



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

Appeal Number: IA/14366/2014

THE IMMIGRATION ACTS

Heard at Field House

**On 21st August 2014
Prepared: 21st August 2014**

**Determination
Promulgated
On 29th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MRS MAGARET ABEKE OLANIYI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant appeared in person
For the Respondent: Mr E. Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

The Appellant

1. The Appellant is a citizen of Nigeria born on 6th June 1943. She appealed against decisions of the Respondent dated 16th March 2014 to cancel her leave to enter the United Kingdom and to remove her. These were taken on the grounds that the Respondent was satisfied that false representations were employed or material facts were not disclosed for

the purpose of obtaining leave and/or that there had been such a change of circumstances in her case since the leave was granted that it should be cancelled pursuant to paragraph 321(A) of the Immigration Rules HC 395.

2. The Appellant was granted leave to enter the United Kingdom on 13th July 2011 valid until 13th July 2013. She first visited the United Kingdom as long ago as 1978 and between 1982 and 1986 she had studied at University College in Cardiff. Her daughter, son-in-law and her two grandchildren reside in the United Kingdom. The Appellant travelled to the United Kingdom on 27th October 2010 and returned to Nigeria just under six months later on 10th April 2011 (“the first period”). She then returned to the United Kingdom later that year on 27th September 2011 returning to Nigeria 25th March 2012 (“the second period”). She came to the United Kingdom for a third time on 27th April 2012 and returned to Nigeria on 26th October 2012 (“the third period”).
3. However the passport stamps indicated a different sequence of travel. Her passport contained Nigerian re-entry stamps purporting to show that she returned back to Nigeria on 10th January 2011 (during the first period), on 10th January 2012 (during the second period) and 7th July 2012 (the third period). These stamps were false given that the Appellant had remained in the United Kingdom at those times. On or about 16th March 2014 she was stopped by Immigration Officers at Heathrow Airport attempting to enter the United Kingdom. The Appellant was interviewed about these stamps and told the Respondent that a neighbour Mr Oloko who worked at Lagos Airport would take the Appellant’s passport away, put the fraudulent stamps in and then return the passport to the Appellant at her home. She was initially detained on the grounds that she had failed to give satisfactory or reliable answers to an Immigration Officer. A decision was made to refuse leave to enter which has given rise to the present proceedings.

Immigration Law and Rules Relevant to the Appellant

4. Paragraph 321(A) sets out the grounds on which leave to enter or remain which is in force is to be cancelled at port or while the holder is outside the United Kingdom. The paragraph is mandatory and the following grounds apply:
 - (1) that there has been such a change in the circumstances of that person’s case since the leave was given that it should be cancelled;
 - (2) false representations were made or false documents were submitted whether or not material to the application and whether or not to the holder’s knowledge or material facts were not disclosed in relation to the application for leave or in order to obtain documents from the Respondent or a third party required in support of the application.
5. The making of false representations involves an element of dishonesty and the burden of establishing that rests upon the Respondent. The dishonesty

complained of does not have to be by the Appellant herself but can be by a third party.

The Proceedings at First Instance

6. The Appellant appealed against the Respondent's decisions arguing that she had adhered to Immigration Rules and not remained in the United Kingdom for longer than 180 days for each of her visits between 2011 and 2012. Cancelling her visa would deny her the opportunity of seeing her youngest daughter and watching her grandchildren grow up.
7. The Appellant indicated at Section K on her notice of appeal form IAFT-1 that she wished to have the matter decided at a paper hearing and thus the matter came on the papers for Judge Doyle sitting at Glasgow on 8th May 2014. He noted the Appellant's claim that the stamps had been placed in her passport by Nigerian Immigration Officers over whom she had no control but wrote:

“(d) The difficulty for the Appellant is that she does not challenge anything that is said by the Respondent in the decision notice and concedes that the Nigerian re-entry stamps bear no relation to her movements between the UK and Nigeria. The Appellant does not deny that she made certain admission at interview.

(e) Even though a record of the interview between the Appellant and the Respondent's employees is not placed before me the Appellant does not challenge the narrative given by the Respondent in the decision notice. In the notice of appeal, the Appellant makes it clear that she knew that the Nigerian re-entry stamps were inaccurate.

(f) What the Appellant cannot escape is that she tendered her Nigerian passport and placed reliance on her Nigerian passport knowing that it contained dishonest entries and that the effect of dishonest entries concealed the true length of the Appellant's stay in the UK.

(g) The Respondent had adequate grounds to cancel the Appellant's leave to enter because the Respondent places his reliance on a misrepresentation.”

He dismissed the appeal.

The Onward Appeal

8. The Appellant appealed against that decision arguing that it was inaccurate to say that her neighbour had placed the stamps in the

passport, the Nigerian Immigration Officers had put the wrong dates in the passport without her knowledge. The stamps were correct and genuine. It was unfair to punish her for mistakes made by the Nigerian Immigration Officers. As she had never overstayed she had no reason to backdate her arrival dates. Nigerian immigration officials did this routinely for those overstaying and they must erroneously have thought that the Appellant was one of those who had overstayed.

9. The application for permission to appeal came on the papers before First-tier Tribunal Judge Parkes on 26th June 2014. In granting permission to appeal he wrote that the grounds as drafted amounted to no more than a disagreement with the findings and would not be adequate to justify granting permission. He continued:

“However I have read the determination and there is no reference anywhere to the shifting of the burden of proof to the Secretary of State where forgery or false documentation is alleged. On that basis permission to appeal is granted, I do not limit the grounds”.

10. The Respondent filed a response to the grant of permission on 7th July 2014 accepting that the First-tier Judge had not made any express reference to the burden upon the Respondent. However it was clear that the Judge was aware of it and that it had been discharged. There was a provision of false information and dishonesty by the Appellant. No issue was taken by the Appellant with the key points identified by the Respondent and there was no material error of law in the determination.

The Hearing Before Me

11. In consequence the matter came before me to determine whether there was a material error of law in the Judge’s determination such that it fell to be set aside. If so I would proceed to remake the decision. If there was no material error of law then the decision would stand. The Appellant attended in person and indicated she was content for the case to proceed without a representative. She said she had consulted a solicitor who had told her that there was no need for him to come as she had set matters out fully in her grounds of appeal.
12. She denied that she had given her passport to be used by anyone else travelling to and from Nigeria, the stamps had been put in the passport by Immigration Officers in Nigeria. The stamps were of no benefit to her as she had never overstayed.
13. For the Respondent it was argued that the grant of permission to appeal had given the Appellant an opportunity to explain matters but they still had not been explained. There was no evidence that the Judge had misunderstood the legal requirement. The case law indicated that the standard of proof was the balance of probabilities. There was no explanation why the Nigerian authorities would put false stamps in her passport.

14. Finally in closing the Appellant indicated that if she was removed from the United Kingdom it would deny her the opportunity of seeing her children who are living in the United Kingdom and she asked for a reversal of the First-tier decision.

Findings

15. The Appellant's explanation why inaccurate stamps were placed in her passport was because Nigerian officials were seeking to mislead the British authorities by showing that the Appellant had not overstayed her visa but had returned to Nigeria rather earlier than in fact she had returned. The Appellant said that that was misguided because she did not need that kind of assistance from the Nigerian officials as she had not overstayed the implication being that the Nigerian officials should therefore have simply correctly stamped her passport.
16. Even if one takes the Appellant's case at its highest and discounts any possibility that the Appellant might have given her passport to someone else to use to travel between Nigeria and the UK, the fact is that false passport stamps were placed in the Appellant's passport knowingly by those placing the stamps there. There is no doubt therefore that the placing of those stamps was dishonest and was capable of forming conduct that came within paragraph 321(A). It was not necessary for the Respondent to show that the dishonesty was on the part of the Appellant merely that someone had been dishonest. The Appellant's account is that the Nigerian Immigration Officers were dishonest. The Respondent's case was that the Appellant by offering her passport with dishonest stamps in them was also being dishonest.
17. I have quoted what the Judge said at paragraph 12(f) of his determination that the Appellant had tendered her Nigerian passport and placed reliance on it knowing that it contained dishonest entries. Given that she had used the passport to make three journeys between the United Kingdom and Nigeria it is inconceivable that she could not have known that there were incorrect stamps in the passport. She does not appear to indicate that she was in ignorance of the stamps merely that she had no control over what the Nigerian officials were doing.
18. The paragraph specifically states that it applies where false documents are submitted whether or not material to the application. In other words even if the Appellant did not need to show that she had left earlier than she did, the fact that the false stamps indicated that would be sufficient to come within the paragraph.
19. The Respondent clearly felt that the Appellant was being dishonest and made that very clear in the notice cancelling her leave. The issue in the

case is whether the Judge made it clear in his determination that it was for the Respondent to prove dishonesty and that the Respondent had proved dishonesty. Judge Parkes in granting permission to appeal was concerned that Judge Doyle had not spelt out where the burden lay. This was a narrow point. It is clear from reading the determination as a whole that the Judge was aware that the Respondent needed to prove the dishonesty. At paragraph 9 the Judge explicitly stated that the Respondent relied on admissions made by the Appellant at interview to prove the Respondent's case.

20. The Judge noted that the decision notice of the Respondent set out the Respondent's case quite clearly. The Judge thereby accepted that it was for the Respondent to set out what were the facts and matters she relied on to establish the dishonesty of the Appellant. It was not for the Appellant to prove her innocence but for the Respondent to prove the Appellant's dishonesty. The Judge was satisfied at subparagraph (g) that the Respondent had adequate grounds to cancel the Appellant's leave because the Respondent was relying on a misrepresentation. In other words the Respondent was putting forward the evidence she relied upon to support her contentions.
21. I therefore accept the submission made by the Respondent in their Rule 24 response that it was clear that the Judge was aware that the burden was upon the Respondent and that that burden had been discharged. Whilst the Judge could perhaps have put matters a little more clearly the determination could be understood by the losing party as to why they had lost. The Respondent put forward evidence to show that dishonest passport stamps had been proffered in the Appellant's passport and the Appellant's leave had been cancelled on that basis. There was no error of law in the Judge's determination.
22. The Appellant was concerned as to the consequences for her if her leave was cancelled and she was required to return to Nigeria. She would no longer have a face-to-face relationship with her daughter and grandchildren. While it is correct that the Judge does not specifically deal with that argument in his conclusions it is not a relevant consideration under paragraph 321(A). It is difficult to see how having put forward a passport with dishonest entry stamps the Appellant could then succeed outside the Immigration Rules under Article 8. The Judge referred to the Appellant's grounds of appeal making an impassioned plea that her focus was on her daughter and grandchildren but evidently did not consider that that was sufficient for the appeal to be allowed outside the Rules. Again, there is no error in that.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal.

Appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.
As I have dismissed the appeal no issue of a fee order arises.

Signed this 28th day of August 2014

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Deputy Upper Tribunal Judge Woodcraft