



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

Appeal Number: HU/00014/2020 (V)

THE IMMIGRATION ACTS

**Heard at Field House by Skype
On 14 April 2021**

**Decision & Reason Promulgated
On 14 May 2021**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE KEBEDE**

Between

ALDJOURMA SERGE MARIUS DIALLOKA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Applicant: Ms F. Shaw, instructed by Kamberley Solicitors.

For the Respondent: Mr S. Kotas, Home Office Presenting Officer

DECISION AND REMITTAL

1. The appellant claims to be a national of the Ivory Coast called Aldjoumas Serge Marius Diallonka. That is the name he used in making the application which is the subject of this appeal. He applied to the Home Office for indefinite leave to remain on the basis of what he claimed was twenty years residence unlawfully in the United Kingdom. He has never claimed to have been resident in the United Kingdom lawfully.
2. The documentation which he provided in order to support his claim was not in the name that we have just given. It was instead in the name of Serge Patrick Soro Gogbe, a person said to be a national of France. The

Secretary of State dealt briefly, even brusquely, with his application pointing out that the documents supposed to support it were documents in a different name and the Secretary of State did not accept that they were in truth documents which belonged to the person who was making the application. In line with that view, the Secretary of State also treated very briefly the evidence said to establish that the appellant had a child in the United Kingdom for which he was responsible.

3. Following the refusal of the appellant's claim there was an appeal to the First-tier Tribunal which was heard and determined by Judge Pooler. Judge Pooler dismissed the appeal because he was not persuaded on the evidence before him that Serge Dogbe and the appellant were the same person. Permission to appeal was refused by the First-tier Tribunal and by this Tribunal. There was then a challenge by means of Cart proceedings in the High Court and the Upper Tribunal's refusal of permission was set aside. Permission was subsequently granted by the Vice President with reference to the remarks made in granting permission judicially reviewed in the High Court.
4. The matter now comes before us to determine whether the judge erred in law in making his findings on the evidence that was before him. Despite Mr Kotas' valiant attempt to defend the judge's decision, we are entirely satisfied that for a number of reasons it was not an adequate treatment of that evidence. We can well understand, and we shall refer again to this point, that the judge was troubled by the appellant's assertion that he had essentially managed to secure twenty years lawful residence by a series of frauds and illegalities. Nevertheless, the material that was before the judge needed to be treated in rather more detail than was done.
5. The four essential items of evidence before the judge were as follows. First, there was the appellant's own oral evidence that he was the person who was Serge Gogbe. That was the subject of very brief cross-examination by the respondent: the Presenting Officer put the respondent's view and asked a few questions about the appellant's acquisition of an Ivorian passport in 2016 and the employment that he had given for that passport (which was the employment which he had had all those years ago before leaving the Ivory Coast as he said). There was rather surprisingly at that stage very little investigation with the appellant of his life as portrayed by the documents that he had produced; there was for example no enquiry into the sort of work that he did at the places where Serge Gogbe was said to have worked; there was no detailed enquiry into what the various documents presented in terms of incidents of life which the appellant might have been able to tell the judge about or might have been claimed to be able to tell the judge about; there was no enquiry of that sort at all.
6. The second source of evidence was from the appellant's partner and mother of his child, and the Birth Certificate was exhibited. The Birth Certificate itself is an interesting document because the father's name is given in it as Serge Patrick Soro Gogbe; the mother's name is given in full

(she was referred to in the trial as Ms Bodji): but the name of the child is a name which takes elements both from her and from the appellant's name Gogbe, but also from the name which he claims is his real name, Diallonka, which is one of the child's given names. Ms Bodji herself said that she had known the appellant as Serge Gogbe from 2006 when she first met him until 2018 when she knew his true name. That evidence was not the subject of any cross-examination; the judge took it, therefore, that it was unchallenged by the respondent. That is, there was unchallenged evidence before him that the appellant, who was in court, and was no doubt identified by Ms Bodji in the course of her oral evidence, was a person whom she had known as Serge Gogbe.

7. The third source of evidence was a person who Ms Shaw has referred to as Ms Solange but is referred to in the judgment as Ms Aoussi. She did not know the appellant under his assumed name, but only under his real name.
8. The fourth source of evidence was the bundle of documents which were said to show that Mr Gogbe had sufficiently continued his presence in the United Kingdom to establish the twenty years' presence. That was documentation going chiefly to employment. There were a number of odd features about the employment record, including, in particular, a number of P60s which misspelled the name of the employer and gave an address for the employee which is obviously not an address: but that was the bundle of documents which was available and if they related to the appellant it is said that that bundle of documents is sufficient to show the twenty years presence.
9. The judge's decision refers to Ms Bodji's evidence but not in any detail to the Birth Certificate and the features to which we have referred. It refers to Ms Aoussi's evidence. So far as the appellant's evidence is concerned it merely indicates that the respondent put the case that the respondent did not believe that the appellant had the identity claimed. The documentary evidence is not dealt with in detail. So far as that last point is concerned, we can well understand that as the judge took the view that as he was not persuaded that Mr Gogbe and Mr Diallonka were the same person, there was no particular reason to go into the employment details of Mr Gogbe: but the challenge made by Ms Shaw on behalf of the appellant is that the judge's conclusion that the appellant was not Mr Gogbe is really not consistent with the evidence before her. Yes, as the judge pointed out, it is odd, and there was no direct explanation of why, the appellant had been known to Ms Bodji as Mr Gogbe but not to Ms Aoussi. The judge rightly reminded himself not to speculate; but in failing to speculate on that it does look with the greatest respect as though he lost track of the fact that one intimate friend of the appellant had known him as Mr Gogbe, and was not challenged as having known him as Mr Gogbe for a period of twelve years out of the twenty. That meant that the judge needed to deal with how Ms Bodji had been so mistaken in thinking when she was dealing with Mr Gogbe that she was dealing with the appellant, when in fact on the respondent's case she must have been dealing with someone else

altogether. There may be explanations for that; it may be that Ms Bodji was not as frank and accurate a witness as the Secretary of State appeared to assume. We do not know, and we will not speculate on that either, but it is clear to us that the judge's decision as a whole failed to take proper account of the evidence which he does set out in it as motivating it, and for that reason we regard it as incapable of standing as a proper determination of this appeal. We shall therefore set it aside for error of law.

10. Ms Shaw has been perfectly clear that she seeks a rehearing before a judge who will (as she was content to accept as a suggestion) take into account all the evidence.
11. We said earlier that we would refer to the appellant's claimed history. There is no doubt at all that anybody dealing with this case is bound to regard it as distasteful that the appellant is able to claim his own fraud and his own criminal conduct over a very long period of time supported by evidence of work that he was not entitled ever to undertake and employment that was obtained by him giving false identity to his employer; and to be rewarded for that. It would, however, be particularly unfortunate if his claim to have committed the fraud was itself fraudulent. Ms Shaw's case of course is that the fraud is limited to the appellant's conduct over a long period of time, not to his conduct in court, but one can see that in a case of this sort it is necessary to be particularly careful that a person is not, as it were, pulling the wool over two sets of eyes. It is perhaps surprising that the cross-examination was not more rigorous or that the examination of the documents was not more rigorous: it is not clear for example that any reference was made by the Secretary of State to the alleged employer and so on. But that is a matter for the parties to deal with in due course.
12. Our decision is that the decision of Judge Pooler is set aside for error of law, and we remit the appeal to be reheard afresh before a different judge in the First-tier Tribunal.

C.M.G. Ockelton

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 5 May 2021