claim in an order dated 13 August 2007 after a substantive hearing and refused permission to appeal to the Court of Appeal; see tab 4 page 133-137. The application was found to be academic where the respondent had reinstated the appellant's leave. Lord Justice Brooke refused permission in a decision dated 19 November 2007; see tab 4, page 139-141.

Further Convictions 2015 – 2017

87. Notwithstanding all that had gone before, including the matters set out in the documents from St Lucia, the appellant continued to represent others in legal proceedings. As a result, on 30 March 2015 at South London Magistrates' Court, he was convicted of 3 counts of wilfully pretending to be a barrister and fraud. He was sentenced to a 6 week suspended sentence, 200 hours' unpaid work and to pay £2,000 compensation.

88. Undeterred by even that conviction, on 3 July 2017 the appellant was convicted at Southwark Crown Court on 3 counts of wilfully pretending to be a barrister and 3 counts of fraud. On 5 July 2017 he was sentenced to 2 years' imprisonment; see tab 4 pages 149-157. His appeal against conviction was refused on 24 January 2018. It is that conviction which led to the current deportation proceedings.

89. In his sentencing remarks (see tab 4 page 152) Mr Justice Gledhill stated that the offence involved the appellant telling "a complete lie" about being a barrister. He comments on page 151 at D that as part of the offence, the appellant deceived his wife: "you would leave your home in Abbey Wood every day, suited and booted, leaving your wife with the impression that you were going out to work". Mr Justice

Gledhill stated (page 153 at D) that the appellant's conduct was "totally unacceptable it undermines the justice system in this country". He referred to the "huge risk" to others in being represented by someone not qualified to do so. He also commented on the evidence being "very strong indeed, if not overwhelming" and questioned why the appellant had not pleaded guilty. The 2017 conviction, together with the others, shows the appellant to be a dishonest person who tells lies in order to try to promote his own interests. It further undermines his claim to be Ogilvy and stateless.

90. Notwithstanding the sentencing remarks and unsuccessful appeal against the 2017 conviction, the appellant continues to maintain that he is not guilty, asserting that in his evidence before me and maintaining the same to the Probation Service as recorded in the progress report dated 26 July 2019. This is a further example of his refusal to accept his misconduct and dishonesty. Possibly even more alarming, he stated in his oral evidence that he continues to assist or advise others informally in legal actions in the Employment Tribunal and judicial review. His evidence that he continues to operate in the legal field suggests he has not had any regard to his convictions and comments of numerous judges on his lack of competence and improper conduct when litigating.

91. It is also of note that when taken to prison in 2017 following this conviction, the appellant maintained to the Probation Service that he was Portuguese, clearly at odds with his strenuous assertions over more than 20 years that he is stateless; see tab 6, page 65.

CO/801/2018 (Tab 7)

92. I turn now to three judicial review applications made by the appellant following his conviction in 2017. Although two of them challenge detention and the third challenges the cancellation of a travel document, they repay study as they show the appellant further undermining his reliability as a witness by continuing to make misrepresentations to the High Court in regard to the Eady order, the May 1994 decision of the SSAT which was set aside and the refusal of the NHC to recognise him as Nigerian on the basis of incorrect information provided by him.

93. The case of CO/801/2018_was a judicial review application issued on 21 February 2018 challenging refusal of release from detention under a Home Detention Curfew. The index to CO/801/2018, at tab 7 page 2, shows that the appellant asserted that Eady order stated that he was stateless. Paragraph 6 of the grounds in CO/801/2018 also seeks to rely on the Eady order; see tab 7, page 10. These aspects of the appellant's pleadings were misleading. The appellant can only but have known that the order of Mr Justice Eady does not say that he was stateless and that it was only an interim order with no residual force where it was superseded by the decision of Mr Justice Moses on 23 September 1999.

94. In paragraph 13 of the grounds in CO/801/2018 at tab 7 page 13 the appellant again sought to rely on the NHC refusal to accept him as Nigerian. Paragraph 14 of the

grounds asserts that the May 1994 SSAT decision was not appealed. That is untrue and the appellant can only but have known this.

95. The appellant's claim in CO/801/2018 was rejected as totally without merit by Mr Roger Ter Haar QC on 5 April 2018; see tab 7 page 149. Mr Roger Ter Haar QC commented that it was unclear that the appellant had properly served the respondents in that matter and warned the appellant that if this recurred in any future judicial review applications they would be liable to be struck out for lack of service.

CO/1520/2018 (Tab 8)

96. This was a judicial review issued on 17 April 2018 challenging detention. In CO/1520/2018 the appellant again relied on the Eady order and makes incorrect assertions about what it said. Paragraph 1.5 of the grounds at tab 8 page 2 is incorrect in suggesting that the deportation order was revoked in 1999 as a result of the Eady order. The applicant had already been granted ILR by the date of the Eady order. Paragraph 1.1.5 (i) of the grounds asserts that, as well as ordering the retention of the Home Office file note, the Eady order "categorically makes clear" that the appellant was stateless and unremovable. The Eady order does not do anything of the kind.

