



**First-tier Tribunal
(Immigration and Asylum Chamber)**
00479

Linked Appeal Numbers: UI-2021-

HU/05724/2020

THE IMMIGRATION ACTS

**Heard at Taylor House
On 14 July 2022**

**Decision & Reasons Promulgated
On 9 September 2022**

Before

**UPPER TRIBUNAL JUDGE BLUM
DEPUTY UPPER TRIBUNAL JUDGE MONSON**

Between

**GANIYU OLATUBOSUN OLOWU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rajiv Sharma, Counsel instructed by Yaqub & Co
Immigration Services

For the Respondent: Mr Chris Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Lucas promulgated on 3 June 2021, by which she dismissed the appellant's appeal against the respondent's refusal on 14 April 2020 to refuse his human rights claim made on 5 November 2019.

Relevant Background

2. In his application form, the appellant claimed to have resided in the United Kingdom continuously since entering the UK on 1 May 1998, having previously resided in Nigeria since his birth on 20 July 1976.
3. Shortly after the online application had been submitted on 5 November 2019, Yaqub & Co wrote to UKVI to say that the appellant had entered the UK on 10 September 1999, when he was 15 years old, on a visit visa. In his asylum interview, he had stated that he was unsure of the date he had entered the UK, and recently this was clarified when his sister, Gainat, found a copy of his passport during a recent clear-out when renovating her house.
4. In the reasons for refusal dated 16 April 2020, the respondent asserted that the appellant had failed to show that he had resided in the UK continuously for a period of 20 years prior to the date of application.
5. It was noted that in his asylum application of 25 January 2011, he claimed to have travelled from Lagos to Paris in March 1999 with a friend who arranged a false passport for him, and that he remained in Paris for two months and then travelled by ferry to the UK later in 1999, and was granted leave to enter as a visitor. Also, he said that he had never had his own national passport, but that since being in the UK he had paid £800 to obtain a false passport and a national insurance number in the name of Olumide Olatunde Ayodole. He was arrested by police on 21 January 2011 in his claimed alias for seeking employment with a false passport and national insurance number. At this point he claimed asylum.
6. The respondent also noted that the appellant had re-iterated that he had entered the UK in 1999 in his Article 8 application of 3 January 2013.
7. He now claimed that he had entered the UK at the age of 15, and had provided an entry clearance stamp in a passport dated 10 September 1991. It was considered that it was highly unlikely that he would not have known before that he had entered the UK as a minor. Although he had provided a passport with a stamp, it was known that he had used fraudulent identity documents and had previously used these to obtain work in the UK.
8. Furthermore, he claimed that he was unable to obtain a new passport to verify his identity. However, now that he had possession of what he claimed was his previous passport, this should enable him to obtain a new passport.

The Hearing in the First-tier Tribunal

9. The appellant's appeal came before Judge Lucas sitting at Taylor House on 17 May 2021. Both parties were legally represented. The Judge received oral evidence from the appellant and his sister, Gainat Olusola Olowu. She adopted as her evidence in chief an undated statement in which she said that she had been supporting her brother since he arrived in the UK in September 1991, when her parents wanted him to stay in the UK. As a result of a disagreement, he had moved out of her house in 1999. But since then, they had put their differences to the side.
10. Although not mentioned in her statement, Gainat Olowu said in her oral evidence that she had found a copy of the appellant's passport with an entry stamp of September 1991.

The Decision of the First-tier Tribunal

11. In her findings of fact, the Judge said that she did not consider the appellant to be a reliable witness or a witness of truth.
12. At paragraph [53] she observed that the appellant claimed to have a valid birth certificate and to have held a passport. Yet he still maintained that he had been unable to obtain a new passport. There was no evidence that he had made any such attempt at the Nigerian High Commission in London: *"It is fair to conclude that his precise identity is, at best, at large."*
13. The Judge continued in paragraph [54]:

The Tribunal places no weight at all upon the latterly discovered copy of his 'original' passport that is said to show that he entered the UK in 1991. A copy of this passport is said to have been discovered by his sister. She makes no mention of this rather important fact in her witness statement. If there is a genuine passport that bears this stamp of date of entry, the Tribunal concludes that it is either not genuine or that the passport belongs to someone else. It is of no weight within the context of an immigration history that has been characterised by multiple false aliases and inconsistent dates of entry into the UK.
14. At paragraph [58], the Judge said:

