Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/20438/2016**

THE IMMIGRATION ACTS

Heard at Rolls Building	**Decision & Reasons Promulgated**
On 13 March 2018	**On 30 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

HAJA ISATU JALLOH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr O Noor, Counsel
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS ON ERROR OF LAW

1. The appellant is a citizen of Sierra Leone born on 26 October 1954. She applied for entry clearance to visit the UK but her application was refused on 10 August 2016. The reasons for refusal were that Home Office records showed she was refused entry clearance on 9 August 2011 under paragraph 320(7A) of the Immigration Rules because she had failed to declare a previous passport and entry clearance refusal. She was refused on 10 August 2016 under paragraph 3.7 of Appendix V of the Immigration Rules. This rule requires refusal in the circumstances that an applicant previously used deception in an application (whether successfully or not).

2. The appellant appealed on human rights grounds, stating she wished to undergo medical treatment in the UK while visiting her daughter, Ms Binta Barrie ("the

sponsor") and grandchildren. The sponsor wrote a letter arguing that her mother's "ban" until 2021 was a breach of her right to private and family life. The appeal was heard in the First-tier Tribunal sitting at Taylor House, London, on 10 October 2017. The sponsor gave oral evidence. The appellant provided a statement and a number of documents.

3. Judge of the First-tier Tribunal Devittie dismissed the appeal on human rights grounds. He made the following findings:

- there was family life as between the appellant and the sponsor;
- the appellant had made an appointment to consult a cardiologist and undergo a cardiogram in order to diagnose her condition but he was not satisfied there were no facilities for a cardiogram to be done in Sierra Leone;
- the appellant intentionally practised deception in relation to her previous application for entry clearance;
- the application in which the appellant had failed to declare her previous passport and gave an incorrect date of birth in her new passport followed a previous refusal of entry clearance and therefore the appellant may have had some incentive to conceal the previous refusal by producing a new passport and a false date birth;
- the appellant's claim that she employed an agent to complete the application form and she was an innocent party with regard to errors was rejected because the Judge did not see any good reason why the agent would have inserted false information without seeking the appellant's instructions and he did not accept that the sponsor would not have taken the elementary step of ensuring the agent had completed the form accurately;
- the letter issued by the Immigration Department in Sierra Leone, dated 2 October 2017, failed to give a coherent account of how an error of such magnitude could have occurred when issuing the appellant's passport and therefore the Judge attached no weight to it;
- the Immigration Rules were not met and the contention that there were no facilities in Sierra Leone and that the appellant's condition was life-threatening was far from persuasive;
- the appellant was personally dishonest in making false statements in relation to a previous application and the practice of deception seriously undermined the effective maintenance of immigration controls;
- there was no evidence to show that, if the appellant could not attend for a cardiogram in the UK, there would be serious adverse medical consequences for her;

- it was within the means of the sponsor to visit the appellant periodically in Sierra Leone and therefore the appellant's inability to visit the UK did not seriously undermine family life; and

- the appeal would fall to be refused even if there had been no finding of deception.

4. The grounds seeking permission to appeal argue two points. Firstly, the statement by the Judge that no independent evidence of the absence of facilities for a cardiogram to be undertaken in Sierra Leone ignored the letter from the appellant's local doctor, Dr Black, which stated that the appellant required a more subtle cardiovascular appraisal and this was not available locally. The sponsor had also confirmed this in her oral evidence. Secondly, the Judge's finding that the appellant had employed deception was *Wednesbury* unreasonable. No copy of the application form in which it was said that false representations were made had been produced by the respondent. The sponsor cannot read or write in English. The error in the passport details had been explained by the relevant issuing authority.

5. The respondent filed a rule 24 response opposing the appeal.

6. I heard submissions from the representatives on the question whether the judge made a material error of law in his decision.

7. Mr Noor's submissions built on his written grounds seeking permission to appeal. In relation to his first point, that the Judge had erred by overlooking the evidence before him from Dr Lamb, Mr Noor argued that the Judge had made contradictory findings. The Judge had set out in paragraph 7(iv) of his decision that Dr Lamb had written that the appellant required the opportunity for a more subtle cardiovascular appraisal and the pertinent cardiosurgical intervention because these were not available locally. I questioned with him whether any such error, if established, could prove to be material to the outcome of the appeal, given that the appellant could only succeed by showing the decision breached her rights under article 8 and she could not succeed simply by showing she met the requirements of the rules as a medical visitor. Mr Noor then went on to his second point that the Judge's assessment regarding the allegation of dishonesty was erroneous.

8. Mr Noor accepted that it was open to the Judge to look into the issue. He pointed out that the allegation consisted of three parts: that the appellant had concealed the fact there had been two previous refusals, that the appellant had stated that the passport she submitted with her application was her first passport, whereas there had been others, and she had failed to disclose that the date birth on her passport was incorrect. He pointed out that, as the Judge acknowledged, mistakes as to these matters would not be sufficient to engage the mandatory refusal ground. There had to be an element of dishonesty on the part of the appellant.

9. Mr Noor then took me to the Judge's reasons for upholding the finding of dishonesty, set out in paragraph 15 of the decision. He made five challenges to these reasons: (1) the respondent had not produced a copy of the application form in which the false representations were made, depriving the appellant and the sponsor of the ability to comment on them; (2) neither the appellant nor the sponsor saw the

application form from 2011 because it was submitted by an agent; (3) the appellant cannot read or write and it would have been impossible for her to complete the form herself; (4) the appellant's date of birth was incorrectly stated because it was incorrectly stated in her passport. The error in her passport had been explained in the letter from the Sierra Leonean Immigration Department, dated 2 October 2017, which stated that the error had been made by the data entry clerks; and (5) it must have been obvious to the entry clearance officer that there were errors in the application form because it referred to the appellant visiting her niece, when she does not have one in the UK, and it referred to her husband, when she was a widow. Mr Noor reminded me of the very serious consequences of a finding of dishonesty, as referred to in the Upper Tribunal decision of *Shen (Paper appeals; proving dishonesty)* [2014] UKUT 00236 IAC).

