



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/01017/2016
IA/01018/2016

THE IMMIGRATION ACTS

Heard at Field House
On 4 June 2018

Decision & Reasons Promulgated
On 18 June 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MR YAHKUB TIAMIYU (A1)
MRS RAILU LADIDI TIAMIYU (A2)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Al-Rashid, Counsel instructed by way of Direct Access
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant Mr Tiamiyu (A1) is a citizen of Nigeria. His date of birth is 11 March 1969. His dependent and wife, Mrs Railu Ladidi Tiamiyu (A2), is a citizen of Nigeria. Her date of birth is 16 April 1972.

2. The appellants made applications for indefinite leave to remain as Tier 1 (General) Migrants (and dependant) under the points-based system. Their applications were refused by the Secretary of State on 8 February 2016.
3. The appellants appealed. Their appeals were dismissed by Judge of the First-tier Tribunal A Kelly, in a decision promulgated on 21 September 2017, following a hearing on 12 June 2017 and 7 September 2017. Permission was granted to the appellants by First-tier Tribunal I D Boyes on 22 March 2018. The matter came before me on 4 June 2018 to determine whether Judge Kelly made an error of law.

The Decision of the First-tier Tribunal

4. On 12 June 2017, after the conclusion of the hearing it became apparent to the judge that she had an incomplete respondent's bundle (RB). The second part of the respondent's bundle (RB2) was received by the Tribunal on 16 June 2017. The Judge could have refused to admit the bundle, but instead she gave the appellant the opportunity to consider it and request a further hearing if desired. However, the direction she issued to the respondent to serve the bundle on the appellant, no later than 10 July 2017 was not complied with. She issued further directions listing the case on 7 September 2017 for 30 minutes in order to hear submissions. This hearing was attended by the represented appellants and the respondent. The appellants' representative, Mr Al-Rashid confirmed that a full respondent's bundle had been copied to him by the Tribunal in advance at the date of the hearing (see [6]).
5. The judge recorded that A1 in his application form signed on 14 June 2015 sought to rely on income during a twelvemonth period from 1 June 2014 to 31 May 2015. A1 claimed that during that period self-employed activity generated a turnover of £40,234.11. His evidence was that his income came from three different sources; namely, his work as a crane supervisor and slinger/signaller in the construction industry, Ahead Ray Services Ltd and as a private tutor to children.
6. It is his activity as a tutor which concerned the respondent. From this activity he claimed to earn £17,579, giving him a total income in excess of £40,000. He submitted client invoices, which according to the respondent were false. In respect of invoices from Mrs Oladipup-Azeez for private tutoring, the respondent believed that the invoices were unlikely to reflect genuine payments because Mrs Oladipup-Azeez was in receipt of destitution payments from Greenwich Council. The judge found that Mrs Oladipup-Azeez was receipt of destitution payments taking into account the appellant's own evidence that she had confirmed to him that this was the case. The judge found that it was unlikely that she would use destitution payments in order to pay for private tuition. She took into account that the invoices were for significant sums of money (see [10]).
7. The judge took into account invoices to an individual called Mrs Rashidata Hassan and invoices to Mrs Hassan's husband's company, I-Connect. The respondent's case was that A1 had not genuinely earned this income because Mrs Hassan's bank

statements, produced in support of her own immigration application, showed that A1 had made transfers of £7,600 into her account. In A1's interview he stated that he could not recall ever having made payments to her. He denied this when giving oral evidence at the hearing on 12 July 2017.

8. In RB2 was a copy of Mrs Hassan's bank statements which the respondent relied on to support payments into her account from A1. The judge recognised the importance of these and stated at [12] that she was "keen to ensure that the appellant was afforded the opportunity to view these bank statements and to make any further observations or submissions that he may wish to make". The hearing was resumed on 7 September 2017. The judge recorded at [12]:

"I offered the appellant the opportunity to give any further evidence that he may wish to give about his interactions with Mrs Hassan, or to make any further submissions about the bank statements. The appellant declined the opportunity to give further oral evidence at this hearing. However, Mr Al-Rashid made further submissions on the appellant's behalf."

