



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/50163/2014

THE IMMIGRATION ACTS

Heard at Field House
On 28 October 2015

Decision & Reasons Promulgated
On 18 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

ONORIODE FELIX AMUGEH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms S Sreeramen of the Specialist Appeals Team

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Nigeria, born on 7 March 1984. On 4 March 2013 he entered with student leave to pursue studies for a Master's Degree in Bio-Technology. The course finished in August 2014 but the Appellant had failed certain aspects and on the day before his leave expired he applied for further leave to enable him to complete his studies. On 27 November 2014 the Respondent refused the applicant further leave to remain as a Tier 4 (General) Student Migrant for general grounds relying on paragraph 322 of the Immigration Rules because the Respondent considered the Appellant had failed to disclose that he had been "convicted of possessing/controlling article(s) for use in fraud(s) on April 2014 and making false

representation to make a gain for self or another on 29 April 2014 at North West London Magistrate's Court".

The First-tier Tribunal Proceedings

2. On 11 December 2014 the Appellant lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds did not deny the conviction and asserted that the Appellant had been advised by the solicitors who had acted for him in the criminal proceedings by way of a letter that in respect of both offences he had been sentenced to a conditional discharge for two years and that if he was asked if he had been convicted of an offence he was entitled to reply in the negative. If he was asked whether he had committed an offence or been guilty of an offence then he would have to disclose the fact that he had been sentenced to a conditional discharge. A copy of the solicitor's letter was attached to the Notice of Appeal.
3. By a decision promulgated on 19 March 2015 Judge of the First-tier Tribunal Stott found that the Appellant had failed to disclose in his application for further leave his convictions and so had made misrepresentations in his application. He dismissed the appeal.
4. On 1 June 2015 Judge of the First-tier Tribunal and Lambert refused the Appellant permission to appeal. The Appellant renewed his application for permission to appeal to the Upper tribunal. In his renewed application for permission to appeal to the Upper Tribunal he stated that he would be graduating on 23 July and "after that I will be gone for good. Please I don't want to stay any more."
5. On 3 August 2014 Upper Tribunal Judge Plimmer granted the Appellant permission to appeal on the basis that it was arguable the Judge had failed to apply the learning in *Omenma (Conditional discharge - not a conviction of an offence) [2014] UKUT 314 (IAC)*.
6. In her response of 20 August 2015 under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Respondent stated that she did not oppose the application for permission to appeal and invited the Upper Tribunal to allow the appeal under the Immigration Rules in the light of the decision in *Omenma*.

The Upper Tribunal Hearing

7. The Appellant was unrepresented when he attended the hearing. He had not been able successfully to complete his studies and obtain his Master's Degree but he had obtained a Post-graduate Diploma. He had been unable to focus on his studies because the Respondent had retained his passport and he had been unable to take on any employment. Additionally, he had been the victim of a theft. This had meant that he had been unable to obtain money to travel to return home. In the meantime he had managed to survive by borrowing money from friends and incurring debts on his credit card.

8. I referred to the Respondent's response under Rule 24. For the reasons given by Upper Tribunal Judge Plimmer in her grant of permission, I find the Judge's decision contains an error of law such that it should be set aside and I re-make the decision allowing the Appellant's appeal against the Respondent's refusal to grant him further leave as a student.
9. The Respondent when considering the length of leave to be granted the Appellant in the light of my decision, may wish to take into account the information that the Appellant gave to the Tribunal.

NOTICE OF DECISION

The appeal is allowed on immigration grounds.

No anonymity direction is made.

Signed/Official Crest

Date 30. x. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

The appeal has been allowed and so I have considered whether to make a fee award. Having regard to all the circumstances and the reasons for the appeal being allowed, I consider a partial fee award of £70 is appropriate.

Signed/Official Crest

Date 30. x. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal