



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

**Appeal Number: IA/35940/2014**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly  
On 30 March 2015**

**Decision Promulgated  
On 15 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**CHARLES IKECHIKWU ODUME  
(ANONYMITY DIRECTION NOT MADE )**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Timson counsel instructed by Maya Solicitors  
For the Respondent: Mr A Mc Vitie Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This

is an appeal by the Secretary of State against a decision of First-tier Tribunal Judges Cruthers and Shergill promulgated on 11 December 2014 which allowed the Appellant's appeal under the Immigration Rules.

### Background

3. The Appellant was born on 17 November 1978 and is a national of Nigeria. The Appellant had leave to enter the UK as a student on 3 October 2013 and his visa was valid until 16 January 2015. . In order to prove certain of the requirements necessary to obtain such leave he supplied an ETS TOEIC certificate which purported to show that he had taken an exam on 16 July 2013
4. On 31 August 2014 the Appellant arrived at Manchester Airport after a trip to Nigeria. He sought re entry to resume his studies at Manchester Ideal College where he was studying for a Diploma in management which was due to finish on 16 December 2014. Home Office enquiries revealed that applicant's test score had been cancelled as invalid on the basis of fraud and they therefore refused the Appellant leave to enter the United Kingdom and this is set out in a Notice of Leave to Enter dated 9 September 2014.

### The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal on 26 November 2014. First-tier Tribunal Judges Cruthers and Shergill heard the appeal the decision being written by Judge Shergill ("the Judge") He allowed the appeal.
6. As a preliminary issue the Judge heard an application by the Home Office Presenting Officer for an adjournment to allow them an opportunity to obtain further evidence which would support their case in conjunction with the two 'generic' statements in the bundle. They heard evidence from the Appellant and submissions from both the HOPO and the Appellant's representative. They refused the application.
7. At paragraph 30 the Judge set out that the burden of proof was on the Respondent to establish a precedent fact that false representations had been made by cogent evidence.
8. The Judge found that the Respondent had failed to provide case specific evidence. There were statements from two witnesses who set out how the fraud alleged had occurred but these did not refer to this Appellant.
9. The Judge found that there was a lack of clarity on key issues which is set out at paragraphs 33-40.
10. The Judge heard evidence from the Appellant which he gave in English and found him to be a credible witness which supported the view that he spoke English and therefore found there was no reason for him to have someone else take an English examination on his behalf.
11. The Judge found that the evidence did not show the Appellant's test results were invalidated at all or for good reason; whether he was the subject of bulk or individual invalidation and how the possibility of false positive results were dealt with.

12. The conclusion was that the Respondent did not meet the evidential burden of establishing that the Appellant was involved in dishonest activity or deceived the Respondent in respect of his English Language Certificate
13. Grounds of appeal were lodged on the basis that the refusal of an adjournment amounted to a procedural irregularity and the Judge gave inadequate reasons on material matters.
14. On 29 January 2015 First-tier Tribunal Judge Andrew gave permission to appeal on both grounds.
15. At the hearing I heard submissions from Mr Mc Vitie on behalf of the Appellant that :
  - (a) He relied on the grounds of appeal.
  - (b) In relation to the refusal to grant an adjournment the tribunal should have considered whether the refusal deprived the Respondent of a right to fair hearing relying on Nwaigwe (adjournment :fairness) [2014] 00418 (IAC).
  - (c) He conceded that ground 1 in relation to the refusal of the adjournment was stronger than the argument that the Judge had given inadequate reasons for the decision reached.
16. On behalf of the Respondent Mr Timson submitted that :
  - (a) He relied on the Presidential Guidance Note No 1 of 2014 in relation to the interpretation of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 in relation to adjournment requests. He said that while not specifically referred to by the Judges it was evident from their consideration of the application to adjourn and those matters they took into account that they had considered all relevant factors before refusing the adjournment.
  - (b) It was clear in this appeal that given the central issue in the case was that the language test had been obtained by fraud that the Respondent had been aware of the need for fact specific evidence for some time: the fact that it was in a float list was irrelevant.
  - (c) The application to adjourn had not been made at the earliest opportunity and was speculative and the Respondent did not show what would be achieved by the adjournment.
  - (d) The Respondent had had adequate time to prepare the case.

