



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

Appeal Number: HU/23300/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 20 November 2019**

**Decision & Reasons
Promulgated
On 22 November 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**MS EHS PATIENCE ENEBATOR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Slatter, counsel instructed by Victory at Law Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge NM Paul, promulgated on 22 July 2019. Permission to appeal was granted by Upper Tribunal Judge Mandalia on 16 October 2019.

Anonymity

2. No direction has been made previously, and there is no reason for one now

Background

3. The appellant first entered the United Kingdom on 16 June 1996 and applied for asylum. She married an EEA national in 1999 and was issued an EEA residence card in the name of Patience Osas Ereyi. She made applications for leave to remain in the United Kingdom outside the Rules in 2012 and 2013 in her current identity, both of which were refused with no right of appeal. On 14 December 2017, the appellant made a further application and it is the refusal of this application which is the subject of this appeal. The substance of this application was that the appellant met the requirements of paragraph 276ADE(1)(iii) of the Rules, that is that she had lived in the United Kingdom continuously for at least 20 years.
4. In refusing the appellant's application, by way of a decision dated 20 October 2018, the respondent rejected her claimed evidence, stating that she had failed to provide sufficient evidence of her residence for the years 1996 to 2001 inclusive. The respondent did not accept that there would be very significant obstacles to the appellant's integration as she had resided in Nigeria up until the age of 30 and would have retained knowledge of the life, language and culture. There were said to be no exceptional circumstances which would warrant a grant of leave to remain outside the Rules.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the appellant gave evidence that she had returned to Nigeria in 2002. The judge found there was a dearth of material prior to 2001 to demonstrate that the appellant was in the United Kingdom, that a document provided by the appellant was a forgery and that she had not demonstrated that she was continuously present in the UK for 20 years prior to her application. The judge was also concerned by the fact that the appellant made an EEA application in another identity.

The grounds of appeal

6. The grounds of appeal argued that the judge failed to give adequate reasons for rejecting the appellant's claim to have been living in the United Kingdom from 1996 until 2001. Furthermore, the judge had found a document to be a forgery, despite the respondent making no such allegation and no notice was given to the parties of the judge's concerns. Secondly, it was argued that the judge's reasons did not explain why the remainder of the appellant's evidence during the period in issue was rejected.
7. Permission to appeal was granted on the basis sought, with the judge granting permission commenting that the Tribunal may need to consider whether any error is material in view of the appellant's acceptance that she visited Nigeria on three occasions during 2002 and was therefore absent from the United Kingdom.
8. The respondent did not file a Rule 24 response.

The hearing

9. Mr Slatter relied on the grounds of appeal and the grant of permission. He also made the following points. The errors could be summarised as inadequate reasons, procedural unfairness and irrationality. There had been a failure both by the respondent and the judge to take into account documents presented which covered the period from 1996 to 2001. The respondent did not allege forgery and therefore had the judge raised his concerns about the document at page 115 of the appellant's bundle, these could have been addressed with the provision of further evidence. As for the materiality of any errors, Mr Slatter argued that the appellant had leave to remain when she left the United Kingdom on three occasions, by way of an EEA residence card issued to her in another identity. When asked if this met the requirements of paragraph 276A(a) of the Rules, he argued that the point had not been taken by the respondent. At this point I reminded Mr Slatter that the judge granting permission had raised the issue of the materiality of any error in view of the appellant's absence from the United Kingdom. Mr Slatter relied on paragraph 5 of the Immigration Rules, stating that the Rules did not apply because the appellant was entitled to enter or remain in the United Kingdom by virtue of the Immigration (European Economic Area) Regulations 2016. He further argued that the appellant met the requirement of Rule 276A(a)(iii) because she had a right to reside in the United Kingdom and a reasonable expectation to lawfully return. Mr Slatter clarified that the primary point of the appeal had been long residence, with some reliance on 276ADE(1) (vi).
10. Mr Whitwell argued that the judge had provided adequate reasons for his findings. As for the fairness issue, he argued that the judge provided cogent reasons for his concerns as to the document in issue and he was not expected to flag up his concerns at the hearing in order for the matter to be adjourned for further evidence. Mr Whitwell contended that there had been no failure to refer to the evidence and that there was no materiality in any event because of the appellant's three return trips to Nigeria. He described Mr Slatter's argument that the appellant could have lawful leave in a false identity as an oxymoron. The appellant failed to satisfy two parts of Rule 276A (a)(iii) because her leave was in a false identity and it could not be said that she would have a reasonable expectation of returning to the United Kingdom using an alias.
11. In response, Mr Slatter argued that it was wrong to say that the judge reached adverse credibility findings, the only criticism being of the appellant's frank and prejudicial admission that she went to Nigeria. As for the procedural unfairness point, the document at page 115 was in issue at the hearing and the judge needed to consider obvious points, including that the date on the letter was wrong. Mr Slatter, who represented the appellant before the First-tier Tribunal confirmed that he had made submissions to the effect that there was a mistake with the date on this letter. He accepted that the judge had noted a number of the documents in issue, however he had not dealt with them or explained why they did not demonstrate the appellant's presence in the United Kingdom.
12. At the end of the hearing, I announced that the First-tier Tribunal Judge made no material errors of law. I give my reasons below.

