



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/20972/2012

THE IMMIGRATION ACTS

Heard at Glasgow
on 20 August 2013

Determination promulgated
On 20th August 2013

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

TEMITOPE OMOLOLU PAULSON

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Miss L Beats, of Bruce Short, Solicitors
For the Respondent: Mr M Mathews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) The appellant is a citizen of Nigeria, born on 18 February 1981.
- 2) By letter of 21 September 2012 the Respondent refused the appellant's application for leave to remain under Tier 1 of the Points Based System.
- 3) The appellant claimed 15 points for an eligible award under Appendix A and Table 10 of the Immigration Rules. The Respondent considered that no points fell to be awarded because the application was made on 3 April 2012, but the date of award was 30 May 2012, and so it had not been made at the date of application.

- 4) First-tier Tribunal Judge Grant-Hutchison did not agree with the submission that the appellant should be considered to have been awarded his degree at some earlier date, such as when he completed his course work and submitted his dissertation. She thought that an appellant who had registered in anticipation of receiving his award had not yet received it, and dismissed the appeal by determination dated 16 November 2012.
- 5) On 20 February 2013 Upper Tribunal Judge Chalkley granted permission to appeal, on the view that while the appellant had not been granted his award at the date of his application, he had been granted it and had put his full degree certificate before the respondent prior to her decision. Failing submissions to the contrary, Judge Chalkley proposed to allow the appeal under reference to Khatel & Others v SSHD [2013] UKUT 00044.
- 6) SSHD v Raju, Khatel & 2 Others v SSHD [2013] EWCA Civ 754 was decided on 25 June 2013. Moses LJ was of opinion (paragraph 12) that qualification under Table 10 required strict compliance with the requirement to make the application within the period of 12 months from the time when the qualification was obtained. The question was not whether the qualification was obtained within 12 months of making the application (paragraph 14). The Upper Tribunal had misconstrued paragraph 34G of the Immigration Rules, which is decisive of when an application is made. An application is not continuing until the date of decision. Subsequently obtained evidence could not cure the defect in an application such as the present (paragraph 24). Kitchin & Floyd LJJ agreed.
- 7) Miss Beats referred immediately to Raju and accepted that it was against her case. She asked for an adjournment, on her understanding that Raju is subject to further appeal. She had no confirmation of whether an appeal is pending. She observed that apart from this case the appellant has no other route to remain in the UK (which appears to be correct, at least in terms of applications which may be made “in country”.)
- 8) Mr Mathews opposed that application, on the basis that cases should usually be decided as the law is understood to be.
- 9) I agreed with that submission, and declined to adjourn.
- 10) Miss Beats submitted that the appellant should have been given the opportunity of submitting further information under the “evidential flexibility policy”, referring to the respondent’s guidance and to Rodriguez [2013] UKUT 00042.
- 11) I indicated that although the appellant was not contacted under the terms of that policy, even if he should have been (which is doubtful) it makes no difference. He did not have the evidence needed to succeed until well after his application.
- 12) Miss Beats said that her client had asked for the opportunity to address the UT himself, if his appeal appeared likely to be dismissed. I declined to hear from him. I explained

that he had the benefit of professional representation, and that everything that could properly be advanced on his behalf had been said. It is understandable that he would be disappointed by the outcome, but it was legally unavoidable.

- 13) The appellant's appeal to the UT is dismissed. The determination of the FtT shall stand.
- 14) No anonymity order has been requested or made.

A handwritten signature in black ink, reading "Hugh Maclemon". The signature is written in a cursive style with a large, stylized initial 'H'.

20 August 2013
Judge of the Upper Tribunal