97. Before the application came to be considered by a High Court judge, there were procedural problems as the appellant did not serve the respondent. Mr Justice Ouseley made an unless order on 26 April 2018 allowing the appellant 14 days to serve the application; see tab 8 page 37-38. He records that the Government Legal Department informed the High Court that the appellant had a history of not serving claims even though he knew the correct address for service from other proceedings. Mr Justice Ouseley refers to CO/801/2018 being found to be totally without merit and the service problems in that case. He points out that, as far as he could be aware, the appellant "has brought some 16 judicial review proceedings in some 20 years" and that two recent ones were found totally without merit.

98. On 12 June 2018, Mr Justice Walker refused permission on the papers in CO/1520/2018; see tab 8 page 73. It is of particular note that in paragraph C of that decision, Mr Justice Walker referred to the appellant failing to mention the outcome of CO/801/2018 "even though it was obviously relevant to your claims". Mr Justice Walker goes on to state that if this is what happened "you committed a grave breach of your duty of full and frank disclosure". This is, in my view, given all of the other examples before me, a further example of the appellant acting dishonestly in legal proceedings by withholding materials he considered might damage his position.

99. The appellant renewed his application in CO/1520/2018 and after a hearing on 19 July 2018, Mr Justice Lane refused permission to amend the grounds and dismissed the application.

100. The appellant appealed that decision to the Court of Appeal and his case came before Lord Justice Holroyde on 4 March 2019; see tab 8, page 93-94. Lord Justice Holroyde

sets out a definitive statement on the appellant's improper reliance on the Eady order:

> "Mr Ogilvy relies on the order of 2.09.99 as a judicial declaration of his status. In my view, it was no such thing and Mr Ogilvy's reliance on it is misconceived. On 2.09.99, a week before a hearing scheduled for 09.09.99, Eady J granted an application by telephone for an order to the effect that the SSHD must preserve documents on Mr Ogilvy's HO file, including in particular an internal minute accepting that he was a stateless person. That minute was obviously a relevant document in determining Mr Ogilvy's status, and it can be readily understood why the court was prepared to make an interim order to ensure that it was preserved for the hearing a week later. But Eady J did no more than order the preservation of a document which would be relevant to the argument as to Mr Ogilvy's status; he did not declare that status, or make a judicial finding that Mr Ogilvy was stateless. It follows that in my view, Mr Ogilvy has no prospect of succeeding in submissions based on the proposition that the SSHD, and indeed the court, were bound by the order of 02.09.99 to find that he was and is a stateless person.
>
> I should add (because I know it will concern Mr Ogilvy) that I am aware that the recent decision of the First-tier Tribunal Judge took a different view as to the effect of the order of 02.09.99. I respectfully disagree with that decision, which is not binding on me."

CO/2996/2018 – the 2014 Travel Document (Tab 9)

101. This is an ongoing judicial review application challenging cancellation of a travel document issued to the appellant in 2014. Permission was granted on 15 January 2019 but the application was then stayed pending the outcome of this appeal.

102. The appellant maintains that the travel document issued to him in 2014 supports his claim to be stateless and also seeks to draw support from the High Court granting him permission to appeal against the cancellation of that travel document. It is my conclusion that neither the travel document nor the grant of permission assists the appellant. In order to explain why that it is so, it is necessary to look at the evidence provided as to how the travel document came to be issued and then cancelled and the appellant's claim in CO/2996/2018.

103. On 9 July 2014 the appellant applied for a new travel document; see tab 5, page 150-159. He maintains that he applied for a travel document showing him to be stateless. The application form he filled out does not support his claim; see tab 5 page 150. The appellant ticked the box showing that he was applying for a Certificate of Travel not a stateless person's document.

104. A Home Office file note dated 17 July 2014 at tab 5 page 142 shows that, consistent with the appellant's indication on the application form, the respondent did not treat the application as one made by a stateless person. The file note commenting on the travel document application states that:

> "It is clear that he may be Nigerian but the Nigerians would not accept him when the DO action was underway, neither could he produce evidence that he was born in Portugal.
>
> He was granted leave as a Nigerian and his last travel document his nationality was recorded as a Nigerian national. However, I see little point in labouring the point as we have no evidence of either so I have changed his nationality to XXX, a person of unspecified nationality."

105. The contents of this file note are reflected in the travel document that was issued as it was endorsed with the Civil Aviation code "XXX" which shows that the holder of the document is someone of unspecified nationality. The travel document was again issued in the name of Ogilvy. It contained a date of birth of 10 August 1965, the date of birth of Alakija.

106. The travel document also stated in the nationality field that the appellant was "Unknown – Stateless". This is clearly not consistent with the Home Office's view of the appellant's status set out in the file note or the "XXX" code on the travel document referring to the appellant as someone of unspecified nationality

107. When the appellant again came to the respondent's attention because of his conviction in 2017 for wilfully pretending to be a barrister and fraud, the respondent noticed the inconsistent entries on the 2014 travel document. On 11 April 2018, the respondent wrote to the appellant requesting the return of the 2014 travel document; see tab 2 page 89. The letter set out that there was an inconsistency between the Civil Aviation code and the nationality field but slightly misstated the contents of the nationality field, stating that it said "stateless" rather than "Unknown – Stateless".

108. In an email dated 12 April 2018, the respondent wrote in similar terms to Ms Rensten of the Prisoners' Advice Service as she had been authorised by the appellant to correspond with the Home Office; see tab 3 page 84.