Decision on error of law

13. The first issue raised in the grounds is the unfairness of the judge rejecting a document which purported to show that the appellant was residing in the United Kingdom as of 7 February 2001. The document was said to be evidence of a commission payment to Patience Ereyi, a false identity used by the appellant at the time.
14. The judge found that the commission document was a forgery, created by cut and pasting, because the body of the document gave a date of 3 February 2007 for the date on which the commission payment would be credited to the bank account. As was clear from Mr Slatter's submissions to the Upper Tribunal, the inconsistency with the dates was a matter which he addressed before the First-tier Tribunal. Therefore, it is wrong to suggest that the judge alighted upon the inconsistent dates after the hearing and prevented the appellant from being able to address the matter. On the contrary, as the differing dates was an obvious issue, the onus was on the appellant to provide any further evidence to the First-tier Tribunal to support the submission that it was a simple mistake by the author. There was no unfairness to the appellant in the judge's approach. While the judge used robust language in referring to the document, he was entitled to conclude that the letter represented a "*significant and serious attempt to mislead the Tribunal.*"
15. Addressing the judge's treatment of the evidence relating to the period from 1996 to 2001, it is apparent from [5], that the judge had considered this and indeed he lists every document. In addition, from [7] onwards, the judge sets out the appellant's evidence which includes further descriptions of the relevant evidence. By contrast, there were scores of documents which covered the years 2002 onwards in the appellant's bundle of over 360 pages and, indeed, those years of residence were accepted by the respondent. Accordingly, the judge's description of a dearth of evidence, other than in relation to the asylum application was not entirely inaccurate. The term dearth does not mean there was no evidence at all, but that what there was, was scarce or inadequate and in the case of the document at page 115, unreliable.
16. Even had the judge made errors of law in his assessment of the evidence in this case, they would have been immaterial for the following reasons.
17. Paragraph 276A(a) sets out the definition of "continuous" for the purposes of the Rules relating to long residence.
 - (a) "*continuous residence*" means residence in the United Kingdom for an unbroken period, and for these purposes a period shall not be considered to have been broken where an applicant is absent from the United Kingdom for a period of 6 months or less at any one time, provided that the applicant in question has existing limited leave to enter or remain upon their departure and return, but shall be considered to have been broken if the applicant:
 - (i) has been removed under Schedule 2 of the 1971 Act, section 10 of the 1999 Act, has been deported or has left the United Kingdom having been refused leave to enter or remain here; or
 - (ii) has left the United Kingdom and, on doing so, evidenced a clear intention not to return; or

(iii) left the United Kingdom in circumstances in which he could have had no reasonable expectation at the time of leaving that he would lawfully be able to return; or

18. Paragraph 5 of the Immigration Rules states as follows;

5. Save where expressly indicated, these Rules do not apply to those persons who are entitled to enter or remain in the United Kingdom by virtue of the provisions of the Immigration (European Economic Area) Regulations 2016. But any person who is not entitled to rely on the provisions of those Regulations is covered by these Rules.

19. I accept the submission that paragraph 5 of the Rules has application where a person is entitled to rely on the Regulations. That has not been established in this case.

20. It was the appellant's oral evidence that she was using three identities during the 1996-2001 period. In addition to her own identity which she used to apply for asylum (with a year of birth of 1965), she was issued with an EEA residence card in the name of Patience Osas Ereyi (born in 1963) and was also using the name Mrs O Lakhezwoum for other purposes. This was not just a matter of the appellant lawfully changing her name, but by the use of a different date of birth, of inventing or adopting an alternative identity. In these circumstances, I do not accept that she was a person who was entitled to rely on the provisions of the Regulations. Therefore, the Immigration Rules apply.

21. The appellant admits leaving the United Kingdom on three occasions during the time when she was issued with an EEA residence card. Owing to her use of a false identity, I find that the appellant could have had no reasonable expectation that she would lawfully be able to return to the United Kingdom and she therefore cannot meet the requirements of paragraph 276A(a)(iii) of the Rules. It follows that the requirements of 276ADE(1)(iii) are not met. There is no challenge to the judge's findings in relation to paragraph 276ADE(1)(vi) at [22] *"the appellant's history is so opaque as to mean there is a strong possibility that she may have been travelling backwards and forwards between Nigeria and the UK, and maintained close connections with the country."*

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is upheld.

No anonymity direction is made.

Signed

Date 21 November 2019

Upper Tribunal Judge Kamara