## **The Law**

17. An application to adjourn proceedings at the time of this appeal was governed by Rule 21 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (the “2005 Rules”)

“(1) Where a party applies for an adjournment of a hearing of an appeal, he must-

- (a) if practicable, notify all other parties of the application;
  - (b) show good reason why an adjournment is necessary; and
  - (c) provide evidence of any fact or matter relied upon in support of the application.
- (2) The Tribunal must not adjourn a hearing of an appeal on the application of a party, unless satisfied that the appeal cannot otherwise be justly determined.”
18. This provision of the Rules was to be construed and applied by reference to the overriding objective enshrined in Rule 4, which provides:

“The overriding objective of these Rules is to secure that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible; and, where appropriate, that members of the Tribunal have responsibility for ensuring this, in the interests of the parties to the proceedings and in the wider public interest.”

### **Finding on Material Error**

19. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
20. There is no automatic right to an adjournment and the Procedure Rules and the Presidential Guidance referred to by Mr Timson refer to factors which weigh in favour of and against an adjournment application.
21. In this case the chronology was of some importance: at a hearing on 26 November 2014 the Judge was faced with a refusal decision dated 9 September 2014 underpinned by a claim that an English Language test taken on 16 July 2013 was invalidated by fraud.
22. The so called generic statements on which the claim of fraud were based were dated 23 June 2014 and set out how the fraud the fraud was drawn to the Respondent’s attention in January 2014, how it was alleged to have been carried out and detected in general terms but made no reference to specific applicants. It was conceded by the Respondent at the hearing that the requirement for case specific evidence had been recognised by the Respondent since September 2014.
23. The application made to the Judge was for an adjournment to obtain evidence that showed that the Appellant’s test certificate by reference to his test number was invalid.
24. I am satisfied that the Judge took into account all relevant factors at paragraphs 16-23 in determining whether the case could be justly determined without adjourning the case. They made specific reference in paragraph 23 to the Procedure Rules.
25. The Judge had an opportunity as part of the adjournment request to hear the Appellant give evidence in English about the background to this appeal and they recorded this evidence at paragraph 19.
26. The factual background against which the decision to refuse the adjournment was made but which may have resulted in an adjournment being granted was that it was

conceded by the Respondent that they had been aware of the requirement for case specific evidence since September 2014 so this was not an issue were the Respondent was taken by surprise by something occurring unexpectedly at the date of hearing. The nature of the case had not changed: the Respondent was aware that the case rested on establishing by cogent evidence not only that there was a fraud perpetrated but that this Appellant had carried out such a fraud. There was no suggestion that this evidence was in the hands of someone beyond the control of the Respondent.

27. The factors set out in the Presidential Guidance that weigh against an adjournment which although not specifically referred to by the Judge were part of the factual matrix of the decision were that the adjournment request was not made at the earliest opportunity. They recorded that they heard submissions from Mr Islam on behalf of the Appellant that they mere fact that the Appellant's test certificate had been invalidated would take the matter no further and there was some force in that argument: the Judge was concerned that the fact that the Appellant's test certificate had been invalidated would not have shown in what way it had been determined that he personally had obtained a test certificate by fraud rather than being the victim of a bulk invalidation (paragraph 22).
28. Finally the Judge considered the application against the chronology given and decided that they had been given adequate time to prepare the case. They concluded that they could properly consider the issues in the case and dispose of the case justly and fairly without an adjournment. I am satisfied that in the circumstances of the case before this was a conclusion that was open to him.
29. The second ground argues that the Judge failed to adequately engage with the evidence adduced by the Respondent. I am satisfied that the findings made by the Judge were well reasoned, rational and detailed and clearly demonstrated why the Judge was not satisfied that the Respondent had met the evidential burden in this case. The Judge started by identifying again at paragraph 32 and 39 that the evidence was not case specific to this Appellant although the case was at least 10 weeks old. He then made a finding that the evidence was 'somewhat unclear' on key issues at paragraphs 33-39 and gave clear examples in relation to a lack of clarity as to whether an individual had been the subject of a bulk invalidation or an individual invalidation. The Judge identified contradictions in the Respondent's evidence at paragraph 35.
30. The Judge then set what they described as the 'confused evidence' against the fact that they found the Appellant to be a credible and reliable witness and that English was his first language in Nigeria. After being told that his 2013 test certificate had been invalidated he had undertaken more recent ESOL tests whose validity had not been challenged (paragraph 40). The oral and documentary evidence led them to conclude that there would be no reason for this Appellant to secure a test certificate by fraud as he clearly spoke English (42) and I am satisfied that they were entitled to take this into account in determining whether the Respondent had met the evidential burden in this case.
31. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote: "*Although there is a legal duty to give a brief*

*explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.”* I was satisfied that the Judge’s determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

**CONCLUSION**

**32. I therefore found that no errors of law have been established and that the Judge’s determination should stand.**

**DECISION**

**33. The appeal is dismissed.**

Signed

Date 7.4.2015

Deputy Upper Tribunal Judge Birrell