109. In a letter dated 19 April 2018, the appellant declined to return the 2014 travel document; see tab 2 page 90-92. He stated that he would not return the travel document as the respondent's officers had been "obstructive" concerning his prison conditions and in the refusal to release him on Home Detention Curfew (HDC). He was prepared to consider returning the travel document if the respondent undertook to amend and return it within 14 days and the appellant was released on bail. For what it is worth, he again relied on the Eady order as stating that a court had accepted that he was stateless and could not be removed; see tab 2 page 92.

110. On 20 April 2018, Ms Rensten emailed the respondent on behalf of the appellant; see tab 3 page 86. She reported that the appellant maintained that when he had applied for the travel document this had been "on the specific basis that he was stateless" and that the endorsement in the travel document was not an error.

111. As the appellant declined to return the travel document the respondent cancelled it in a decision dated 4 May 2018; see tab 9 page 24. The cancellation decision set out that the appellant was not accepted to be a stateless person and the travel document

had not been issued on that basis. It was a Certificate of Travel and not a document issued under the Stateless Persons Convention. The cancellation letter again misstated the incorrect endorsement in the nationality field, referring to the travel document showing the appellant as "stateless" rather than "Unknown – Stateless".

112. In my judgment, this evidence shows that the travel document issued in 2014 and cancelled in 2018 cannot assist the appellant's claim that he is stateless. The materials indicate that the appellant did not apply for a travel document showing him to be a stateless person. The Home Office file note shows that the respondent considered him only to be of unspecified nationality, as does the "XXX" endorsement. The ""Unknown – Stateless" endorsement in the nationality field was a mistake which the respondent sought to rectify but could not as the appellant refused to return the travel document. The appellant maintains that the respondent must show how this mistake or IT error occurred. The materials before me are sufficiently clear for that not to be necessary in order to reach a view on the weight to be attached to the 2014 travel document. I do not find that the 2014 travel document shows that the respondent considered the appellant to be stateless at any point or that there was any reason at all why the respondent should have done so. The 2014 travel document does not support the appellant's claim that he is stateless.

113. On 27 July 2018 the applicant lodged an application for permission to judicially review the decision of 4 May 2018 cancelling the 2014 travel document. The documents from that application, CO/2996/2019, are at tab 9.

114. The grounds in CO/2996/2018 again set out misstatements concerning the Eady order in paragraphs 1.7 to 1.9; see tab 9 page 15-16. Paragraph 1.7 suggests that the Eady order can be read as "tacitly accepting" that the appellant was stateless. Paragraph 1.8 states:

> "Firstly, the Order is instructive of two important features, namely, (a) that the court accepts that the Claimant is Stateless; and (b) Secondly, by reason of Statelessness, he is unremovable. This is plain from the wording of the terms of the Order."

115. The grounds go on in 1.9:

> "The Court should note that if the Respondent was dissatisfied or unhappy with the terms of the Order of the Court sealed on 2nd September 1999 as it appears, then it was open to it to challenge it by way of an appeal to the Court of Appeal or by way of an application to the High Court for variation or discharge of the Order. It is now 19 years on since the making of the Order and the Respondent has been on notice of the same, for 19 years. It is now far too late to seek to go behind the Order or act in a manner that is plainly in defiance of a valid court order."

116. The relief sought includes a "Declaration that the Claimant is Stateless as per Order of 2/09/99"; see tab 9 page 24.

117. It will be obvious from the discussion above that these paragraphs set out a wholly incorrect statement of what is in the Eady order and the status of the order. The Eady order does not say that the appellant is stateless or unremovable. The Eady order

was always time limited. The allegation that the respondent was seeking to "go behind" the order was baseless when the order was superseded by the decision of Mr Justice Moses dated 23 September 1999.

118. For completeness sake, I should point out that in Section 9 of the claim form in CO/2996/2018 (tab 9 page 10) the appellant again relies again in paragraph 6 on the findings of the May 1994 SSAT without giving any indication that they were set aside and replaced with adverse findings in December 1994. On the contrary, the appellant goes on in the very next paragraph to assert, essentially, that his claims as to his identity were accepted by the SSAT. The opposite is true; see paragraphs 40-47 above.

119. Also, shown on tab 9 page 10, the appellant's claim form in CO/2996/2018 again relied on the refusal of the NHC in the 1990s to accept him as Nigerian. As before, that refusal arose because of his provision of only the May 1994 SSAT decision to the NHC, not the December 1994 SSAT decision and repeated incorrect statements to the NHC that he was Ogilvy and not a Nigerian national.

120. On 22 October 2018, HHJ Evans-Gordon refused permission in CO/2996/2018; see tab 9 page 79-81. She found that even if the appellant had shown that he was stateless, the decision to cancel the travel document was lawful as it required correction where the statement of the applicant's immigration status as "Unknown – Stateless" did not match the International Civil Aviation Code of "XXX".

121. The appellant renewed his application. On 15 January 2019 there was a hearing before Mr Justice Swift. In an order dated 18 January 2019, Mr Justice Swift granted permission limited to the ground challenging the cancellation of the travel document; see tab 5 page 83-84. The judicial review application was then stayed pending the outcome of this appeal.

