



IAC-FH-AR-V1

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

Appeal Number: IA/27352/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 14 October 2015**

**Decision & Reasons**

**Promulgated**

**On 27 October 2015**

**Before**

**UPPER TRIBUNAL JUDGE WARR**

**Between**

**BIDEMI BOLAJI OLANREWaju  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER - ABUJA**

Respondent

**Representation:**

For the Appellant: Miss C Record, Counsel (Chambers of Celia Record)

For the Respondent: Miss A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Nigeria, born on 26 September 1985. She appeals the decision of First-tier Judge Hillis determined on the papers on 29 September 2014 to dismiss her appeal against a decision of the respondent to refuse her application as a Tier 1 (Entrepreneur) under paragraph 320(7A) of the Immigration Rules on the basis that deception had been used. The application was also refused under paragraph 320(7B) of the Rules and any future applications would be automatically refused under paragraph 320(7B) until ten years had elapsed.

2. It was noted that the appellant's husband only had limited leave to remain in the United Kingdom until 30 September 2014 and the appellant had stated that she intended to return to Nigeria on 29 September 2014. In such circumstances it was considered that the appellant's family and private life would not be infringed under Article 8.
3. It appears that the appellant in fact entered the UK as a Tier 4 (General) dependant on 7 February 2013 and an application for leave to remain had been submitted prior to that date and the First-tier Judge appears to have accepted in paragraph 15 a submission made by the appellant to that effect in her grounds of appeal. She had travelled to the UK to stay with her husband.
4. The First-tier Judge recorded the appellant's submission that she was the innocent victim of an attempted fraud committed by her financial backers in Nigeria. She had lived with her husband in the UK as his dependant for three years and during that time the couple had established a private and/or family life in the UK.
5. The judge set out the material parts of paragraph 320(7A) in paragraph 18 of his decision. Paragraph 320(7A) reads as follows:

“Where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant’s knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application.”
6. The judge observed in the concluding sentence of paragraph 18 as follows:

“It is therefore clear that the respondent is not required to show the appellant has personal knowledge of the false submission of a document for the terms [of] this paragraph to be engaged.”
7. In paragraph 9 the judge concluded “I find on the evidence before me, the appellant has failed to submit genuine documents as required and that no points can be allocated to her application.”
8. The judge was not persuaded that the appellant's human rights had been breached given the lack of any persuasive evidence before him of her current private life nor had she shown that her social and financial ties to Nigeria had been broken. He added:

“Although the appellant has been in the UK from 7 February 2013 as a dependant of her husband I find that both his and her presence here has always been subject to visas of a limited duration. The UK government has done no more than apply its valid Immigration Rules and Law to the appellant's application in furtherance of its legitimate aims of proper immigration control.”
9. The appeal was accordingly dismissed.

10. In the grounds of appeal settled by Miss Record reliance was placed on **AA (Nigeria) v Secretary of State [2010] EWCA Civ 773** on the basis that false was held to mean dishonesty and the appellant had not been dishonest and had not been party to the fraud. Permission to appeal was granted by the First-tier Judge on the point taken in relation to **AA (Nigeria)**. In relation to the arguments under Article 8 the judge observed:

“As to the second ground, the judge’s consideration under Article 8 was somewhat cursory, although his conclusion might be thought inevitable (and thus any error immaterial) if A could not succeed on the other issues in the appeal. I will not exclude the second ground at this stage.”

11. The respondent filed a response on 21 November 2014 submitting that the judge had directed himself correctly in the light of paragraph 320(7A) as referred to in paragraph 18 of the determination. Counsel said that the appellant was on temporary admission in the UK. It was necessary to prove deception on the part of the appellant and the appellant had merely made an innocent mistake. She had reported the fraud to the Nigerian police. She was an innocent dupe. The point was a very succinct one. There was a material error of law in the decision.
12. Miss Everett submitted that paragraph 67 of **AA (Nigeria)** made the matter quite clear. The appellant might have used “in all innocence” a false document but the fact that she was unaware was irrelevant. She also relied on the concluding words of paragraph 76 of the decision “... dishonesty or deception is needed, albeit not necessarily that of the applicant himself, to render a ‘false representation’ a ground for mandatory refusal.”
13. There was nothing in the Article 8 point in the premises.
14. Counsel submitted that the appellant had made an innocent mistake and she was not party to the fraud and that dishonesty was required.
15. At the conclusion of the submissions I reserved my decision. I can only interfere with the judge’s determination if it was materially flawed in law. This was a case in which there was no dispute that there was a fraud but the appellant says she was an innocent victim of their fraud. With respect to the First-tier Judge who granted permission, the point is clearly dealt with in **AA (Nigeria)** and Miss Everett aptly refers to paragraph 67 of that case which reads as follows:

“First, ‘false representation’ is aligned in the Rule with ‘false document’. It is plain that a false document is one that tells a lie about itself. Of course it is possible for a person to make use of a false document (for instance a counterfeit currency note, but that example, used for its clarity, is rather distant from the context of this discussion) in total ignorance of its falsity and in perfect honesty. But the document itself is dishonest. It is highly likely therefore that where an appellant uses in all innocence a false document for the purpose of obtaining entry clearance, or leave to enter or to remain, it is because some other party, it might a parent, a sponsor, or

agent, has dishonestly promoted the use of that document. The response of a requirement of mandatory refusal is entirely understandable in such a situation. The mere fact that a dishonest document has been used for such an important application is understandably a sufficient reason for a mandatory refusal. That is how the rule expressly emphasises that it applies 'whether or not to the applicant's knowledge.'

16. The words at the conclusion of paragraph 76 to which Miss Everett also referred are also in point. What the First-tier Tribunal Judge said in paragraph 18 is entirely correct.
17. This was a case in which there was no dispute there was a fraud but it was a fraud with which the appellant said she had nothing to do. The fact she was an innocent victim is not relevant.
18. Issues are also taken in the grounds with the question of burden of proof but this was a case where there was no dispute about the fraud.
19. In the light of this it is not perhaps necessary to deal with the Article 8 issues since the First-tier Tribunal Judge considered that the assessment in relation to those issues might be inevitable if the conclusions were otherwise not flawed. As I have found that the approach of the First-tier Tribunal Judge to paragraph 320(7A) was entirely correct, I can see no flaw in his approach to issues arising under Article 8. This was a matter determined on the papers and no doubt it would have been open to the parties to put more evidence before the judge had they so wished.
20. The decision under paragraph 320(7A) carries consequences for the future. When making a further application it is of course open to the appellant to draw the respondent's attention that she was not party to the fraud and make reference to the fact that she reported the matter to the police, for example.

### **Notice of Decision**

21. For the reasons I have given, the decision of the First-tier Tribunal Judge is not materially flawed in law and I direct that it shall stand.
22. No anonymity order is made.

### **Fee Award**

23. The First-tier Tribunal Judge made no fee award and I make none.

Signed

Date 23 October 2015

Upper Tribunal Judge Warr