The appellant has provided little or no evidence to show that he resided in the UK prior to 2007. He states that he lived with his sister until 1999. He then states that he was destitute. That did not prevent him from moving to the Plymouth area and obtaining a false national insurance number in a false name. He, on the one hand, claims to have been destitute prior to 2007 and on the other, in his witness statement, states that he was destitute for one and a half years. It makes no sense."
15. At paragraph [61], the Judge returned to the question of the recently produced passport:

His evidence is fundamentally unreliable and it is concluded that he has quite deliberately concealed his identity in the UK in order to

maintain his illegal presence here. It is certainly not accepted at all that he has been continuously present in the UK since 1991. The passport stamp is not indicative of anything other than its presence on a passport. It is unsurprising that the respondent has not sought to verify it.”

16. The Judge continued in paragraph [62]:

The Tribunal places no or little weight upon the evidence of the appellant’s sister or his supporting witnesses. None of these witnesses are independent of him, and no reliance is placed on the assertion that he has been in the UK since 1991.

The Grounds of Appeal to the Upper Tribunal

17. Mr Sharma, who appeared below, pleaded the appellant’s grounds of appeal to the Upper Tribunal. He pleaded that the decision of the First-tier Tribunal was vitiated by a material error of law, in that the Judge had failed to assess the evidence given by the appellant’s sister. The Judge made a finding that the appellant was not a reliable witness or a witness of truth, but no such findings had been made in relation to his sister. Her evidence could not simply be ignored because she was considered not to be independent. Further rational reasons would be required.

18. Mr Sharma also raised what he characterised as a procedural point. This was that, during the course of the video hearing - during closing submissions - the appellant was disconnected from the online link. He referred to an email that he had sent to the Judge and Ms McKenzie of the respondent immediately after the hearing, stating that he had received a message at 13:06 from his lay client and Instructing Solicitor, that they had “*lost power*”. The hearing had finished at 13:14, and so he did not think they had missed much, as he had a record of the submissions.

19. Mr Sharma submitted that it was a matter for the Upper Tribunal whether such a procedural error could make the determination unsafe “*notwithstanding the contention on behalf of the appellant that the appellant was content despite having missed part of the hearing.*”

The Initial Refusal of Permission

20. Permission to appeal was refused by First-tier Tribunal Judge Saffer on 7 September 2021. He said that Ground 1 disclosed no arguable error of law as the Judge was entitled to make the findings she did regarding the appellant’s sister in paragraph [62]. The Grounds were nothing more than a disagreement with those findings. There was nothing in Ground 2, as Counsel’s own email straight after the hearing said: “*I think they did not miss much as I have a record of the submissions.*” The proceedings were recorded and could be accessed, and there was no indication in what way, if any, the Judge acted unfairly or would have been assisted by the appellant hearing what he had missed.

The Renewed Application for Permission

21. In a renewed application for permission to appeal to the Upper Tribunal, Mr Sharma said, with reference to Ground 1, that part of the argument was that no findings were made in relation to the credibility of the appellant's sister on which the credibility of the document in question hinged. It was not open to the First-tier Tribunal Judge to make no findings on a material issue.
22. As to the procedural point, he acknowledged that there was merit in Judge Saffer's observation concerning the content of the email that he had sent. However, since that email, it had become apparent that the appellant had missed much more of the submissions than was previously understood.

The Reasons for the Eventual Grant of Permission to Appeal

23. On 29 December 2021, Upper Tribunal Judge O'Callaghan granted permission to appeal as Ground 1 was arguable and Ground 2 raised an issue of fairness. He granted permission for the appellant to rely upon this ground, subject to the appellant complying with a direction that both he and his instructing solicitor file and serve witness statements addressing the loss of remote contact with the Tribunal at the hearing on 17 May 2021, and detailing the efforts made to contact Counsel at the hearing centre, no later than 14 days before the listed hearing in the Upper Tribunal.