122. On 20 June 2018, Mr Justice Walker refused to order the re-issue of the travel document by way of interim relief; see tab page 85. The appellant made that application on the basis that he had an urgent need to travel to participate in a pilgrimage.

123. On 23 October 2019 at 05:32, the first day of the re-hearing of this appeal in the Upper Tribunal, the appellant emailed the Upper Tribunal, submitting that on 14 October 2019 he had made an urgent application for a lifting of the stay in CO/2996/2019. He maintained that "it will be inappropriate to proceed right now without knowing the outcome of the current application before the High Court". The respondent opposed the adjournment application.

124. Neither the documents accompanying the email application for an adjournment of these proceedings nor those provided at the hearing on 23 October 2019 showed that the urgent application for a stay of CO/2996/2019 had been accepted by the Administrative Court.

125. Further, even had that been shown, I did not accept that the proceedings of the High Court should "take precedence" as suggested in the urgent application or that anything provided a basis for the hearing of the statutory appeal to be adjourned or stayed, as also sought in the application to the High Court. The outcome of these proceedings is not "highly prejudicial to the proceedings of the High Court". They are separate proceedings considering different decisions of the respondent and contain different grounds and materials. Nothing before me indicated that this appeal could not be determined justly and fairly even if it had been shown that the stay in CO/2996/2018 had been applied for and lifted.

126. Further, the Upper Tribunal had set aside two days for the hearing, the respondent had instructed Counsel and the appellant's wife had taken time off work to give evidence. It was my conclusion that no good reason had been provided to adjourn the hearing and that it was in the interest of justice to proceed.

127. One further matter arose concerning CO/2996/2018. On the first day of the hearing, the appellant handed up a transcript that he had obtained of the hearing on 15 January 2019 before Mr Justice Swift. No good reason was given for this not being provided much sooner where the hearing had taken place some 10 months earlier. No good reason was given for the failure to make an application under Rule 152A on notice to the respondent for the new material to be admitted. The respondent did not object to the appellant relying on this document, however. Where that was so, I allowed the appellant to admit the transcript. I adjourned the hearing in order for the respondent's legal representatives to have time to consider the transcript.

128. With the utmost respect to the Administrative Court and Mr Justice Swift, the permission decision of 18 January 2019 is not binding on me and that is so whatever was said at the hearing on 15 January 2019. The materials that I have been provided with from that application show that the grounds and the materials are wholly different to those before me. The judicial review and this appeal address different issues on different evidence. Further, even if the two cases were on more similar ground, the decision of Mr Justice Swift only finds the appellant's case on the cancellation of the travel document met the "modest" threshold for granting permission.

129. For these reasons I do not find that anything arising from the issue and cancellation of the 2014 travel document or anything from the proceedings in CO/2996/2018 supports the appellant's claim that he is Ogilvy or that he is stateless.

<u>HU/12785/2018 – Article 8 appeal against deportation</u>

130. The appellant's conduct in these proceedings adds to my view that he is a dishonest person who seeks to mislead when litigating and that this further undermines his claim to be Ogilvy and stateless.

131. By early March 2019 and certainly by the time of the error of law hearing before the Upper Tribunal on 30 July 2019, the appellant knew of the order of Lord Justice Holroyde in CO/1520/2018 and the specific comments of the Court of Appeal on his

baseless assertions concerning the Eady order; see paragraph 100 above. Even then, in a supplementary skeleton argument submitted to the Upper Tribunal on 24 April 2019 the appellant again proceeded as if the Eady order were still in force, asserted that the Upper Tribunal had no jurisdiction to consider his statelessness where the respondent had not attempted to challenge the Eady order and that the file note referred to in the Eady order was "a concession". It is my view, in the context of all that is before me including formal findings made by senior judges that he has acted dishonestly in legal proceedings and the comments of Lord Justice Holroyde, that the appellant simply could not have made those submissions in good faith.

132. Further, the date of the acknowledgment of service and summary grounds in CO/2996/2018 is 1 October 2018; see tab 9 page 42. It was served on the appellant as part of those proceedings. In this document, the respondent sets out some of the appellant's dishonest history and refers to the criticism of Mr Justice Walker in CO/1520/2018 concerning a failure to provide full and frank disclosure, set out in paragraph 98 above. Despite this document being available to the appellant he did not provide it to the First-tier Tribunal for the hearing of this appeal on 11 October 2018. That is, perhaps, not surprising. It is dispiriting that the respondent did not provide it or the other materials showing the appellant's full history to the First-tier Tribunal. On the basis of the limited material provided by both sides, the appellant was able to continue to rely on the Eady order and the travel document and these documents, divorced from their proper context, played a significant part in the decision of the First-tier Tribunal that the appellant was stateless; see tab 1 page 6-10.

133. What is striking, however, is that that the appellant still did not provide the respondent's highly adverse summary grounds from CO/2996/2018 to the Upper Tribunal despite being directed on 1 April 2019 to serve "all documents available to him from that judicial review application, including … *any summary defence and skeleton argument from the respondent* (my emphasis)". The bundle of materials he provided on 23 April 2019 in response to that direction did not contain the summary grounds of defence. My view of that conduct is that the appellant deliberately withheld a document he knew to be damaging to his case despite being directed to serve it. He has been found to do so on numerous previous occasions; see paragraphs 46, 53, 73, 98 above.

