



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

Appeal Number: HU/00232/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 19 July 2019**

**Decision & Reasons Promulgated
On 30 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SUTHERLAND WILLIAMS

Between

MISS TEMILOLA ABIODUN FASANU

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Jarvis, Home Office Presenting Officer

For the Respondent: Mr J Gajjar, Counsel, instructed by AY & J Solicitors

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Lever ('the judge'), promulgated on 26 March 2019, dismissing the appellant's appeal against the respondent's decision to refuse her claim for indefinite leave to remain.

2. The appellant is a citizen of Nigeria. She appealed against the decision of the respondent to refuse her indefinite leave to remain under paragraphs 322(5) of the Immigration Rules.
3. Relevant to this onward appeal is the respondent's contention that the first appellant's earnings, as declared to Her Majesty's Revenue and Customs ('HMRC'), differed significantly from the income she had declared to the Home Office following a Tier 1 leave to remain application.
4. The respondent's initial case was that there had been a clear benefit to the appellant either by failing to declare her full earnings in order to reduce her tax liability and/or falsely representing her earnings to the Home Office to meet the points requirement for a Tier 1 visa.
5. This deception, it was advanced, meant it was undesirable to permit the appellant to remain, and thereby the appellant did not meet the requirements of the long residence rules.
6. Following a hearing, the judge found that the appellant had acted dishonestly and that the Home Office's case in this regard was 'overwhelming'.
7. As a result, the appeal was dismissed.
8. In the grounds of appeal to the Upper Tribunal, drafted on 4 April 2019, Counsel representing the appellant submitted that the judge had materially erred in dismissing this appeal, *inter alia*, because:

The appellant submits that paragraph 26 of the determination is infected with an arguably material error of law as the First-tier Judge has failed to grapple with a concession made by the presenting officer at the outset of the hearing or submissions made by counsel for the appellant.

As to the concession, the Secretary of State accepted at the start of the hearing that he had narrowed his allegation to fraud on HMRC on the basis that insofar as it was alleged that the appellant had inflated her income to secure leave to remain - thereby defrauding UKVI - the documentary evidence by the appellant at the time of the previous applications stacked up and led to leave to remain being granted. The First-tier Judge has given no reasons as to why this concession has been departed from.

9. The record of proceedings on the tribunal's file appears to be silent on the issue, so I am not assisted either way in that regard.
10. Nonetheless, contrary to the concession asserted in the grounds of appeal, it is clear that the judge was satisfied that the appellant '*had produced bogus figures and documentary evidence to the Home Office in her visa application claiming a high level of income from self-*

employment in order to gain points so that she would be awarded a visa'.

11. I can find no reference in the judge's determination to any concession made by the Home Office.
12. The suggestion the appellant's representative makes is that the presenting officer conceded that the appellant had not inflated her income to secure leave to remain. Clearly such a concession would be contrary to what the judge found.
13. I had certain reservations about what was said in this regard going into the hearing. The judge has produced an otherwise well-reasoned decision, explaining why he found against the appellant. On one view, it appeared unlikely he would have overlooked a concession of this type made by the Home Office.
14. However, at the start of the hearing the presenting officer before me was able to confirm that some form of concession had been made by the Home Office. He had found on the Home Office file what appeared to be a note relating to said concession:

'Far more likely she has been manipulating the figures in order to avoid tax by submitting lower figures. Deception against HMRC therefore not the Home Office.'
15. This note appears to corroborate to a degree what counsel for the appellant maintained. If, as Mr Jarvis was prepared to assume, this (or something similar) had been said at the hearing, it would appear to have been something the judge would have at least had to address, if only to explain why he was departing from it.
16. Mr Jarvis, correctly in my view, took the approach that the Home Office was not in a position to dispute what counsel said about the concession; and thereby accepted the concession had been made.
17. The question that then flows is whether the judge should have engaged with such a concession. It appears to me that he should have done. The appellant is at least entitled to know that the judge considered the concession before going on to make the findings that he did, particularly as the findings that the judge made relate to the appellant's integrity and how she acted at the time, concluding with a finding that was contrary to what the Home Office were by that stage advancing in relation to the fraud being on HM Revenue and Customs, not in relation to the Tier 1 application.
18. As has been suggested in more than one decision of the Upper Tribunal, it is axiomatic that the determination discloses clearly the reasons for a tribunal's decision (e.g. *MK (duty to give reasons) Pakistan* [2013] UKUT 00641 (IAC)).

19. While I am satisfied that one element of the reasons for the judge's decision are clear, I am not satisfied that the judge has taken into account what was a concession relating to a central part of the case touching upon those reasons. The failure to address the conceded position calls into question the decision as a whole.
20. I have considered whether it would be appropriate to write to the judge to seek clarification, but in the light of the way the Home Office have framed the case before me today, I do not think that that is likely to add substantial value. The Home Office have accepted what is currently advanced.
21. I have also considered, bearing in mind the force of the determination of the judge at first-instance, whether such an error is material to the overall outcome of this appeal. While I think it is arguable to say it may not be, on balance I am far from persuaded that the decision can now survive following the Home Office's acceptance that the point should have been addressed, if only to be dismissed. As a result, I am not able to remedy the defect at this stage.
22. For the above reasons, I am satisfied that there has been a material error of law. The judge has failed to take into account a concession made by the Home Office that was relevant to the determination he was being asked to make.
23. I therefore set aside the decision of Judge Lever, dated 25 March 2019.
24. I have considered whether I should reserve this matter to myself and the Upper Tribunal, but it appears to me that having prepared this decision after the hearing, the correct course is to now remit this appeal to the First-tier Tribunal to begin again.

Notice of Decision

The appeal is allowed.

The decision of the First-tier Tribunal sitting in Newport on 5 March 2019 under reference HU/00232/2019 is set aside.

AND I DIRECT:

- 1. This matter shall be remitted to the First-tier Tribunal sitting in Newport for a fresh hearing, not to be listed before Judge Lever.**

- 2. The Secretary of State must now consider whether he wishes to maintain the concession made at the previous hearing. The Secretary of State may apply to withdraw the concession, but notice must be given to the tribunal and the parties within 28 days of the issue of this decision.**
- 3. In any event, the Secretary of State must prepare a short statement of case for the tribunal and the appellant, so that the appellant is aware of the case that she now has to meet.**
- 4. Upon receipt by the First-tier Tribunal in Newport, this file shall be referred to a tribunal caseworker for further listing directions.**

No application was made for anonymity in this appeal. The general rule is that hearings are held in public and judicial decisions are published (*A v BBC* [2014] UKSC 25) and I saw no reason to depart from the general rule in this case.

Signed



Date 22 July 2019

Deputy Upper Tribunal Judge Sutherland Williams