Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/48287/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 22nd September 2014	**On 29th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR OLUMIDE OLUTOLA
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Ume-Ezeuke (Counsel)
For the Respondent: Mr S Kandola (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Braybrook promulgated on 15th July 2014, following a hearing at Taylor House on 9th July 2014. In the determination, the judge dismissed the appeal of Olumide Olutola. The

Appellant applied for, and was granted, permission to appeal to the Upper Tribunal and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Nigeria, who was born on 16th May 1984. He appeals against a decision of the Respondent dated 7th November 2013 refusing him leave to remain in the UK as a Tier 1 (Entrepreneur) Migrant.

The Appellant's Claim

3. The Appellant's claim is that he has set up Lumidee Limited, which was incorporated on 21st January 2013, he has submitted a letter from Stanbic IBTC Bank in Lagos. There are details of an account in his name which was set up on 7th June 2013. He had an opening balance of 2,000 Nigerian naira. The Appellant also has in Nigeria £51,763 in his bank account there.

The Judge's Findings

4. The judge dismissed the appeal on the basis that there was very little, if any, evidence of business activity on the part of the Appellant's business. At the date of the application and interview he had only one client, Muse Consult. The contract with Muse Consult gives very little detail as to the Appellant's role in their business. There is no detail of the work he did in oral evidence. Muse Consult also had no website presence although according to the Appellant in interview they were also "in internet solutions". The Appellant was also unclear as to whether or not Muse Consult had a website. Moreover, the Appellant himself gave a vague account of his own website.

5. Finally, as far as the funds in his account were concerned, the judge held that,

> "The Appellant's evidence as to the provenance of the funds in the Stanbic account was anything but straightforward. There was nothing to corroborate his assertion that the funds were from his family rather than the third parties he did not know but whose names featured as the depositors in the Stanbic account. The Appellant was not able to give a satisfactory explanation why his father was not able to deposit the sum in person stating that his father was busy and then that he was indisposed" (see paragraph 16).

Grounds of Application

6. There are two grounds of application. First, that the judge had mixed up the facts in relation to this Appellant with the facts of another case. This is evidently so. The judge states at paragraph 10 that "Ms Cooke relied on the refusal letter". There was no Ms Cooke representing the Respondent Secretary of State in this case. The judge also states, at paragraph 11, that "Mr Garrod relied on the Grounds of Appeal and skeleton". There was no Mr Garrod representing the Appellant. The judge also then stated, at paragraph 13, that "the burden of proof is on the Appellant to establish that

on balance she meets the requirements of the Rules ...". The Appellant was not a "she" but a "he".

7. The second ground of application is that the judge took into consideration matters that were not a requirement under the Immigration Rules. This was clear from what the judge said at paragraph 14, namely, that, "there was very little if any evidence of business activity on the part of the Appellant's business. At the date of the application and interview, he only had one client, Muse Consult ...". It was said that the judge failed to properly consider the contract of service between the Appellant's company and Mews Consult Limited.

8. On 4th August 2014, permission to appeal was granted on the basis that it was arguable that the judge had erred because of mixing up the facts between two different cases.

9. On 12th August 2014, a Rule 24 response was entered by the Respondent Secretary of State to the effect that "there is clearly an error in as much that paragraphs 10-13 clearly related to a different Appellant from Mr Olutola". It is said, however, that "when these paragraphs are excluded the determination makes perfect sense" and that in particular, "paragraphs 14 and 15 make clear and cogent adverse findings".

The Hearing

10. At the hearing before me on 22nd September 2014, Mr Ume-Ezeuke relied upon the grounds of application. First, he submitted that the judge at paragraphs 10 and 11 had obviously been referring to a completely different case. Second, with respect to specific findings of fact in relation to this case, whereas the judge was right in stating that the Appellant had only one client (Muse Consult), at the hearing the Appellant had stated he was paid £1,275 per month, and the judge was referred to the invoices and bank statement to support this. Mr Ume-Ezeuke submitted that any business making in excess of £1,000 per month is a lucrative business. Furthermore, the judge had been especially harsh at paragraph 15 of the determination, when stating that the only evidence of savings available to the Appellant "were the limited funds in his HSBC account and the Stanbic account". The judge had acknowledged that there was no requirement that £50,000 in funds should be available in the UK only. Yet, he had then gone on to impose this as a requirement. The Appellant had stated at the interview that he had £2,000 available in the UK to him (see his HSBC account at pages E1 to E11 of the Respondent's bundle). The judge does not anywhere make mention of this.

No Error of Law

11. I am satisfied that the making of the decision by the judge does not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.

12. Whereas it is clearly unsatisfactory that two substantial paragraphs (namely, paragraphs 10 and 11 of the determination) have found their way into the decision of

the judge, in a manner that ought to have been picked up upon a re-reading of the determination before its promulgation, the fact remains that nothing in these paragraphs (or in paragraph 13 which refers to the Appellant as a "she") has any bearing whatsoever on the eventual findings of the judge. Mr Ume-Ezeuke has submitted that the Appellant had £2,000 in his UK account.

13. However, the judge refers to the substantial amount of his funding arising from his account in Nigeria and he observes that, "the Appellant's evidence as to the provenance of the funds in the Stanbic account was anything but straightforward" (paragraph 16).

14. Nothing corroborated the Appellant's assertion that the funds came from his family. The Appellant could not explain why his father did not deposit the sum in person, if the funds came from his family, and the judge was unpersuaded by the explanation that his father was busy.

15. A third deposit made into the Appellant's account from a Mr Ogwuok, "was said to be a business associate of his sister who was unable to make the deposit herself because according to her declaration she was indisposed" (paragraph 16). On top of this, the judge was alarmed at "the timing of the deposits".

16. Eventually this led the judge to the conclusion that, "the funds were placed in the Stanbic account in June 2013 solely for the purposes of the application and the Appellant has not satisfied me that they are generally available to the Appellant for his business" (paragraph 16).

17. If one excludes the offending paragraphs 10, 11, and 13 from the determination, it is clear that these conclusions were ones that were based upon the evidence before the judge. They were open to him.

18. The determination is not irrational because what was said in paragraphs 10, 11 and 13, does not taint the decision of the judge. The judge is not seen to be having regard to "irrelevant circumstances".

19. In stark public law terms, the determination may be irrelevant in the manner it is expressed, but it does not reach the standard of amounting to an error of law. The determination stands.

20. There is no material error of law in the original judge's decision. The determination shall stand.

21. No anonymity order is made.

Signed Date

Deputy Upper Tribunal Judge Juss 26th September 2014