134. Even on 23 and 24 October 2019 at the hearing before me, the appellant continued to argue that the Eady order showed that he had been accepted as stateless. As indicated above, by October 2019 he had been told in the clearest of terms by the Court of Appeal that the Eady order did not say this and did not support his claim to be stateless. The appellant's conduct in this appeal, combined with all that has gone before, can only lead to the conclusion that the appellant is a profoundly dishonest individual and a seriously unreliable witness.

Appellant's Evidence on Statelessness

135. Even setting aside all of the matters considered above, the appellant's own evidence on his personal history is highly unreliable. His account of his history has varied

widely over the years. It has included assertions that he was born in Portugal, that he is Portuguese, that he was born on a ship and his birth never registered, was adopted by his uncle, was adopted by the Ogilvys and so on; see, for example, paragraphs 29, 38, 39, 76, 78, 80, 81 and 91 above. He has never provided a credible explanation of why there is no documentary evidence at all of any of the events he claims occurred prior to his beginning to work and study in London. He has not explained why he speaks no Portuguese even though many of his accounts refer to spending between 8 and 13 years of his life there and to going to school there. He has not provided any evidence suggesting that he has even attempted to obtain any documents showing his history prior to coming to London.

136. The appellant's evidence before me was different again, maintaining that he was adopted first by a Portuguese family when he was 8 year's old, not the Ogilvys. When first asked he could not remember the name of this family even though he lived with them for "a good part of 2 years". This would have made him approximately 10 years' old when adopted by the Ogilvys. He then stated that the Portuguese family travelled back and forth between Portugal and Brazil and so the appellant travelled with them and that this was for 3 years between the age of 8 and 11. He later recalled the name of the Portuguese family as Rodriguez. The father was Paolo and mother was Celestina. He did not remember the names of their two sons with whom he lived for 2 or 3 years. He went to a private Catholic school in Portugal but could not remember the name. He was a "recluse" at school so did not have friends. He was treated as servant by this family.

137. He went on to say that he was adopted from Portugal by the Ogilvys at the age of 13. He maintained that he refused to go to school while he lived in Scotland and that a priest would come to the home to give him lessons including Bible study. The Ogilvys were called James and Maximiliana. They had a son called Paul but he could not remember their daughter's name.

138. I did not find this account credible. It was not internally consistent, the appellant giving different times and ages for the adoption by the Ogilvys. It is not credible that he would not remember the name of the Portuguese family and their children if he lived with them for at least 2 years. Like SSAT in December 1994, I find his claim to have been able to travel between Portugal, Brazil and the UK undocumented on a number of occasions over a period of years to be "inherently improbable". The evidence that he was a recluse at school in Portugal and refused to go to school in Scotland appeared to me to be an attempt to explain his inability to speak Portuguese and to be unable to provide details of any friends or contacts from those periods.

139. This evidence is also highly inconsistent with other accounts he has provided over the years, for example his statement in 1992 (tab 5 page 14) as to being the son of Eusibio Carla Maximiliana Assumpcao and adopted by Sir James and Lady Catherine Ogilvy after his parents died in 1975. There was no mention of being adopted by a Portuguese family prior to the Ogilvys in the 1992 statement or any of the other accounts he has provided in the documents before me. As above, as

recently as 2017 he was claiming to be Portuguese (to the Probation Service) and stateless (to the respondent and Administrative Court)

140. It is therefore my conclusion that the appellant's own evidence on being Ogilvy and stateless consists of a multiplicity of inconsistent and incredible accounts of his birth and upbringing with no documentary evidence at all to support any of these versions including even the existence of his alleged adopted family, the Ogilvys which would not be difficult to establish.

141. Part of the appellant's case as to being stateless is an allegation that the respondent has deliberately withheld documents supporting that claim. He refers in an email of 24 July 2019 to the respondent having "hoarded" and "obliterated" documents. These allegations are not made out. On 23 July 2019 the appellant wrote to the Tribunal *ex parte* requesting a direction that the respondent disclose a number of documents. On 25 July 2019 the Tribunal directed that the respondent provide the appellant with the documents requested where not already provided and where identifiable from the information provided by the appellant. Notwithstanding the respondent's objection on 26 July 2019 to that direction, in the error of law decision issued on 16 August 2019, the Tribunal confirmed that the respondent was to provide the materials sought by the appellant as far as she was able.

142. The respondent complied with this direction on 10 September 2019. The respondent indicated that any letters from the NHC had already been provided. The respondent confirmed that after a further search of the appellant's file it had not been possible to find a letter from the Portuguese Embassy from 1997, the file note which was the subject of the Eady order or a letter from a Mr Emezie from litigation in the 1990s. It is of passing note that a Mr Tiki Emezie was copied in to an email from the appellant to the Tribunal dated 25 October 2019 but it is not clear if this is the person who might be able to provide the appellant with a copy of the letter on which he seeks to rely or give evidence as to its contents.

143. Having identified which documents had already been provided and which were not available, the respondent sent the appellant his 2014 travel document application form. The respondent confirmed that she did not have a copy of any covering letter to that application. The respondent also provided the appellant with a complete copy of the SSAT decisions from 1994.