9. The judge recorded that Mr Al-Rashid drew her attention to the fact that the payments into Mrs Hassan's bank account were made by A2 and not A1. Mr Al-Rashid explained to the judge that A1 had instructed him that Mrs Hassan was often unable to attend the group tutoring sessions. As a result, A2 would collect cash payments from all of other mothers who attended and that she would pay this cash into Mrs Hassan's bank account. A1 would subsequently invoice Mrs Hassan for the appropriate amount and Mrs Hassan would then transfer the sum in question to A1's bank account. This explained why there were payments from someone with the surname Tiamiyu going into Mrs Hassan's bank account. The judge accepted that the payments were made from A2's account, but rejected the explanation. The judge stated as follows:

"14. I have considered this explanation with care. However, for the following reasons I reject it. It is clear from Mrs Hassan's bank statements that the payments into her account from "Tiamiyu R" were online transactions. They were not cash deposits. I find it most unlikely that Mrs Tiamyu would collect the cash from the other mothers, then pay that cash into her own bank account, then transfer that amount to Mrs Hassan's bank account, only for Mrs Hassan to almost immediately transfer the amount back to Mrs Tiamyu's husband, the appellant. Surely, Mrs Tiamyu would simply hand over the cash to her husband, who could still provide Mrs Hassan with a written invoice for the benefit of their mutual record-keeping. I note that on some occasions (e.g. 6th May 2014 and 3rd July 2014), the deposit into the appellant's bank account from Mrs Hassan was made on the same day that money was deposited into her account from "Tiamiyu R". According to the appellant's explanation, it would mean that all of the aforementioned steps were undertaken in a single day. Again, this seems unlikely. Furthermore, having carefully studied the

various bank accounts, it is apparent that the sums deposited into Mrs Hassan's bank account do not always accord with the sums subsequently paid out to the appellant. For example, on 31st March 2014, a total of £800 was deposited into Mrs Hassan's bank account by "Tiamiyu R" (two separate transactions of £350 and £450). But on 2nd April 2014, only £350 was paid by Mrs Hassan to the appellant. On 5th June 2014, £700 was paid into Mrs Hassan's bank account by "Tiamyu R", but there is no corresponding payment into the appellant's bank account.

15. Having studied the appellant's own bank statements, I note a very large number of significant payments being made from both his personal and his business account into a bank account with the sort-code "[-]" and the account number "[-]". For example, on 1st May 2015, the appellant transferred £500 into this account. On 5th May 2015, the appellant made three separate internet deposits totalling £2300 into this account. On 11th May 2015, the appellant transferred £300 into the account. On 26th May 2015, the appellant made a further two online deposits totalling £400 into the account. Significant deposits were made from the appellant's accounts in to this account throughout 2014 and 2015. When the appellant was interviewed on 19th June 2015, I note from the hand-written transcript that he said that this bank account belonged to his wife. Yet the appellant also said that his wife was not involved in the running of his business. If this is the case, I find it highly unlikely that the appellant had any legitimate reason for paying such large and regular sums of money to his wife out of his business account as well as his personal account. On the evidence before me, I find that the appellant was paying significant sum of money into his wife's account on such a regular basis so that she could in turn pay the money to Mrs Hassan, and no doubt to other fictitious clients, so that they could in turn make online deposits into the appellant's bank account so that it would appear that he was generating a legitimate income from multiple clients. In short, I find that the appellant was recycling money as alleged by the respondent in order to deceive the authorities as to his income in an effort to secure a right to remain in this country.
16. I find that such a conclusion is supported by the appellant's failure to call Mrs Hassan as a witness in support of his appeal. When I raised this at the hearing on 7th September 2017, Mr Al-Rashid suggested that the appellant had been unaware that this issue would be raised at the hearing and so had not invited Mrs Hassan to attend. However, it was plain from the refusal letter that these transactions were one of the chief matters relied on by the respondent in concluding that the appellant had relied on deception. Yet Mrs Hassan was also absent from the hearing off 12th June 2017, as was Mrs Oladipup-Azeez. The appellant said in his evidence on 12th June 2017 that Mrs Hassan had her own immigration problems and was due to attend her own appeal hearing the following day.