The further evidence provided pursuant to the direction of the Upper Tribunal

24. Pursuant to the direction which accompanied the grant of permission to appeal, both the appellants and Ms Samia Yaqub made signed witness statements. In her statement Ms Yaqub said that she and the appellant had joined the hearing remotely from her office in Slough. The remote connection to the hearing was lost when the appellant's sister was called to give evidence. Several attempts were made to reconnect to the hearing, with no success. She and the appellant were thus unable to hear the witness's evidence, and the final submissions from Counsel and the Home Office Presenting Officer.
25. In his statement, the appellant said that by the time the connection was eventually restored, the hearing had finished. He did not hear any of the evidence that his sister had submitted. This was very important, as the passport that she had found was critical proof of his residence in the UK. He was not given a fair chance to make any further comments in relation to the evidence that she had provided to the Tribunal. It was not fair justice, as the Judge did not hear any further comments that he might have wished to make. Also, he did not hear what the Barrister or the Home Office concluded at the end. Again, if he did not agree with any of this, he was unable to provide comments, and he felt that this was unfair, and that his case should be heard again so that all the evidence could be considered by the Judge before making a fair and balanced decision.

The Hearing in the Upper Tribunal

26. At the hearing before us, we invited Mr Sharma to develop Ground 2 first before proceeding to Ground 1.
27. Mr Sharma was at pains to stress that there was only one ground of appeal, and that what Judge O'Callaghan characterised as the second ground of appeal had simply been an observation. Nonetheless, fairness required that the appellant should have been able to see and hear all the evidence given, and if the connection had not been lost it would have been open to the appellant to provide him with further instructions before he made his closing submissions. His ability to give further evidence was not the focus. The issue was his inability to comment on his sister's evidence. Mr Sharma agreed that the appellant had not identified anything in his witness statement on which he would have wished to comment, had he had the opportunity to do so at the hearing.
28. As to the first, and principal, ground of appeal, Mr Sharma adopted the grounds of appeal that he had pleaded, and reiterated his submission that the sister's lack of independence did not constitute a sufficient reason for giving no weight to her evidence.
29. On behalf of the respondent, Mr Avery adopted the same line as had been taken by Judge Saffer when refusing permission to appeal. He also drew our attention to the fact that there was an embarkation stamp in the passport which, in the clearer copy that he showed to us, appeared to bear a date in October 1991, whereas the arrival stamp was clearly dated 10 September 1991. Thus, he submitted, even if the passport was treated as belonging to the appellant, it did not show that he had continuously resided in the UK from a date of entry on 10 September 1991.
30. Mr Avery also drew our attention to the fact that the passport had been renewed in 1995, and he submitted that the stamp on the renewal indicated that the passport had been renewed in Nigeria.
31. Mr Sharma accepted our invitation to go outside to take instructions from his lay client on the matters raised by Mr Avery. After a brief adjournment, Mr Sharma and the appellant came back into the courtroom and Mr Sharma announced that he had four points to make. Firstly, it was the appellant's case that the exit stamp related to his exit from the UK in 1984. We pointed out to Mr Sharma that this was impossible, as the passport had not been issued until 25 January 1990. Mr Sharma responded by saying that his client's second and alternative case was that the date of the exit stamp was unclear. Thirdly, while the appellant accepted that the passport had been renewed in 1995, it was not accepted that this renewal had taken place in Nigeria. He also disclaimed any personal involvement in the renewal process. Fourthly, as none of the allegations raised by Mr Avery had been made in the RFL, or put to the appellant in the First-tier Tribunal, he submitted that fairness required that

the appellant should be given the opportunity to respond to the allegations at a further hearing.