144. It is my view that the respondent has used her best endeavours to provide the appellant with the documents he requested. It also is very difficult to see how the documents sought by the appellant could assist his claim to be stateless in the context of the matters set out above. A letter from a legal representative in the 1990s and the appellant's cover letter from the 2014 travel document application are not objective and, in the context of the other very strong evidence as to the appellant's identity and nationality, are most unlikely to be probative. A letter from the Portuguese authorities in the 1990s stating that he has never been registered in Portugal and is

not a Portuguese citizen is immaterial where the weight of the evidence shows him to be Alakija, a Nigerian national.

145. In short, there is no merit in the appellant's claim that the respondent has acted in bad faith or otherwise improperly and that this has prevented him from making out his claim to be stateless.

Conclusion on Identity and Nationality

146. I have set out above the cases in which the appellant has been found to be Alakija and to be Nigerian. I have also set out the evidence showing that he has been seriously dishonest in his dealings with the public and the legal system. I have set out above that the May 1994 SSAT decision, the refusal of the NHC in the 1990s to recognise him as Nigerian, the Eady order, the grant of ILR and issuing of travel documents in the name of Ogilvy and the 2014 travel document do not amount to evidence even when taken together that are in any way capable of showing that the appellant is Ogilvy or that he is stateless. I have not found his own evidence on his personal history to be remotely credible. The appellant's claims to be Ogilvy and stateless are without merit as a result. The evidence shows overwhelmingly that he is Alakija.

147. The appellant cannot show that he meets the Immigration Rules on statelessness. Paragraph 403(c) of the Immigration Rules requires him to take reasonable steps to facilitate admission to Nigeria and show that he has been unable to secure the right of admission. As in AS (Guinea) at paragraph 57, set out above in paragraph 19, in order to meet this requirement he must take all reasonably practical steps to submit all documents which bear on his nationality to the Nigerian authorities. Nothing here shows that he has done so where this would require him to provide the NHC with full disclosure of the materials that are before me. It is wholly insufficient to rely on the refusal of the NHC in the 1990s to accept him as a Nigerian national where that decision was made on the basis of other information which was limited and incorrect.

148. In summary, for the reasons set out above, I have reached the following conclusions:

I. The appellant is Olusegun Adedeji Alakija

II. He was born on 10 October 1985

III. He is a citizen of Nigeria

IV. He entered the UK in 1987 using a Nigerian passport

V. He returned to Nigeria in 1989

VI. He is not stateless

VII. There is no valid decision from any Court or Tribunal finding him to be Leonard Ogilvy, to be stateless or to have a date of birth of 1 March 1968

VIII. The appellant has used the aliases of Leonard Ogilvy, Adedeji Olusegun Alakija, Alakija Olusegun Adedeji and Aderemi Odunsi

IX. He may also have used the aliases of Leonardo Eusibio Assumpcao, Robert Leonard Ogilvy, Hubisi Nwenmely, Thomas Raymond and Leonard Raymond Ogilvy, the aliases recorded in the Government Notice from St Lucia; see tab 5, page 146-149

Decision on Article 8 claim

149. The appellant maintains that his deportation would breach his rights under Article 8 of the European Convention on Human Rights. In her decision of 12 June 2018 the respondent decided that Article 8 would not be breached if the appellant were to be deported; see tab 4 pages 207-227.

150. In my assessment of the appellant's Article 8 claim, I proceed on the basis of the findings set out in paragraph 148 that he is Olusegun Adedeji Alakija, a Nigerian national born on 10 August 1965 who came to the UK in 1987. He is not stateless so this does not need to be addressed in the Article 8 assessment.

Section 117C(4) - Exception 1

151. The appellant cannot meet the requirements of Exception 1 set out in s.117C of the NIA 2002 or the provisions of paragraph 399A of the Immigration Rules. He is now 54 years' old. At best, he has had lawful residence in the UK for 20 years since he was granted ILR in 1999. That is not more than half of his life.

152. I do not find that the appellant is socially and culturally integrated in the UK. I accept that he has been in the UK most of the time since he came as a visitor in 1987. That is a period of 32 years and provides a basis on which he could be found to have become socially and culturally integrated. There was very little evidence of any positive social and cultural links formed during that period, however. Taking his evidence at its highest he has studied and worked at times and currently attends church and is still studying. The evidence on the extent of his integration is very limited, however.

153. Set against his long residence and history of work and study, it is my judgment the appellant has conducted himself throughout his time here in a manner that shows contempt for the social and cultural values of the UK. He has acted profoundly dishonestly throughout his time here in using aliases, in particular the false assertion over at least 29 years that he is Ogilvy. He has been dishonest in asserting vociferously and wholly untruthfully that he is not Nigerian but is either Portuguese or stateless. He avoided deportation and was granted ILR in the 1990s only because of his profound dishonesty. He has conducted extensive and meritless litigation on his own behalf in which he has made representations which he knew were false and has withheld documents in a dishonest attempt to bolster his various claims. He has

been found to be a dishonest person by a number of judges and has been found formally in contempt of court.

154. His criminal convictions for theft, unlawfully providing immigration advice, pretending to be a barrister and fraud also weigh against his being socially and culturally integrated. He has repeatedly acted for others in legal proceedings when not qualified or competent to do so. His evidence before me that he continues to assist or advise others in legal matters even in the face of his criminal convictions and having been found to be incompetent to do so by the judiciary was deeply concerning. He continues to assert his innocence of the most recent conviction, maintaining this to be so at the hearing before me and to the Probation Service as shown in the progress report dated 26 July 2019. This is in the face of the comments of the sentencing judge that the evidence against him was overwhelming and the conviction being upheld on appeal.