17. I also find the appellant's explanation to be undermined by his failure to advance his explanation for these transactions at an earlier stage. Mr Al-Rashid submitted that the appellant had in fact explained the arrangement in his witness statement of 2nd May 2017 when he described how his wife would collect monies from the other mothers and convey these to Mrs Hassan. However, he did not explain that she paid the monies into her own bank account and then made an online transfer to Mrs Hassan who in turn made an online transfer to the appellant. He also failed to explain why the appellant was making such regular deposits from his personal and business bank accounts into his wife's bank account. Even in his oral evidence before me on 12th June 2017 he failed to mention these matters and he declined the opportunity to give further oral evidence before me on 7th September 2017.
18. The appellant stated in his interview that he was tutoring children in Key Stage 1, 2 and 3. This means that he would have had a detailed knowledge of the school syllabus that applies to children from the ages of 5 to 14. I find that the appellant has failed to satisfactorily explain or evidence how he acquired and maintained such extensive knowledge. He is not qualified as a teacher and, according to his application form, his degree was in environmental management. He said in his interview that he was a member of the Education and Training Foundation, and he produced an email dated 18th December 2014 confirming his renewed membership. However, I find that this email alone is insufficient to explain the above. Whilst the email details the services that are available to members, which includes "access to an online library of resources, publications and online support", it does not specify whether this library includes all that a private tutor would need to be in a position to teach students privately. Furthermore, the Education and Training Foundation is a body that primarily caters to those involved in post-16 education whereas the appellant claims to be tutoring children from ages 5 to 14. I am therefore not satisfied that the appellant's membership of this body is anything other than an attempt to gather evidence to support a dishonest immigration application.
19. In concluding that the appellant's claimed self-employed earnings were not genuine, the respondent also pointed to the vagueness of the answers given by the appellant during his interview. During the appeal hearing of 12th June 2017, the appellant appeared to accept that the summary of the interview provided in the reasons for refusal letter was accurate and that he had given the answers alleged. He agreed that he had been unable to provide answers to the questions asked but suggested that this was entirely reasonable given that he was being asked about figures he had submitted several years ago. He also provided a copy of the letter inviting him to attend the interview and pointed out that it made no mention of

the need to come armed with any particular documents or financial records and it gave no clue as to the matters that he was likely to be questioned about.

20. I accept that a person cannot be expected to recall the specific figures that have been detailed by him in a tax return or other official document that was completed a significant time ago. However, I find that in light of the questions asked, it would have been reasonable to expect the appellant to explain (as he now seeks to do) that the apparent discrepancies in the figures arose because in his immigration application he was citing gross earnings whereas the figures he had given to HMRC were net earnings.
21. On the totality of the evidence before me, I find that the appellant did use deception in his application and that the Secretary of State was fully justified in exercising her discretion to refuse the appellant's application in reliance upon the General Grounds for Refusal. I also find that his application was properly refused under paragraph 245CD(b) and (g). His wife's application as his dependent was therefore also properly refused."

The Grounds of Appeal

10. The grounds of appeal argue that there was procedural unfairness caused by the judge having admitted post-hearing evidence; namely RB2. There was unfairness in the judge directing the re-hearing for further submissions only and then discrediting A1 for not giving evidence or producing additional witness statements.
11. The judge erred in concluding that Mrs Oladipup-Azeez was in receipt of destitution payments. She misunderstood A1's evidence. The conclusion was not open to her. The judge speculated in concluding that A2 was involved in a conspiracy with A1. This was not based on the evidence nor the submissions of the Presenting Officer.
12. The judge improperly applied the burden of proof. She repeatedly referred to the absence of witnesses to corroborate A1's explanation. However, the burden of proof was on the respondent to prove the allegation of deception.
13. The judge confused instructions from the appellant to his representative with evidence. At [13] the judge stated that A1 had instructed his representative about Mrs Hassan's non-attendance at the meetings whereas this is documented in his witness statement at [16]. The judge contradicted herself at [13] where she stated that A2 would pay cash into Mrs Hassan's bank account and then at [14] she recorded that A2 put the cash into her own account and then transferred the money into Mrs Hassan's bank account.
14. The conclusion of the judge at [14] is speculative.

15. The judge did not properly take into account that the alleged deception related to a previous successful application made by A1 in 2013 which resulted in the grant of leave.

Conclusions

16. The appellant's representative confirmed that a full respondent's bundle had been copied to him by the Tribunal in advance of the date of hearing. The respondent's case was that A1 made payments into Mrs Hassan's account. Her bank statements according to the respondent showed that A1 made significant transfers of funds into her account. It was the respondent's case from the start that A1 had made payments to Mrs Hassan and that he was merely recycling money to inflate his earnings. A1 denied this. At the hearing A1 gave evidence and continued to deny this. In his statement he said that A2 had made payments into Mrs Hassan's account and gave an explanation. The evidence in RB2 contained Mrs Hassan's bank statements which supported the payments having been made by A2. They show payments to Mrs Hassan's account from what later transpired to be A2's bank account and not A1's. A1 stated in his witness statement that A2 made payments into Mrs Hassan's account. The judge engaged with the evidence in A1's witness statement (see [14]).
17. Mr Al-Rashid's argument that there was unfairness because the judge listed the case for submissions and therefore the appellants were prevented from submitting further evidence has no substance. It was open to the appellants to submit further witness statements engaging with RB2 and specifically Mrs Hassan's statements and the reasons why payments had been made by A2 into her account. In addition they had the opportunity to give oral evidence. They were represented and could have made an application following the directions. Mr Al-Rashid did not properly identify any material evidence on which the appellants wanted to rely, but were prevented from so doing following the judge's directions. There was nothing preventing the appellants from providing further evidence to support their appeals.
18. Whether payments were made to Mrs Hassan from the account of A1 or A2, the issues were clear from the start and it was always open to the appellants to produce witness statements from Mrs Hassan or others to support their case. I note that A2 did not produce a witness statement throughout these proceedings. The case evolved because of the late disclosure of RB2 and Mrs Hassan's bank statement, but fundamentally the issues remained the same. The respondent's case was always that A1 had artificially generated an income from clients and that payments had been made into Mrs Hassan's account. Whether these were from A1 or A2 was not material. The judge accepted that the payments were made from A2's account but was entitled to reject A1's explanation about this. The judge was entitled to conclude that A1's explanation was undermined by his failure to advance an explanation (see [17]). His evidence was that payments were made from A2's account to Mrs Hassan which the judge took into account. However, the full account relied on was given by his advocate at the resumed hearing and was not evidence. In any event, the judge considered what was said by the advocate and rejected it. She did not find the

