



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: IA/06368/2014**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 November 2015**

**Decision & Reasons  
Promulgated  
On 18 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**FLORENCE CHIOMA AGBARA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr L Doyle, instructed by M & K Solicitors  
For the Respondent: Ms A Holmes, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a decision of First-tier Judge Kelly promulgated on 24 March 2015 dismissing the appellant's appeal against the respondent's decision on 29 January 2014 refusing leave to enter the United Kingdom.
2. The respondent's concern was in respect of a stamp in the appellant's passport and it may be simplest if I set out the relevant parts of the judge's decision on this.

“On 28 September 2011 she was granted entry clearance as a visitor for a period of two years. She first travelled to the United Kingdom in October 2011 and returned to Nigeria in March 2012. She next travelled to the United Kingdom in July 2012 and returned to Nigeria in December 2012. She obtained a further two year visit visa on 28 September 2013 and arrived for her third visit to the United Kingdom on 29 January 2014. On her arrival at Heathrow airport a decision was taken to cancel her leave pursuant to paragraph 321A of the Immigration Rules on the basis that false representations had been employed or material facts not disclosed for the purpose of obtaining her second visit visa”

and this was the decision challenged.

3. The misrepresentation or matter not disclosed related to endorsements in the passport. When she arrived in the United Kingdom on 29 January 2014 her passport was found to contain a stamp showing that she had exited Nigeria for the purposes of the first visit to the United Kingdom on 11 October 2011 and returned to Nigeria on 21 October 2011, but checks in fact revealed that she had not returned to Nigeria until 8 March 2012.
4. The appellant had to say the following about this: that she only became aware of this error, as she puts it, at a later date, and she tried to take the matter up when she went back to the airport to highlight the mistakes of the Immigration Officer but they were not interested, did not do anything to correct the mistake and there was evidence from both her and her daughter at the hearing and one of the points that was made in the grant of permission was that the judge did not refer to her daughter's evidence as to their belief that she returned to Nigeria on 8 March 2012.
5. The judge noted the mandatory nature of paragraph 321A, noted that the appellant accepted she was aware of the inaccuracy in her passport and said although it was unclear whether or not she sought to gain any advantage through the presence of the inaccurate stamp in her passport, as it is common ground that it was, there was no need to establish any particular motive before paragraph 321A could be applied and even if it were an error by the immigration authorities at the airport that did not make the paragraph inapplicable.
6. Permission was initially refused by a First-tier Tribunal Judge but on renewal permission was granted by Judge Plimmer who expressed concerns about whether the judge had provided adequate reasons for finding that the respondent had displaced the burden imposed on her by paragraph 321A, noted as I say the absence of any reference to the appellant's daughter's evidence and questioned whether a failure to draw to the attention of the respondent an incorrect date stamp amounted to a representation, quite apart from whether it was a false representation, although there is as I remarked in the course of argument the fact that the decision includes a reference to non-disclosure as well as the positive making of a representation and that is part of paragraph 321A.

7. The main points made on the appellant's behalf by Mr Doyle are that the judge failed to take account of what had been said by the Court of Appeal in AA [2010] EWCA Civ 773 about the requirement for dishonesty and he also referred back in the first set of grounds to the decision of the Upper Tribunal in Ahmed [2011] UKUT 351 (IAC) which I will come back to in a moment on this point, and also noticed the point that there would be significant disadvantage to the appellant if the refusal were maintained. That of course cannot go to the quality of the decision, it is a matter really in passing.
8. As I say, I think it is relevant to look at Ahmed because this brings to the fore the point about dishonesty and it is I think common ground that no dishonesty has been alleged in this case and the appellant has provided comprehensive evidence about her immigration history and Ms Holmes, with characteristic fairness, really does no more than refer to the fact that the appellant has nothing to gain by any misrepresentation and that must I think be right.
9. In the decision in Ahmed it is said in the head note:

“In order to have made false representations or submitted false documents so as to attract a mandatory refusal under Part 9 of the Immigration Rules an applicant must have deliberately practised deception as defined at paragraph 6. Failing to disclose a material fact is also classed as deception. It follows that such failure also requires dishonesty on the part of the applicant or by someone acting on his behalf.”
10. So it seems to me one can, reading this across to paragraph 320A, conclude that dishonesty is a requirement whether it is a matter of the making of a false representation or a non-disclosure and as I say, dishonesty has not been alleged in this case. As a consequence it seems to me it must follow that the decision of the judge concluding that the appeal against the paragraph 321A decision fell to be dismissed was fundamentally flawed. It seems to me to follow logically from the absence of dishonesty in this case that the requirements of the Rule are not made out. The Secretary of State has not discharged the burden of proof incumbent upon her and consequently the appeal falls to be allowed.

### **Notice of Decision**

The appeal is allowed.

No anonymity direction is made.

Signed

Date

Upper Tribunal Judge Allen