



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/23424/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12<sup>th</sup> September 2018

Decision & Reasons Promulgated  
On 20 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR OLAJUWON JAMIU ODESANYA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Mannon, Counsel  
For the Respondent: Ms Wilcox-Briscoe, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Nigeria born on 29<sup>th</sup> May 1980. The Appellant had submitted an application and his application had been refused by Notice of Refusal dated 29<sup>th</sup> September 2016. The Appellant appealed the decision and the decision

came before Judge of the First-tier Tribunal Zahed sitting at Hatton Cross on 9<sup>th</sup> February. The basis of the Appellant's application was that he sought leave to remain on the basis of his family life as the spouse of a British citizen and that the Secretary of State had considered his application under Appendix FM and 276ADE of the Immigration Rules. It is important thereafter to recite paragraph 2 in its entirety of the First-tier Tribunal Judge's decision:

*"The respondent refused the appellant's application because she found that the appellant did not meet the suitability condition as he had been convicted of using a false instrument, namely an identity document that resulted in a sentence of six months imprisonment. The respondent found that the appellant's presence in the United Kingdom is not conducive to the public good and his criminal conduct makes it undesirable to allow the appellant to remain in the United Kingdom."*

2. Grounds of Appeal were lodged to the Upper Tribunal on 7<sup>th</sup> March 2018. Those grounds set out that the First-tier Tribunal Judge made a fatal error at paragraph 2 in that what the judge has done is mistakenly taken facts of another case and made definitive findings and that that is manifestly incorrect and wholly untrue. The Appellant has never been convicted of using any false instrument and never arrested. He has never been sentenced to six months' imprisonment and it is also submitted that he does not have a criminal record and there were no issues raised by the Respondent. Consequently the Grounds of Appeal submit that the First-tier Tribunal Judge has stepped into the role of the Respondent in making imaginary findings without affording to the Appellant's factual background. The issues mentioned here above were never required to be raised by the Respondent as the allegations are baseless and the issues considered were in fact a case of mistaken identity.
3. In addition the grounds contend that the First-tier Tribunal Judge contradicts himself at paragraph 3 and the First-tier Tribunal Judge has stated that the Respondent accepted the Appellant meets the suitability requirements whereas at paragraph 2 he states the opposite.
4. On 31<sup>st</sup> July 2018 Judge of the First-tier Tribunal Buchanan granted permission to appeal. Judge Buchanan noted that it was contended that the First-tier Tribunal Judge had taken facts from another case and considered the appeal on the basis of mistaken facts and that the judge had fundamentally erred in not following the guidance given under *Razgar* in determining proportionality.
5. It is on that basis the appeal comes before me to determine whether or not there is an error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Mannon. The Secretary of State by her Home Office Presenting Officer Ms Wilcox-Briscoe.
6. I am substantially helped in this matter by Ms Wilcox-Briscoe accepting that what is stated specifically at paragraph 2 of the decision is completely erroneous and has no bearing whatsoever in this case. She also contends and notes that there are in fact errors in the judge's decision at paragraph 3. In all the circumstances she acknowledges that such errors must go to the findings made by the Judge and that as

the Judge has recited completely inaccurately findings of fact – perhaps by cutting and pasting a paragraph from a different decision – that his decision has to be flawed and cannot stand up to anxious scrutiny.

### **Findings on Error of Law**

7. In such circumstances, and bearing in mind the concession made by Ms Wilcox-Briscoe, I do not even consider it necessary to hear submissions made by or on behalf of the Respondent through Mr Mannon. He merely endorses to me in any event that he would do no more than reiterate what Ms Wilcox-Briscoe has said. It is clear that the judge has got the facts completely wrong. He has made an overall unfair negative credibility finding on the basis of unfounded and untrue facts and the cumulative effect of those unreasonable negative findings result in an unsafe determination where he discredits the Appellant in all aspects of his claim without affording him any benefit of the doubt or following the lower standard of proof. This erroneous scrutiny of the whole facts in turn has been the main foundation of the First-tier Tribunal Judge's decision-making process.
8. Further the judge has fundamentally erred by not referring or following the guidance given under *Razgar*. In applying Article 8 there is a five stage test set out essentially used for proportionality and the judge has failed to give any or proper consideration of this.
9. In all the circumstances the decision is unsafe and I set aside the decision and give directions for the rehearing of this matter.

### **Decision**

The decision of the First-tier Tribunal Judge contains material errors of law and is set aside. The following directions are to apply:

- (1) On the finding that there are material errors of law in the decision of the First-tier Tribunal Judge the decision is set aside with none of the findings of fact to stand.
- (2) The matter is remitted to the First-tier Tribunal sitting at Taylor House on the first available date 28 days hence with an ELH of two hours.
- (3) That the remitted appeal is to be heard by any Judge of the First-tier Tribunal other than Immigration Judge Zahed.
- (4) That there be leave to either party to file and serve a bundle of such subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.
- (5) That the Appellant advises that he speaks English. In such circumstances no interpreter is required. In the event that the Appellant's solicitors consider that he does require an interpreter then they must notify the Tribunal of the language requirement within seven days of receipt of these directions.

No anonymity direction is made.

Signed

Date 20 September 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 20 September 2018

Deputy Upper Tribunal Judge D N Harris