10. Mr Noor's expanded on those submissions at the hearing. He argued the Judge had applied an excessively suspicious approach to the evidence. He had misdirected himself as to the relevant standard of proof in paragraph 15(i) of his decision by using the words, *"[i]t is not entirely unlikely therefore …"* He argued that there were similarities to the case of *Shen* in which the tribunal found that the circumstances boiled down to the Secretary of State identifying an inaccuracy in the application form but the appellant then provided a plausible explanation for the mistake.

11. Mr Melvin pointed out that it was arguable the Judge did not have jurisdiction to hear the appeal in the first place. However, he acknowledged that the respondent had not lodged a cross appeal on this point and he did not have permission to argue it. He pointed out that there had been no appeal against the 2011 refusal, which the appellant had acknowledged in her application form this time around. There was no mileage therefore in the argument that the appellant had been deprived of the opportunity to look at the application form in which the false representations had been made. It was clear she accepted there had been errors. There had then been a gap of almost 5 years in which she had done nothing to answer the accusation of dishonesty. He suggested that some of Mr Noor's arguments were nothing more than "semantic". In short, the findings made by Judge Devittie were open to him to make.

12. Mr Noor argued that, if the rules were met in this case, it should follow that the decision was disproportionate. He relied on the well-known case of *Mostafa (Article 8 in entry clearance)* [2015] UKUT 00112 (IAC) in which it was held that an appellant's ability to satisfy the rules is not the question to be decided by the tribunal but it is capable of being a weighty, though not determinative factor, when deciding whether the refusal is proportionate to the legitimate aim of enforcing immigration control.

13. I reserved my decision on whether Judge Devittie's decision contains a material error of law.

14. Having considered the matter, I have concluded that it has not been shown that the decision is vitiated by material error of law and therefore the appellant's appeal is dismissed and the decision of Judge Devittie shall stand. My reasons are as follows.

15. In relation to the comment by Judge Devittie that no independent evidence had been presented to show that there were no facilities for a cardiogram to be done in Sierra Leone, I note the following. Firstly, any error cannot be material to the outcome. The issue here is whether one of the requirements of the rules for medical visitors had been met. It is clear that the Judge was fully aware of the contents of the letter from Dr Lamb and I incline to the view that his comment that there was no independent evidence was simply a means of expressing his assessment that the letter did not carry much weight. He had noted some discrepancies, for example over the spelling of the name of the consultant in the UK which the appellant wished to consult and also the fact the consultant referred to Dr Lamb as the appellant's GP. This was not impressive evidence and, in any event, it appears to me from reading Dr Black's letter that the appellant was able to undergo echocardiographic assessment in Sierra Leone, which resulted in the diagnoses stated. In sum, while it is not strictly correct that there was no independent evidence, the Judge was entitled to attach little weight to the evidence which had been adduced. There is no material error.

16. In relation to the more significant issue of whether respondent had shown that false information had been provided in connection with a previous application, I acknowledge that it does appear the appellant has never been provided with a copy of that application. On the other hand, this point carries little weight because it is not clear that the appellant in terms denies that wrong information was provided. It is implicit from the fact she submitted a letter purporting to explain the errors in her passport that she accepts that her date of birth was wrongly recorded.

17. Moreover, in my judgment, the Judge provided adequate reasons for his decision to find that, the respondent having raised the question of deception by reference to evidence creating a reasonable suspicion, the appellant failed to satisfy him that she had simply made a mistake. Neither the fact the appellant may be illiterate nor the fact she employed an agent to complete her application form can by themselves absolve her from responsibility for ensuring that the contents are correct.

18. I find no error in the Judge's approach. He was entitled to begin by finding that there was a possible reason for the appellant to seek to conceal her previous refusals by presenting a passport with a different date of birth. I do agree with Mr Melvin that Mr Noor's challenge to the Judge's wording in paragraph 15(i) of his decision is nothing more than semantic. At the beginning of paragraph 15 the Judge directed himself correctly that it was for the respondent to establish on a balance of probabilities that the appellant had intentionally practised deception. The fact the Judge expressed himself in the manner he did a few lines later is insufficient to show a material misdirection.

19. In the two following subparagraphs the Judge gave sensible reasons for rejecting the appellant's explanation, which were based on the evidence. Whilst Mr Noor sought to argue that the letter produced could not be dismissed as incoherent when its contents were clear, I also consider that what the Judge plainly meant to say was that he gave the letter little weight. Having looked at it, I can fully understand his decision. The letter is dated 2 October 2017 and must have been written therefore approximately six years after the issuance of the previous passport. There is

absolutely no explanation of how it came to light that an error was made by data entry clerks such a long time ago.

20. The errors regarding the reference to niece and husband were made by the entry clearance officer. It is unclear to me how this should mean the Judge erred in his assessment. He was in no position to know how those errors came about and he was not required to give them weight as showing the respondent had not acted fairly.

21. There is no error of law in the First-tier Tribunal's decision to dismiss the appeal and the decision shall stand.

22. The appellant's appeal is dismissed.

Notice of Decision

The Judge of the First-tier Tribunal did not make a material error of law and his decision dismissing the appeal is upheld.

No anonymity direction is made.

Signed Date 13 March 2018

Deputy Upper Tribunal Judge Froom