155. These matters show that the appellant's conduct throughout the time that he has been here has been inimical to the social and cultural values of the UK. There is very little positive evidence of social and cultural integration. My conclusion is that the appellant is far from being socially and culturally integrated.

156. Further, the appellant cannot show that there would be very significant obstacles to reintegration in Nigeria. I accept that he has not lived or been there since approximately 1990. That is a period of 29 years and there will inevitably be a period of readjustment and difficulties to overcome on return, as a result. As above, however, the evidence from St Lucia indicates that he is likely to have some contacts there. The evidence as a whole shows the appellant to be a highly dishonest person and I do not accept that he has no contacts in Nigeria from whom he could obtain some support on return, even if this was limited.

157. Even if the appellant does not have any contacts in Nigeria, the facts as found show that he lived there until the age of 22 and voluntarily returned there in 1989. He speaks English, one of the main languages used there. In addition, the appellant has qualifications from the UK he can use to try to find work. The energy and resourcefulness he has shown in holding himself out as Ogilvy and as stateless, in persuading numerous individuals to allow him to represent them and in conducting his own numerous cases can be redeployed in Nigeria. He showed similar energy and resourcefulness in the time that he was in St Lucia, indicating his ability to operate in different environments. Having spent all of his formative years in Nigeria and given his abilities and qualifications it is my conclusion that he will be able to become "an insider" with understanding of how life is conducted in Nigeria and be able to participate, be accepted and operate on a day to day basis with significantly more ease than most individuals; SSHD v Kamara [2016] EWCA Civ 813 applied.

158. There will no doubt be some obstacles to reintegration for the appellant on return to Nigeria after nearly 30 years but the evidence before me indicates that he is not someone who will find them significant, certainly not very significant.

Paragraph 399(b) and Exception 2 of s.117C(5)

159. The appellant maintains that he is in a relationship with [CO], a British national. Given the findings above, anything said by the appellant about this relationship has to be viewed with extreme caution.

160. The appellant and Ms [O] both gave evidence that they were in a genuine and subsisting relationship. They gave consistent evidence about meeting in 2009, marrying in 2010 and living together since then. They provided many photographs of what they called their marriage ceremony and a wedding reception. There is no valid marriage certificate, however. The document provided by the appellant (after the hearing) is not a valid marriage certificate, merely reflecting an informal ceremony having taken place on 21 August 2010 under the auspices of the Jesus Cares Crusaders' Ministries International. Such is the appellant's dishonesty, it is my view that he knows that he is not legally married to Ms [O]. I also noted that nothing before me shows that the appellant has ever divorced Ms [C]; see paragraph 90 above.

161. It is not necessary to be married (or, indeed, divorced from a previous partner) in order to demonstrate a genuine and subsisting relationship, however. I noted that the photographs from 2010 provided show a public ceremony and reception that would appear to be recognising a relationship. Ms [O]'s brother was identified as participating in the ceremony. I accept that the couple underwent some form of ceremony attesting to their being in a relationship in 2010.

162. Further, the appellant provided a visitors' log from HMP Wandsworth between 11 July 2017 and 18 June 2018 and it shows Ms [O] visiting the appellant on twenty five occasions, the equivalent of every two weeks. I also noted that she attended all of the hearings before me.

163. Further, the appellant was bailed to [~] Road the property on which Ms [O] has a mortgage. I also accept that she was interviewed at the property as part of the assessment of whether the appellant could leave prison on a Home Detention Curfew. Ms [O] also spoke in some detail about the difficulty she had maintaining the mortgage whilst the appellant was in detention and provided evidence her mortgage arrears of approximately £800 in a letter dated 30 September 2019 (provided after the hearing). In addition, the appellant was able to describe Ms [O]'s current employment and the location and hours of her work. These matters weigh in favour of the appellant and Ms [O] having some kind of relationship and living in the same property.

164. I did not find it significant that Ms [O] retained her maiden name, for example using it on her passport as this can be the case reasonably often even for married couples.

165. I did find, however, a distinct absence of documentary evidence showing that the appellant and Ms [O] had a genuine relationship rather than merely living in the same property. There was no evidence showing any joint interests such as bank accounts, utilities, memberships and so on. It was of particular note that there was no

evidence at all from anyone who knows the couple supporting the claim that they are in a genuine and subsisting relationship.

166. There was also a notable inconsistency in the evidence. The appellant maintained that Ms [O] took in tenants whilst he was in detention in order to help pay the mortgage. He stated that one tenant remained in the property and that he would not permit more as there were repair and other issues in the property making this inappropriate. Ms [O] said that there were no tenants in the property. This clear inconsistency on what should be an uncontentious matter suggested to me that either the appellant or Ms [O] was being untruthful about who lived in the property. This could be for any number of reasons unconnected with the nature of the relationship but, considering the evidence on the relationship as a whole, I found it undermined the claim that the couple are in a genuine and subsisting relationship.

