



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

Appeal Numbers: IA/43525/2014

THE IMMIGRATION ACTS

Heard at: Field House

**Decision and Reasons
Promulgated**

On: 30 October 2015

On: 3 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

**MR KINGSLEY UDABOR
(ANONYMITY DIRECTIONS NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Adjarho, Solicitor

For the Respondent: Ms N Wilcocks-Briscoe, Senior Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Nigeria, appealed to the First-tier Tribunal against the decision of the respondent dated 14 October 2014 to refuse his application for further leave to remain as a spouse of a person present and settled in the United Kingdom. The First-tier Tribunal dismissed the appellant's appeal in a determination dated 30 December 2014. Permission to appeal was initially refused by Judge of the First-tier Tribunal

Judge on 15 May 2015 and after a renewed application, was subsequently granted by Upper Tribunal Judge, Kebede.

2. Thus the appeal came before me.

The findings of the First-tier Tribunal

3. The First-tier Tribunal dismissed the appellant's appeal for the following reasons, which I summarise. The appellant and his solicitor were both advised by letter that any documentation, further written evidence or submissions should be forwarded to the Tribunal by 17 December 2014. On 22 December 2014, a fax was sent to the Tribunal from the appellant's solicitors Chancery CS, amounting to 14 pages. The first page was an index of the documents claiming to be sent. The only documents received were the statements from the appellant and his spouse, which were numbered as pages 1 to 10 of the bundle. No other documentation arrived with the fax or under separate cover. There is therefore no evidence before me to support the appellant's written statement or that of his wife. It is noted that both statements are couched in very similar terms and have obviously been copied from one to the other.
4. The submission of the fax containing the statements indicate that the appellant was aware of the need to lodge further documentation in support of his appeal. Without that documentation, it has not been established that the appellant meets the requirements of the Immigration Rules. There is no support documentation of the claims he has made within his statement either in connection with his cohabitation with a spouse or in respect of his income. There is no evidence of any job prospects he has or of his degree from University. His future income is of no relevance when considering his current position in respect of his ability, as of today's date, to be able to maintain himself without recourse to public funds. The appellant has not established on the balance of probabilities, he meets the requirements of the Immigration Rules.
5. The appellant claims that by returning him to Nigeria, the United Kingdom would interfere with this family and private life in such a manner that it is disproportionate when weighed against the implementation of immigration laws designed to implement an effective system of immigration control within the United Kingdom and that his removal would also be an interference with his wife's right to family life with him. Her private life would also be disproportionately affected.
6. The appellant has not established that he meets the requirements of appendix FM paragraph are LTRPT 1. 1. or our LTRPT 1. 1, including EX 1 as he has not demonstrated there are insurmountable obstacles to family life with this partner continuing outside of the United Kingdom. The appellant stated in his statement that he currently receives financial support from his parents in Nigeria, in particular his mother. His application indicates he has siblings in Nigeria. The appellant has no children to consider. The appellant has not demonstrated he meets the

requirements of paragraph EX1. The appellant also does not meet the requirements of paragraph 276 ADE of the Immigration Rules in respect of his private life. The appellant entered the United Kingdom in September 2010 when he was 26 years old and has not, therefore, lived in the United Kingdom for 20 years. He has visited Nigeria during the four years he has been studying in the United Kingdom and still has family members there. There are no reasons put forward as to why he could not reintegrate into society on his return or seek employment in the same manner he claims he will be able to do in the United Kingdom. There are no exceptional circumstances preventing his return to Nigeria. The appellant has not demonstrated that he has a legitimate right to remain in this country and that the decision to refuse to vary his leave to remain is unlawful. The appellant's removal from the United Kingdom would be proportionate response to the legitimate aim of proper immigration control. The Judge dismissed the appeal under the immigration rules and human rights grounds.

The grounds of appeal

7. The appellant's grounds of appeal are in summary as follows. It appears that the Judge believed that the appeal before the court was an oral hearing on 17 December 2014 as against a paper appeal. It is obvious from the determination at paragraph 2 and 3 that the appellant's bundle was sent by way of fax on 19 December 2014 and not on 22 December 2014 as erroneously stated by the judge in his determination. Hence the Judge made an error of law to state at paragraph 5 that the appellant should provide an explanation as to why the bundle upon which he seeks to rely on, was served after rather than before the hearing. This is a perverse and irrational finding and matters that were material to the outcome of the appellant's case is the matter was determined on 30 December 2014, no hearing date was fixed for 17 December 2015 but rather it was the date that all documents should be delivered to the court being a paper appeal.
8. No explanation or reason has been provided in the determination as to why the appellant's bundle was not considered which was received via recorded delivery by the court eight clear days before the date of the determination on 30 December 2014. The Tribunal letter dated 19 November 2014, the court directed the appellant and respondent to submit to the Tribunal by 17 December 2014 all documents to be relied on. The respondent should by the same dates should also have submitted the documents which she seeks to rely on. Up to date, the respondent did not comply with this direction. The appellant was waiting for the respondent to serve her bundle to enable him to respond to issues raised therein but when it was obvious that they did not comply by 17 December 2014. The appellant prepared his own bundle which was faxed to the Tribunal on 19 December 2014 and posted by recorded delivery which was received by the court of 22 December 2014.

The hearing

9. At the hearing and I heard submissions from both parties as to whether there has been an error of law. Miss Wilcocks-Briscoe submitted that there was no error of law in the determination. She submitted that the documents have to be considered by the respondent and she is not able to make the calculations required as to whether the threshold of income support has been met.

Decision on Error of Law

10. Having considered the determination as a whole, I find that the issues raised by the appellant is procedural fairness by not taking into account the appellant's bundle of documents which was served after the deadline referred to in the directions issued in form IA35, and not in the Judge's position at the time she was allocated the case, but were nevertheless received by the Tribunal eight days prior to the date of publication of the Judge's decision.
11. As the Judge reasoning for dismissing the appellant appeal was on the absence of supporting evidence, there is therefore an error of law. I therefore take into account whether the additional documents would have any material effect on the outcome of the appeal. The documents clearly show evidence of cohabitation and maintenance.
12. The appellant cannot be compromised because the documents were not considered by the Judge, although I hasten to add that it is not the fault of the Judge for not considering documents that were not placed in the file because it is clear the Judge did not have sight of the documents when she made her decision.
13. It is important that the primary decision maker, which is the respondent, should have sight of the documents. I therefore direct that the file be placed before the Secretary of State awaiting her lawful decision taking into account all the evidence in this appeal.
14. I find that there is a material error of law in the determination of the Judge in respect of procedural fairness and the Judge's decision, is set aside in its entirety.

DECISION

For the reasons given above, the determination of the First-tier Tribunal is set aside.

The appeal be remitted to the Secretary of State.

Signed by

Mrs S Chana

A Deputy Judge of the Upper Tribunal

This 2nd day of November 2015