



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

Appeal Number: HU/00037/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 5 June 2017**

**Decision & Reasons Promulgated
On 27 July 2017**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**M I
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D O'Callaghan instructed by Duncan Lewis & Co
Solicitors

For the Respondent: Mr S Whitwell, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The appellant appeals with permission against the decision of the First-tier Tribunal on 27 October 2015 dismissing his appeal against the decision of the Secretary of State to remove him to Sierra Leone as a Sierra Leonean citizen and to refuse him further leave to remain in the United Kingdom on Article 8 grounds.
2. The Secretary of State now accepts that the appellant is a citizen of Nigeria, not Sierra Leone: if she seeks to remove him there, she will need to set fresh removal directions to Nigeria.
3. Matters have moved on since the refusal letter on 24 February 2017, in which the respondent maintained that the appellant was Sierra Leonean, did not accept that the Sierra Leonean authorities would refuse to issue a travel document, and did not accept that he was stateless on that basis. The respondent stated in her refusal letter that her investigations were continuing.
4. On 25 May 2017, the respondent made a further decision and Mr Whitwell applied for an adjournment of the present hearing, based on that decision. The further decision was made by Mr Chris Bailey at the Leeds Immigration Enforcement Centre. It reads as follows:

“It is acknowledged that you claim to be a Sierra Leone national. However, it is noted that you provided no evidence to support your claims apart from your claimed Sierra Leone birth certificate which has been confirmed as a false document. You have been interviewed by officials from the Sierra Leone Embassy on three occasions and they have advised that they do not accept you as one of their nationals. You have failed to demonstrate sufficient knowledge of Sierra Leone, your claimed country of origin and the Embassy officials have been unable to identify any record relating to you or any of your claimed family members. The Home Office have therefore been conducting enquiries into your true identity and nationality...”.

Pausing there, that is a plain statement that the Secretary of State no longer considers that this appellant is a citizen of Sierra Leone.

5. There are then two possibilities, either that he is stateless or that he is a citizen of somewhere else. The letter continues:

“Three visa applications have been identified relating to the holder of Nigerian passport C475681 [name given] born on 25 March 1982. The similarities to the name and date of birth you have submitted to the Home Office are highlighted. Furthermore, it has been identified that visa applications were made on the same dates of each application by various members of the Shittu family. It is noted that you were interviewed on 29 March 2017 during which you confirmed that you are friends with Akeem Shittu and remain in contact with him. You also confirmed that your bail surety, James Olubusola Agbonna is married to Kudiratu Shittu. Our records confirm that both Akeem Shittu and Kudiratu Shittu applied for visas to enter the United Kingdom on the same date as [the appellant] on at least two occasions each. Based on the similarities between your claimed identity, the aliases you have used with the details of the holder of Nigerian

passport C475681, in tandem with your clear links to members of the Shittu family who made visa applications at the same time as the holder of Nigerian passport C475681, it is believed that you are [MEI] born on 25 March 2982 in Benin City, Nigeria. As a consequence, your details will be updated to reflect this. Arrangements will now be put in place for you to be interviewed by officials from the Nigeria High Commission with the view of obtaining a travel document. You are urged to fully comply with this interview.”

The covering letter from Mr Whitwell sought an adjournment to obtain a travel document enabling the respondent to effect removal to the Federal Republic of Nigeria.

6. The letter continues:

“Given the procedural history of this appeal and also that the appellant’s nationality and the proposed place of removal are fundamental to the disposal of this appeal you may be of the view that the absence of a conclusion by the Nigerian High Commission will render the hearing of the 5 June otiose and not in the interests of any of the parties to proceed. It is on this basis that I respectfully apply for an adjournment of six weeks in order for such interview to be conducted and a response to be received from the Nigeria High Commission. Alternatively, I invite the Tribunal to consider whether such hearing on 5 June should be commuted into a pre-hearing review...”.

- 7.** With respect to Mr Whitwell, that letter misses the point which arises from the letter of 25 May 2017, which is that the removal directions and the refusal letter are premised on the appellant being a citizen of Sierra Leone, that the appellant’s defence has been that he has no such citizenship and that the respondent now accepts that he is not a citizen of Sierra Leone.
- 8.** If the respondent wishes to remove the appellant to Nigeria she will have to make a fresh decision on that basis and no such decision has yet been made.
- 9.** For that reason, I declined to adjourn the present appeal and I allow the appellant’s appeal against the Secretary of State’s decision to remove him to Sierra Leone.
- 10.** That does not grant him any Article 8 rights or status. If he now wishes to pursue those rights he will need to make an appropriate application and in the meantime, the Secretary of State will doubtless consider to where she might remove him and make an appropriate decision, should that be her intention.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. The decision has been set aside.

I re-make the decision in the appeal by allowing it.

Signed: **Judith A J C Gleeson**
Upper Tribunal Judge Gleeson

Date: 26 July 2017