167. The appellant and Ms [O] also maintained that they are trying to have a baby and that this has been difficult as Ms [O] had medical problems. There was no documentary evidence at all to support this claim. Where documents to support this oral evidence would be easily available but were not provided and given the degree of the appellant's dishonesty, I did not accept that the couple have been trying to have a child together, notwithstanding that this was Ms [O]'s evidence as well as the appellant's.

168. I also noted the comment made by Mr Justice Gledhill that the appellant has deceived Ms [O] in the past, stating that he would "leave your home in Abbey Wood every day, suited and booted, leaving your wife with the impression that you were going out to work". That deception, the appellant's profoundly dishonest conduct over many years, the untruthful evidence about a formal marriage, the absence of evidence showing the couple have any kind of joint life and the inconsistent evidence about a tenant led me to conclude that whatever Ms [O]'s position may be, the appellant is not in a genuine and subsisting relationship with her.

169. The appellant therefore cannot meet the requirements of paragraph 399(b) or s.117C(5) of the NIA 2002.

170. It was also my view that even if the relationship was found to be genuine and subsisting, these provisions could not be met. There is no dispute that had the relationship been shown to be genuine, it was formed when the appellant had ILR and so could have met the requirement set out in paragraph 399(b)(i) of the Immigration Rules.

171. I did not find that the evidence showed that the provisions of paragraph 399(b)(ii) and (iii) of the Immigration Rules could have been met, however, even taking the evidence of the appellant and Ms [O] about their relationship at its highest. The test is whether it would unduly harsh for Ms [O] to go to Nigeria with the appellant and unduly harsh for her to remain without him in the UK. The latter assessment mirrors that of Exception 2 in s.117C(5) of the NIA 2002.

172. The appellant and Ms [O] were asked why she could not be expected to go to Nigeria with him. Ms [O] confirmed that she was originally from Ivory Coast and had been in the UK for approximately 20 years. She lived in another culture for all of her early life, therefore, and albeit that was not in Nigeria, she has significant experience of living in an African country. The appellant and Ms [O] referred to the difficulty in her finding work in Nigeria, having to rely on the appellant, potentially losing her home in the UK and the difficulties they had had in conceiving a child. The appellant has educational qualifications from the UK, as does Ms [O] who recently obtained a Masters' degree in banking and finance. She also has work experience as a finance controller. She could expect to find some kind of work in Nigeria in due course, as could the appellant. I accept that she would have to make arrangements for the house in the UK on which she has a mortgage, either by selling it, or renting it out if she went to Nigeria but this is an administrative matter which does not begin to reach the level of undue harshness. The concerns expressed about being unable to obtain assistance in order to have a child together were not supported by any objective material on the particular problems and whether they could be addressed by the public or private healthcare systems in Nigeria. I therefore did not find that the evidence of the appellant and Ms [O] was capable of showing that life would be unduly harsh for her in Nigeria.

173. The couple also stated that life in Nigeria would be difficult as the appellant was not Nigerian and had never been there. As above, it is my settled view that the appellant is Nigerian and that he lived there until 1987, so for 22 years before he came to the UK. He can be expected to use the knowledge he has of the country to re-establish himself and assist Ms [O] to establish herself.

174. My conclusion was that there would be difficulties for Ms [O] if she goes to Nigeria with the appellant but that her circumstances there would not be harsh, certainly not unduly harsh.

175. It is also not my view that the provisions of paragraph 399(b)(iii) and Exception 2 of s.117C could be met, even taking the evidence on the relationship at its highest. The evidence as to Ms [O]'s circumstances if the appellant were deported was that she would miss him greatly, that it would be very difficult where they were hoping to have a child together and it would be hard for Ms [O] financially, needing to take in lodgers for example to help pay her mortgage and needing to find a full time rather than a part-time job. As above, there was no evidence of the extent of the problem in Ms [O] conceiving and whether the couple could not continue to try to have a child using the healthcare system in Nigeria on visits there. Taking the evidence on Ms [O]'s situation if the appellant were deported at its highest, it cannot meet the high threshold for a finding of undue hardship. It is, at best, the level of hardship that is due when a partner is deported and nothing in the evidence on this question could show that Ms [O] would find herself in unduly harsh circumstances.

Section 117C(6) – Very Compelling Circumstances

176. The appellant cannot meet the Exceptions set out in s.117C (4) and (5) or the provisions of the Immigration Rules. He does not meet those provisions by some margin. He has not been here more than half his life, he is not socially and culturally integrated and would not face very significant obstacles to integration in Nigeria. He is not in a genuine and subsisting relationship with Ms [O] and even if he was, it would not be unduly harsh for her to go to Nigeria with him or to remain in the UK when he is deported. The circumstances here do not come close to being the "near miss" situation described in paragraph 32 of NA (Pakistan). The appellant's relationship with Ms [O] and his length of residence in the UK and time away from Nigeria cannot amount to very compelling circumstances over and above the provisions of paragraphs 399, 399A or Exceptions 1 and 2 of s.117C, therefore. There was nothing further put forward in the evidence that could show a "far stronger case" by reference to Article 8 interests that could possibly begin to weigh against the strong public interest in this appellant's deportation.

Notice of Decision

177. The appeal under Article 8 of the European Convention on Human Rights is refused.

Signed:  Date: 9 January 2020

Upper Tribunal Judge Pitt