Discussion and Conclusions

32. It is convenient to deal with the procedural ground of appeal first. It was unfortunate and undesirable that the appellant should have missed the evidence of his sister and the closing submissions as the result of a loss of power in the equipment that was being used at the offices of his legal representatives. However, we are wholly unpersuaded that the appellant was, as a result, deprived of a fair hearing or that the continuation of the hearing after the connection was lost constitutes a procedural irregularity.
33. It is not suggested that the Judge or the legal representatives were aware that the appellant had dropped out of the hearing from the moment when his sister was called to give evidence. Moreover, when Counsel for the appellant drew the Judge's attention to what had happened after the hearing, he did not ask the Judge to take any remedial action, on the basis that the appellant had only missed the closing submissions, and he could advise the appellant as to their content by reference to his written record of them.
34. Although it turns out that the appellant also missed his sister's evidence, it is reasonable to question why Counsel for the appellant was not alerted to this fact at the time, if it was perceived by the appellant or Ms Yaqub to be a matter of concern. More significantly, even if the loss of connection for the sister's evidence had been raised as a matter of concern immediately after the hearing, it is difficult to see what remedy the First-tier Tribunal Judge could have afforded to the appellant in addition to that which was readily available from his Counsel, which was his Counsel giving him a verbatim account of the evidence which his sister had given, as recorded in his own notes for the hearing. It would have been highly irregular for the Judge to have acceded to a request for the evidence of the sister to be re-heard for the benefit of the appellant.
35. Our decision on the impact of the loss of connection would have been different if the appellant had been conducting the hearing as a litigant in person. But as he was legally represented, his Counsel constituted his eyes and ears when his sister gave her evidence. He was fully competent to assess her evidence and to make closing submissions on its probative value. The appellant has had the opportunity to review his note of the evidence she gave, and he has failed to identify any matter arising from her evidence that he would have wished to raise with his Counsel before he made his closing submissions.
36. As to Ground 1, we consider that an error of law challenge amounts to no more than an expression of disagreement with findings that were reasonably open to the Judge on the evidence that was before her.

37. Mr Sharma advances two criticisms of the contents of paragraph 54. Firstly, he submits that, in finding that no weight should be attached to the “*passport photocopy*”, the Judge took no account of the fact that the appellant’s sister had given evidence that she was the one who found the document and that the document was genuine. The second criticism is that he had argued during the hearing in the First-tier Tribunal that the stamp could have, and should have, been verified by the respondent as the issuing authority, and so, he submits, it was not open to the Judge in the circumstances to impugn the veracity of the stamp.
38. As to the first criticism, it was open to the Judge not to attach weight to the evidence of the sister as to the provenance of the photocopied document, for a number of reasons which are discernible in her decision. The first is that she had not said anything at all in her supporting witness statement about the document, even though - on the appellant’s case - it was the single most crucial piece of evidence in the appeal. The second reason was that, as stated in paragraph [62], she was not an independent witness. The third reason is that her evidence was contradicted by what the appellant had said in the past about when he first entered the UK, and she did not offer any explanation in her witness statement or in her oral evidence for this contradiction.
39. The Judge’s reasoning is sufficient, having regard to the Judge’s unchallenged adverse credibility findings against the appellant himself, and also having regard to the appellant’s sister not having addressed at all in her witness statement either the genesis or the alleged re-discovery of the passport photocopy, which is not in fact a complete copy, but only a copy of certain pages in the passport. It is not true that the Judge failed to make a finding on the sister’s credibility. An adverse credibility finding against the sister is implicit in the Judge’s observation that she had failed to mention “*this rather important fact*” - the discovery of the passport photocopy - in her witness statement. Although not recorded by the Judge in her decision, Mr Sharma relies on the fact that the sister acknowledged in her oral evidence that she had made a mistake in not mentioning it. We do not consider that this undermines the Judge’s implicit adverse credibility finding. We consider that it was open to the Judge not to treat the sister’s excuse for the omission as salvaging her credibility.
40. Mr Sharma’s other criticism is that it was not open to the Judge to impugn the veracity of the entry stamp. It is difficult to see how the respondent could verify a stamp on a photocopy, and in any event the burden rested with the appellant to show that the document and its contents were reliable. Since it purported to be a copy of a passport issued by the Nigerian authorities, and since also the appellant had a background of using multiple false identities, the burden rested with him to show that the photocopy was of a genuine passport that had been issued to him in 1990 as opposed to being issued to someone else, whose identity he had adopted.

41. As the appellant had not brought forward any evidence about the genesis of the photocopy, apart from what was said in correspondence and by his sister in her oral evidence, it was open to the Judge to place no weight on it for the reasons she gave in paragraph [54].

Conclusion

42. For the above reasons, we find that the decision of the First-tier Tribunal is not vitiated by an error of law, either on procedural grounds or because of inadequate reasoning. Accordingly, the decision stands and the appellant's appeal to the Upper Tribunal is dismissed.

Anonymity

43. The First-tier Tribunal did not make an anonymity direction, and we do not consider that an anonymity direction is warranted for this appeal to the Upper Tribunal.

Signed

Date 26 July 2022

Deputy Upper Tribunal Judge Monson