explanation to be credible for the reason she gave at [14]. The findings are grounded in the evidence and adequately reasoned.

19. The grounds assert that the judge speculated that A2 was involved in a conspiracy with A1. It is argued that this was not based on the evidence and it was not an issue raised by the Presenting Officer. There is no substance in this. The judge was entitled to conclude that A2 was aware of the deception; particularly in the light of the absence of evidence from her and payments having been made from her account. It was a reasonable inference to draw from A1's own evidence and should have been reasonably anticipated by those representing the appellants. It has not been explained why A2 did not produce a witness statement or give evidence.
20. The judge recorded at [10] that

“Although no evidence of the destitution payments to Mrs Oladipup-Azeez was provided, the [first] appellant himself accepted that she was in receipt of destitution payments. His evidence according to the Judge was that he had spoken to Mrs Oladipup-Azeez following the refusal of his application and that she confirmed that she was in receipt of destitution payments. The refusal of his application and she had confirmed to him that this was the case”.

Mr Al-Rashid's submission was that he did not believe that A1 had given such evidence. The appellants have not at any time asked for a copy of the Record of Proceedings and Mr Al-Rashid did not produce a copy of his notes or seek to obtain the presenting officer's notes. Once I read to the parties at the hearing before me what was recorded by the judge in the Record of Proceedings, Mr Al-Rashid withdrew this ground. However, he effectively sought to argue a new ground that it was not open to the judge to conclude that the invoices were not genuine simply because Mrs Oladipup-Azeez was in receipt of destitution payments. This is misconceived. The judge was entitled to find that Mrs Oladipup-Azeez was in receipt of destitution payments. The judge drew reasonable inferences from the evidence.

21. It is argued that the judge did not properly apply the burden of proof. The judge said at [9] that when considering deception, where dishonesty is alleged the more serious the allegation the more cogent the evidence must be. At [21] the judge concluded that on the totality of the evidence before her, A1 used deception. I am satisfied that the judge was aware that the burden was on the respondent in this case. There is no reference to the burden being on the appellants at any point in the decision. The evidence against A1 was in my view overwhelming and wherever the burden lay it is difficult to see how the appellants could have been successful in this case. A1's explanation about the transfer of funds and the running of his business was at best wholly unsupported and lacking in credibility.
22. I reject the submissions made by Mr Al-Rashid that the evidence had previously been accepted by the respondents when they were leave as Tier 1 (General) Migrants in 2013. It is not clear to me what evidence was at that time before the decision maker.

Mr Al-Rashid was not able to identify this. The matters now relied on by the respondent came to light when the third parties involved in the transfer of funds made applications to the home office. It is unarguable that the case as now presented by the appellant has been accepted in the past by the respondent.

23. The remaining issues raised in the grounds but they are wholly without substance and amount to disagreements with the findings of the judge and an attempt to reargue the case. The judge did not find that this was a genuine business. In my view A1's account of the running of the business was so far-fetched as to be incapable of belief. The grounds focus in the main on peripheral matters of little consequence. The judge did not accept the evidence advanced by A1 to explain the complex web of bank transfers and deposits into and transfers out of various bank accounts. The account given by A1 was wholly unsupported. The inevitable conclusion was that he had used deception and the business was not genuine. There was no unfairness. The findings were open to the judge and adequately reasoned.
24. A1 cannot meet the Rules. His case was dismissed under paragraph 322(5). A2's appeal was dismissed because A1 did not meet the requirements of the Rules and she is his dependant. There has been no unfairness.
25. There is no error of law in the decision of First-tier Tribunal Judge Kelly dismiss the appellants' appeals under the Immigration Rules is maintained.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

Signed *Joanna McWilliam*

Date 14 June 2018

Upper Tribunal Judge McWilliam